

ORDINANCE NO. 16-__

Ordinance Of The City Council Of The City Of Emeryville Adding Chapter 40 To Title 5 Of The Emeryville Municipal Code, "Residential Landlord And Tenant Relations"

WHEREAS, on October 1, 2014, the Housing Committee recommended that the City explore means of addressing disputes between residential landlords and tenants regarding residential rent increases and arbitrary terminations of tenancy;

WHEREAS, on May 5, 2015 the City Council held a study session on the matter, directed staff to analyze various just cause eviction and anti-harassment protections, and referred the matter to the Housing Committee to work out the details; and

WHEREAS, on October 7, 2015, the Housing Committee reviewed and provided feedback on the staff analysis of various tenant protection measures; and

WHEREAS, at a study session on June 7, 2016, the City Council reviewed the recommendations of the Housing Committee and directed that a just cause eviction, anti-harassment, and relocation assistance ordinance be drafted for future consideration by the Council;

WHEREAS, the City Council finds and determines that regulating the relations between certain residential landlords and residential tenants will increase certainty and fairness within the residential rental market in the City and thereby serve the public peace, health, safety, and public welfare; and

WHEREAS, this Ordinance is adopted pursuant to the City's police powers, afforded by the state constitution and state law to protect the health, safety, and welfare of the public;

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

SECTION ONE. PURPOSE AND INTENT

The purpose and intent of this Ordinance is to adopt a new Chapter 40 of Title 5 of the Emeryville Municipal Code, "Residential Landlord and Tenant Relations", to increase certainty and fairness in the residential rental market in the City by addressing just cause eviction, anti-harassment, and relocation assistance.

SECTION TWO. ADDING CHAPTER 40 TO TITLE 5 OF THE EMERYVILLE MUNICIPAL CODE

Chapter 40 is hereby added to Title 5 of the Emeryville Municipal Code to read as follows:

**CHAPTER 40
RESIDENTIAL LANDLORD AND TENANT RELATIONS**

5-40.01 Purpose.

- (a) The Residential Landlord and Tenant Relations Chapter of the Emeryville Municipal Code is enacted to formalize the relations between owners and managers of residential rental property in the City and the tenants who reside in those properties. By formalizing and regulating the landlord-tenant relationship, the City sets clear expectations and provides certainty for both landlords and tenants, promotes fair dealings between landlords and tenants, and recognizes the fundamental importance of residential housing and the landlord-tenant relationship to create a healthy, safe, and vibrant city. This Chapter is intended to complement existing state and federal regulation of the landlord-tenant relationship; it does not summarize or supersede any state or federal law. The rights and obligations created by this Chapter for landlords and tenants are in addition to those rights and obligations under state and federal law.
- (b) The City Manager has the authority to issue interpretations of and regulations to implement this Chapter, including regulations to develop a process in which landlords of a single Covered Unit may petition the City for a complete or partial exemption from the obligations set forth in Section 5-40.04.

5-40.02 Definitions.

- (a) "**Covered Unit**" means every residential housing unit or dwelling unit within or under the jurisdiction of the City of Emeryville except the following:
 - (1) Dwelling units in hotels, motels, lodging houses, and rooming houses subject to Chapter 25 of Title 5 of the Emeryville Municipal Code are exempt from this Chapter so long as the tenant(s) in a given dwelling unit do not reside in that unit for more than 30 consecutive days. Terminating a tenancy or requiring an occupant to move, or to check out and reregister before the expiration of 30 days occupancy is prohibited if a purpose is to avoid the effects of this Chapter, in accordance with California Civil Code Section 1940.1.

- (2) The entirety of a single Owner-Occupied Residence, when the owner-occupant rents or leases two or fewer bedrooms to one or more Lodgers, is exempt from this Chapter.
 - (3) Dwelling units in nonprofit cooperatives owned, occupied, and controlled by a majority of the residents are exempt from this Chapter.
 - (4) Each dwelling unit where the rent is controlled, regulated, or restricted by a state or federal government unit, agency, or authority, when the control, regulation, or restriction would preempt local regulation of landlord and tenant relations. This exemption includes, but is not limited to, those dwelling units restricted by a recorded encumbrance on title pursuant to the federal low income housing tax credit program. This exemption applies unless and until such restrictions, regulations, or controls of residential rents are released or no longer preempt local regulation of the landlord and tenant relationship; this exemption does not apply whenever a dwelling unit may be leased or rented for fair market value.
 - (5) Housing accommodations in any nonprofit hospital, convent, monastery, extended care facility, asylum, residential care or adult day health care facility for the elderly which must be operated pursuant to a license issued by the California Department of Social Services are exempt from this Chapter.
 - (6) Housing units owned by any government unit, agency, or authority, including but not limited to any division or department of a local, state, or federal government, are exempt from this Chapter.
- (b) "**Landlord**" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any resident rental unit or portion thereof, and includes any legal entity or other individuals, employees, agents, contractors, and subcontractors that comprise or represent the landlord.
 - (c) "**Lodger**" means a person contracting with the owner of a dwelling unit for a room or room and board within the dwelling unit personally occupied by the owner, where the owner retains a right of access to all areas of the dwelling unit occupied by the lodger and has overall control of the dwelling unit, as defined in California Civil Code Section 1946.5(c).
 - (d) "**Notice of Termination**" means a written notice that includes all of the components identified in Section 5-40.07.
 - (e) "**Owner-Occupied Residence**" means a single dwelling unit in which an individual retains no less than a 50% ownership interest in the individual unit, and

resides in that unit as his or her permanent residence no less than ten months of any calendar year.

- (f) **"Right To Return"** means the obligation of certain residential landlords to deliver, and the right of certain residential tenants to receive an offer to return to and rent a Covered Unit when the landlord returns the unit to the rental market, after temporarily removing the unit from the market under Section 5-40.03(e)(2). Tenant(s) with tenancies terminated pursuant to Section 5-40.03(e)(2) are entitled to receive, and landlord(s) must deliver, an offer to return to and rent the same unit if: (1) the tenant has provided to the landlord a current mailing address at which to receive an offer of the right to return; (2) the landlord returns the Covered Unit to the rental market within two years of terminating the tenancy under Section 5-40.03(e)(2); and (3) the tenant delivers to the landlord an affirmative written acceptance of the offer to return to and rent the unit within thirty (30) days of delivery by the landlord of the offer to return. For purposes of this subsection, deliver and delivery include deposit with the United States Postal Service of a sealed, addressed envelope, with first-class postage paid. A tenant's Right to Return survives regardless of any transfer of legal ownership of the Covered Unit.

5-40.03 Just Cause for Termination of Tenancy Initiated by Landlord.

No landlord may terminate a residential tenancy of a Covered Unit (and so must either (i) renew the lease, (ii) permit the tenancy to continue in accordance with California Civil Code Section 1945, or (iii) provide notice in accordance with California Civil Code Section 827) unless the landlord can demonstrate:

- (a) that the landlord possesses a valid Residential Landlord Business License pursuant to Chapter 1 (Business Taxes) of Title 3 (Finance) of the Emeryville Municipal Code;
- (b) that the landlord has provided the tenant with a notice of tenant rights in accordance with Section 5-40.07;
- (c) that the landlord served a Notice of Termination to the tenant in the form required by Section 5-40.08, and that the landlord delivers a true and accurate copy of the Notice of Termination to the City Clerk within ten calendar days of delivery to the tenant(s); and
- (d) that the landlord has not accepted and will not accept rent or any other consideration in return for the continued use of the Covered Unit beyond the term of the terminated tenancy in compliance with California Civil Code Sections 1945, 1946, and 1946.1.

- (e) that the termination qualifies as a "For Cause" or "No Fault" termination, as defined below.
- (1) For Cause Terminations. If a landlord can show any of the following circumstances with respect to a termination of tenancy, the termination will qualify as "For Cause."
- a. "Failure to Pay Rent." Tenant failed to pay rent within three days of receiving written notice from the landlord demanding payment in accordance with California Code of Civil Procedure Section 1161.2.
 - b. "Breach of Rental Contract." Tenant violated a material term of the rental agreement.
 - c. "Tenant Illegal Activities." Tenant has used the unit for an illegal purpose, including but not limited to the unlawful distribution of a controlled substance as contemplated by California Civil Code Section 3486, or the unlawful use, manufacture, or possession of weapons and ammunition as contemplated by California Civil Code Section 3485.
 - d. "Violations of City Health & Safety Code." Tenant created or is maintaining a dangerous and unsanitary condition as defined in Chapter 2 (Dangerous and Insanitary Conditions) of Title 6 (Sanitation and Health) of the Emeryville Municipal Code, and that condition has not been promptly abated or repaired as contemplated in Chapter 2 of Title 6 of the Emeryville Municipal Code.
 - e. "Failure to Allow Landlord Access." Tenant failed to allow landlord access to the unit, after receiving due notice as required by California Civil Code Section 1954.
 - f. "Tenant Rejected Written Lease Extension." Tenant failed to execute a written extension of an existing rental agreement, but only if the offered written extension is substantially and materially the same as the original rental agreement.
 - g. "Tenant Violated Occupancy Restriction." Tenant failed to abide the long-term occupancy restrictions of the rental agreement (i.e. tenant allowed long-term occupancy of the unit by one or more individuals who were not previously contemplated in the rental agreement), but only when the unapproved, long-term occupants of

the unit would cause the number of persons living in the unit to exceed the total of two-persons per bedroom in the unit plus one.

- h. "Landlord Returning from Sabbatical to Occupy Unit." Landlord has temporarily rented or leased the entirety of a single Covered Unit for up to and including six months, when that Covered Unit qualified as an Owner-Occupied Residence during the calendar year prior to the temporary rental and the landlord intends to return to the Covered Unit as his or her primary residence to re-qualify the Covered Unit as an Owner-Occupied Residence for the calendar year after the conclusion of the temporary rental; if the Covered Unit does not qualify as an Owner-Occupied Residence following the conclusion of the temporary rental, the tenant during the temporary rental is entitled to the Right to Return.
- i. "Landlord Condominium Conversion." Landlord is converting the Covered Unit(s) to a condominium in accordance Article 7 (Residential Condominium Conversions) of Chapter 6 (Subdivisions) of Title 9 (Planning Regulations) of the Emeryville Municipal Code, and has provided the tenant(s) with the relocation assistance payment under Section 9-6.706 of the Emeryville Municipal Code.

- (2) No Fault Terminations. If a landlord can show any of the following circumstances with respect to a termination of tenancy, the termination will qualify as "No Fault" and entitles the tenant to relocation assistance in accordance with Section 5-40.04 and the Right To Return, which includes the right to receive notice from the landlord that the unit will be returned to the rental market and the right to return to and rent the unit under substantially the same material terms as the prior rental agreement when it is placed back in service for residential rental purposes. For purposes of this Section, "substantially the same material terms as the prior rental agreement" means substantially similar housing services for a monthly rent charge that may not exceed the amount paid for the last month of the tenancy, subject to any notice provided in accordance with California Civil Code Section 827.

- a. "Landlord Will Remove Unit from Market." Landlord will imminently demolish the unit or otherwise permanently remove the unit from any residential rental use or purpose.
- b. "Landlord Will Move in to Unit." Landlord, or one of landlord's parents or children, will imminently move into and reside in the housing unit as his or her permanent residence no less than ten

months of any calendar year, for no less than two years from the termination of tenancy.

- c. "Landlord Will Sell Unit." Landlord of a single Covered Unit will imminently sell that Covered Unit.
- d. "Unit Is Temporarily Unfit for Human Habitation." The unit must be temporarily removed from the rental market because the unit is not currently fit for human habitation, but will be repaired and returned to the rental market.
- e. "Unit Will Be Substantially Renovated." The unit must be temporarily removed from the rental market because it will imminently become unfit for human habitation because of planned capital improvements and other necessary rehabilitation, for which the landlord currently possesses all necessary permits to imminently begin and diligently complete the permitted work in order to promptly return the unit to the rental market.

5-40.04 Relocation Assistance.

- (a) When a landlord terminates a tenancy through a No Fault termination, the tenant(s) will be entitled to receive Relocation Assistance, unless the cause of the No Fault termination was a natural disaster or other naturally occurring phenomenon beyond the control of the landlord, such as an earthquake, fire, or flood.
- (b) Landlord may pay the Relocation Assistance to entitled tenants concurrent with or after delivering the Notice of Termination, but must deliver the Relocation Assistance to the tenant(s) by the last day of tenancy for which the landlord has received rent.
- (c) Relocation Assistance means either five times the most current Fair Market Rents as published annually by the U.S. Department of Housing and Urban Development ("HUD") for the Oakland-Fremont, California HUD Metro FMR Area in the Federal Register, or four times the monthly rent that the tenant(s) is paying at the time the Notice of Termination is delivered, whichever amount is greater. The payment must be divided equally among all tenants who are occupying the rental unit at the time the Notice of Termination is delivered to the tenant(s).

5-40.05 Anti-Harassment and Other Prohibited Activities.

- (a) No landlord may do any of the following in bad faith, with ulterior motive, or without honest intent:

- (1) Interrupt, fail to provide, or threaten to interrupt or fail to provide any housing services under the rental agreement, including but not limited to utility services and other amenities and services agreed to by contract;
- (2) Fail to perform repairs or maintenance required by contract or by State, County, or local housing, health, or safety laws;
- (3) Fail to exercise due diligence to complete repairs and maintenance once undertaken, including the failure to follow industry-appropriate safety standards and protocols;
- (4) Abuse or otherwise improperly use landlord's right to access the property;
- (5) Remove personal property of the tenant(s) from the rental unit;
- (6) Influence or attempt to influence the tenant(s) to vacate the unit by means of fraud, intimidation, or coercion (including but not limited to threats based on immigration status);
- (7) Offer payment or any other consideration, in return for the tenant(s) vacating the unit, more often than once every six months;
- (8) Threaten the tenant(s) by word or gesture with physical harm;
- (9) Interfere with the tenant(s) right to quiet use and enjoyment of the rental unit;
- (10) Refuse to accept or acknowledge receipt of lawful rent from the tenant(s)'
- (11) Refuse to cash a rent check for over 30 days;
- (12) Interfere with the tenant(s) right to privacy;
- (13) Request Information that violates the tenant(s) right to privacy;
- (14) Other repeated acts or omissions of such significance as to substantially interfere with or disturb the tenant(s) comfort, repose, peace, or quiet enjoyment, and that cause, are likely to cause, or are intended to cause the tenant(s) to vacate the unit; or
- (15) Retaliate against the tenant(s) for the tenant(s) exercise of rights under this Chapter or state or federal law.

- (b) Nothing in this Section 5-40.05 prohibits the lawful eviction of a tenant by appropriate legal means.

5-40.06 Civil Remedies.

- (a) Whenever a landlord attempts to prevent a tenant from acquiring any rights under this Chapter, retaliates against a tenant for the exercise of any rights under this chapter, or engages in activities prohibited under this chapter, the tenant, or the City through a duly appointed agent, may institute a civil proceeding for money damages or injunctive relief or both. This Section creates a private right of action to enforce all terms, rights, and obligations under this Chapter.
- (b) Any tenant who receives a Notice of Termination may bring a civil action against the landlord to contest the validity of each necessary component and pre-condition for service of the Notice of Termination as required by subsections (a), (b), (c), (d) and (e) of Section 5-40.03 and to request injunctive relief to halt the termination of tenancy.
 - (1) A landlord's inability to demonstrate compliance with any individual component of or pre-condition to serve a Notice of Termination as defined in subsections (a), (b), (c), (d) and (e) of Section 5-40.03 will invalidate, nullify, and avoid the effect of a Notice of Termination, except that a failure to demonstrate service to the City under subsection (c) of Section 5-40.03 will not invalidate the Notice of Termination. If a Notice of Termination is invalidated, the tenant(s) will be entitled to costs and reasonable attorney fees incurred to invalidate the Notice of Termination.
 - (2) If a landlord can demonstrate compliance with each pre-condition to serve the Notice of Termination to the tenant(s) by a preponderance of the evidence, the Notice of Termination will be deemed valid and the landlord entitled to costs and reasonable attorney fees incurred to defend the Notice of Termination.
- (c) Any tenant may bring a civil action to determine the applicability of this Chapter to the tenancy, including but not limited to a determination of whether the dwelling unit is a Covered Unit or whether the residence qualifies as an Owner-Occupied Residence.

5-40.07 Notice of Tenant Rights.

- (a) Landlords must provide to each tenant in a Covered Unit a notice of tenant rights under this Chapter in substantially the same form as follows:

"The City of Emeryville regulates the relationship between most landlords and tenants within the City. Generally, landlords may not terminate your tenancy without cause or explanation, and may not reduce or stop providing services agreed to in the rental contract, so long as you pay rent on time as agreed in the rental contract.

In addition to State and Federal Laws, the Residential Landlord and Tenant Relations chapter of the Emeryville Municipal Code creates certain rights for landlords and tenants, which may include the right to relocation assistance or the right to return to your rental unit if you are evicted. Visit the City of Emeryville website for more information: <http://www.emeryville.org>"

- (b) Landlords must provide to tenants the notice of tenant rights in accordance with Subsection (a) of Section 5-40.07 in the following circumstances:
 - (1) within 30 days of enactment of this Chapter 40 of Title 5 of the Emeryville Municipal Code regarding Residential Landlord and Tenant Relations;
 - (2) when entering a lease or rental agreement;
 - (3) when renewing a lease or rental agreement;
 - (4) with a Notice of Termination, as provided in Section 5-40.08; and
 - (5) at such times as required by the City of Emeryville, which may include but is not limited to, when this Chapter 40 of Title 5 of the Emeryville Municipal Code regarding Residential Landlord and Tenant Relations is significantly amended.

5-40.08 Landlord Notice of Termination to Tenant and City.

- (a) The Notice of Termination provided to tenants must contain the reason for the termination of tenancy in accordance with Subsection (e) of Section 5-40.03, a notice of tenant rights under Section 5-40.07, and a list of rents charged throughout the tenancy in substantially the same form as provided in subsection (b) of Section 5-40.08. The City of Emeryville makes no claim or representation that the Notice of Termination satisfies any responsibilities or obligations imposed upon landlords serving a notice of intent to terminate a tenancy under state or federal law. Landlords may wish to consult with a private attorney prior to completing this form.

- (b) The Notice of Termination must be in substantially the same form as the following:

The City of Emeryville makes no claim or representation that this notice satisfies any responsibilities or obligations imposed by State or Federal Law. You may wish to consult with a private attorney prior to completing this form.

NOTICE OF TERMINATION

This is a notice of the landlord's intent to terminate your tenancy. Read this notice for important information about your rights under the City of Emeryville regulation of landlord and tenant relations. You may wish to consult with a private attorney about the information contained in this notice.

Landlord Information

Name: _____
 Address: _____

Property Information

Unit: _____
 Address: _____
 Emeryville, CA 94608

Length of Notice

- ☐ 30 Days ☐ Other: _____
☐ 60 Days (Specify Days)

Intended Final Date of Occupancy

Landlord requests return of unit by:

 (Day of the Week, Calendar Date/Month/Year)

Reason for Termination THIS AFFECTS YOUR LEGAL RIGHTS.

Tenant(s) may be entitled to money to help relocate and the right to return to the unit depending upon the reason for termination. Tenant(s) must provide Landlord with mailing address for Right to Return. (Check Only ONE, see Emeryville Municipal Code § 5-40.03 for More Information)

"For Cause"	<input type="checkbox"/> Failure to Pay Rent <i>EMC §5-40.03(e)(1)a</i>	<input type="checkbox"/> Breach of Rental Contract <i>EMC §5-40.03(e)(1)b</i>	<input type="checkbox"/> Tenant Illegal Activities <i>EMC §5-40.03(e)(1)c</i>
	<input type="checkbox"/> Violations of City Health & Safety Code <i>EMC §5-40.03(e)(1)d</i>	<input type="checkbox"/> Failure to Allow Landlord Access <i>EMC §5-40.03(e)(1)e</i>	<input type="checkbox"/> Tenant Rejected Written Lease Extension <i>EMC §5-40.03(e)(1)f</i>
	<input type="checkbox"/> Tenant Violated Occupancy Restriction <i>EMC §5-40.03(e)(1)g</i>	<input type="checkbox"/> Landlord Returning from Sabbatical to Occupy Unit <i>EMC §5-40.03(e)(1)h</i>	<input type="checkbox"/> Landlord Condo Conversion <i>EMC §5-40.03(e)(1)i</i>
"No Fault"	<input type="checkbox"/> Landlord Will Remove Unit from Market <i>EMC §5-40.03(e)(2)a</i>	<input type="checkbox"/> Landlord Will Move in to Unit <i>EMC §5-40.03(e)(2)b</i>	<input type="checkbox"/> Landlord Will Sell Unit <i>EMC §5-40.03(e)(2)c</i>
	<input type="checkbox"/> Unit Is Temporarily Unfit for Human Habitation <i>EMC §5-40.03(e)(2)d</i>	<input type="checkbox"/> Unit Will Be Substantially Renovated <i>EMC §5-40.03(e)(2)e</i>	

Rent Paid List Contractual Rental Amount Charged Per Month For Most Months in:

\$ _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____
 Year: 20 _____ Year: 20 _____ Year: 20 _____ Year: 20 _____ Year: 20 _____ Year: 20 _____

City of Emeryville Notice

EMC § 5-40.07

The City of Emeryville regulates the relationship between most landlords and tenants within the City. Generally,

landlords may not terminate your tenancy without cause or explanation, and may not reduce or stop providing services agreed to in the rental contract, so long as you pay rent on time as agreed in the rental contract.

In addition to State and Federal Laws, the Residential Landlord and Tenant Relations chapter of the Emeryville Municipal Code creates certain rights for landlords and tenants, which may include the right to relocation assistance or the right to return to your rental unit if you are evicted. Visit the City of Emeryville website for more information:

<http://www.emeryville.org>

California Civil Code § 1946 Notice

State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out.

- (c) Landlords must provide a copy of the Notice of Termination to the City Clerk within ten days of delivery to the tenant(s). Landlords must attach a copy of the applicable rental agreement or contract to the Notice of Termination when submitting the Notice of Termination to the City Clerk. Notices of Termination with a copy of the applicable rental agreement or contract may be mailed or otherwise delivered to:

City Clerk
1333 Park Avenue
Emeryville, CA 94608
ATTN: Notice of Termination of Residential Tenancy

SECTION THREE. CEQA DETERMINATION

The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment, in that this ordinance applies the City's just cause for eviction and tenant protection measures to existing residential units in the City, which is solely an administrative process resulting in no physical changes to the environment. Accordingly, this ordinance contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures.

SECTION FOUR. SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.

SECTION FIVE. EFFECTIVE DATE

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code Section 33693.

SECTION SIX. CODIFICATION

Section Two of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Three, Four, Five, and Six shall NOT be so codified.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, November 1, 2016, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, November 15, 2016 by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:



CITY ATTORNEY