

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
APPROVING JUST CAUSE EVICTION PROTECTIONS AND RENTAL RATE LIMITS
EFFECTIVE IMMEDIATELY

WHEREAS, the “Tenant Protection Act of 2019” (Assembly Bill [“AB”] 1482) was approved by the California Legislature on September 11, 2019 and signed by the Governor on October 8, 2019; and

WHEREAS, effective January 1, 2020 the Tenant Protection Act of 2019 codified as California Civil Code sections 1946.2 (Just Cause Eviction) and 1947.12 (Rent Caps) will provide eviction protections and limits on rent increases in the State of California; and

WHEREAS, the City Council, pursuant to its police powers, has broad authority to maintain public peace, health, and safety of its community and preserve the quality of life for its residents; and

WHEREAS, housing instability threatens the public peace, health, and safety as eviction from one’s home can lead to prolonged homelessness; increased residential mobility; loss of community; strain on household finances due to the necessity of paying rental application fees and security deposits; stress and anxiety experienced by those displaced; increased commute times and traffic impacts if displaced workers cannot find affordable housing within the city in which they work; and interruption of the education of children in the home; and

WHEREAS, eviction creates particular hardships for individuals and households of limited means, given the limited supply of housing, particularly affordable housing, within the City of Cupertino and the San Francisco Bay Area region generally; and

WHEREAS, the City Council has received anecdotal evidence from members of the public that some landlords are significantly increasing rents prior to the end of 2019 or sending 60-day no cause eviction notices; and

WHEREAS, the City Council has received reports that since September 2019, requests for household financial assistance by Cupertino residents, which are often to help cover moving costs related to evictions or rent increases, have sharply increased; and

WHEREAS, it is likely that some landlords in Cupertino will attempt to evict tenants during the brief window ahead of the January 1, 2020 effective date of AB 1482, and the evidence suggests that this has already been occurring; and

WHEREAS, as AB 1482 does not go into effect until January 1, 2020, landlords could seek to evict tenants without cause in order to implement rent increases that would not otherwise be possible after the effective date; and

WHEREAS, the City desires to prohibit such exorbitant rental rate increases as well as evictions without just cause during this transition period; and

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

WHEREAS, Government Code section 36937(a) authorizes the adoption of an urgency ordinance to protect the public peace, health or safety, where there is a declaration of the facts constituting the urgency and the ordinance is adopted by four-fifths of the Council; and

WHEREAS, this urgency ordinance would essentially establish the rental protections that will go into effect on January 1, 2020 under AB 1482 immediately within the City of Cupertino to (1) prohibit an owner of residential property (with specific exceptions) from terminating a tenancy without just cause, and (2) prohibit an owner of residential property from annually increasing rent more than 5% plus the percentage change in the cost of living (which amounts to a total of 9% for the City of Cupertino); and

WHEREAS, an urgency ordinance that is effective immediately is necessary to avoid the immediate threat to public peace, health, and safety as failure to adopt this urgency ordinance could result in the displacement of the City's residents and community members; and

WHEREAS, the City Council of the City of Cupertino held a duly noticed public hearing on December 17, 2019, and after considering all testimony and written materials provided in connection with that hearing introduced this ordinance and waived the reading thereof.

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

SECTION 1. Incorporation of Recitals. The City Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

SECTION 2. Findings. The City Council hereby finds, determines and declares that this urgency ordinance adopted pursuant to California Government Code section 36937 is necessary because:

- A. Housing, particularly affordable housing, is difficult to procure in the San Francisco Bay Area and in Cupertino. The rental increases and evictions without just cause occurring in advance of the effectiveness of AB 1482 destabilize the housing market and can result in the loss of affordable housing.
- B. For the immediate preservation of the public peace, health and safety, the City Council finds that it is necessary to adopt an ordinance regulating rental rate increase and just cause evictions, for all of the reasons set forth in the recitals above, which are hereby incorporated by reference.

- C. Without the imposition of this urgency ordinance, rental rate increases and evictions without just cause may result in the displacement of residential tenants who would be forced to find new housing in an ever-more expensive housing market before a non-urgency ordinance or AB 1482 would become effective, and would significantly increase the risk of residential tenants becoming homeless.
- D. There is a current and immediate threat to the public peace, health, and safety of the City and its community due in part to the adoption of AB 1482 which increases the risk of tenant displacement prior to the effective date of the bill, thereby necessitating the immediate enactment of this emergency ordinance in order to ensure that tenants are not turned out of their homes without just cause.

SECTION 3. Urgent Need. Based on the foregoing recitals and findings, all of which are deemed true and correct, this ordinance is urgently needed for the immediate preservation of the public peace, health, and safety. This urgency ordinance shall take effect immediately upon adoption in accordance with the provisions set forth in Government Code section 36937.

SECTION 4. Just Cause Eviction Protections. The City Council of the City of Cupertino hereby adopts the Just Cause Eviction Protections provided in Exhibit A, attached hereto and incorporated by reference.

SECTION 5. Rent Rate Limit Provisions. The City Council of the City of Cupertino hereby adopts the Rental Rate Limit Provisions provided in Exhibit B, attached hereto and incorporated by reference.

SECTION 6. Enforcement. An owner's failure to comply with any requirement of this ordinance is a complete affirmative defense in an unlawful detainer or other action brought by the owner to recover possession of the rental unit. A tenant may bring a civil suit in the courts of the state alleging that an owner has violated any of the provisions of this ordinance including that the owner has demanded, accepted, received, or retained a payment or payments in excess of Rental Rate Limit Provisions.

SECTION 7. Effectiveness of Ordinance. This urgency ordinance shall remain in effect through December 31, 2019. On January 1, 2020, this ordinance shall be repealed and shall be of no further force and effect.

SECTION 8. Compliance with CEQA. The City Council finds that the adoption and implementation of this Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the

activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action to enact tenant protections would have no or only a de minimis effect on the environment because it helps preserve the status quo and reduce displacement. The foregoing determination is made by the City Council in its independent judgment.

SECTION 9. Severability. The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated

SECTION 10. Publication. The City Clerk is directed to cause this ordinance to be published in the manner required by law.

Introduced and adopted as an ordinance of the City of Cupertino at a regular meeting of the City Council held on December 17, 2019, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Steven Scharf, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Grace Schmidt, City Clerk	 _____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	 _____ Date

EXHIBIT A
JUST CAUSE EVICTION PROTECTIONS

These just cause eviction protections of the urgency ordinance shall be known as the “Just Cause Eviction Protections.”

(a) Notwithstanding any other law, after a tenant has continuously and lawfully occupied a residential real property for 12 months, the owner of the residential real property shall not terminate the tenancy without just cause, which shall be stated in the written notice to terminate tenancy. If any additional adult tenants are added to the lease before an existing tenant has continuously and lawfully occupied the residential real property for 24 months, then this section shall only apply if either of the following are satisfied:

(1) All of the tenants have continuously and lawfully occupied the residential real property for 12 months or more.

(2) One or more tenants have continuously and lawfully occupied the residential real property for 24 months or more.

(b) For purposes of this section, “just cause” includes either of the following:

(1) At-fault just cause, which is any of the following:

(A) Default in the payment of rent.

(B) A breach of a material term of the lease, as described in paragraph (3) of Section 1161 of the Code of Civil Procedure, including, but not limited to, violation of a provision of the lease after being issued a written notice to correct the violation.

(C) Maintaining, committing, or permitting the maintenance or commission of a nuisance as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.

(D) Committing waste as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.

(E) The tenant had a written lease that terminated on or after December 17, 2019, and after a written request or demand from the owner, the tenant has refused to execute a written extension or renewal of the lease for an additional term of similar duration with similar provisions, provided that those terms do not violate this section or any other provision of law.

(F) Criminal activity by the tenant on the residential real property, including any common areas, or any criminal activity or criminal threat, as defined in subdivision

(a) of Section 422 of the Penal Code, on or off the residential real property, that is directed at any owner or agent of the owner of the residential real property.

(G) Assigning or subletting the premises in violation of the tenant's lease, as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.

(H) The tenant's refusal to allow the owner to enter the residential real property as authorized by Sections 1101.5 and 1954 of the Civil Code, and Sections 13113.7 and 17926.1 of the Health and Safety Code.

(I) Using the premises for an unlawful purpose as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.

(J) The employee, agent, or licensee's failure to vacate after their termination as an employee, agent, or a licensee as described in paragraph (1) of Section 1161 of the Code of Civil Procedure.

(K) When the tenant fails to deliver possession of the residential real property after providing the owner written notice as provided in Section 1946 of the Civil Code of the tenant's intention to terminate the hiring of the real property, or makes a written offer to surrender that is accepted in writing by the landlord, but fails to deliver possession at the time specified in that written notice as described in paragraph (5) of Section 1161 of the Code of Civil Procedure.

(2) No-fault just cause, which includes any of the following:

(A) Intent to occupy the residential real property by the owner or their spouse, domestic partner, children, grandchildren, parents, or grandparents.

(B) Withdrawal of the residential real property from the rental market.

(C) (i) The owner complying with any of the following:

(I) An order issued by a government agency or court relating to habitability that necessitates vacating the residential real property.

(II) An order issued by a government agency or court to vacate the residential real property.

(III) A local ordinance that necessitates vacating the residential real property.

(ii) If it is determined by any government agency or court that the tenant is at fault for the condition or conditions triggering the order or need to vacate under clause (i), the tenant shall not be entitled to relocation assistance as outlined in paragraph (3) of subdivision (d).

- (D) (i) Intent to demolish or to substantially remodel the residential real property.
(ii) For purposes of this subparagraph, “substantially remodel” means the replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a governmental agency, or the abatement of hazardous materials, including lead-based paint, mold, or asbestos, in accordance with applicable federal, State, and local laws, that cannot be reasonably accomplished in a safe manner with the tenant in place and that requires the tenant to vacate the residential real property for at least 30 days. Cosmetic improvements alone, including painting, decorating, and minor repairs, or other work that can be performed safely without having the residential real property vacated, do not qualify as substantial rehabilitation.

(c) Before an owner of residential real property issues a notice to terminate a tenancy for just cause that is a curable lease violation, the owner shall first give notice of the violation to the tenant with an opportunity to cure the violation pursuant to paragraph (3) of Section 1161 of the Code of Civil Procedure. If the violation is not cured within the time period set forth in the notice, a three-day notice to quit without an opportunity to cure may thereafter be served to terminate the tenancy.

(d) (1) For a tenancy for which just cause is required to terminate the tenancy under subdivision (a), if an owner of residential real property issues a termination notice based on a no-fault just cause described in paragraph (2) of subdivision (b), the owner shall, regardless of the tenant’s income, at the owner’s option, do one of the following:

(A) Assist the tenant to relocate by providing a direct payment to the tenant as described in paragraph (3), below.

(B) Waive in writing the payment of rent for the final month of the tenancy, prior to the rent becoming due.

(2) If an owner issues a notice to terminate a tenancy for no-fault just cause, the owner shall notify the tenant of the tenant’s right to relocation assistance or rent waiver pursuant to this section. If the owner elects to waive the rent for the final month of the tenancy as provided in subparagraph (B) of paragraph (1), the notice shall state the amount of rent waived and that no rent is due for the final month of the tenancy.

(3) (A) The amount of relocation assistance or rent waiver shall be equal to one month of the tenant’s rent that was in effect when the owner issued the notice to terminate the tenancy. Any relocation assistance shall be provided within 15 calendar days of service of the notice.

(B) If a tenant fails to vacate after the expiration of the notice to terminate the tenancy, the actual amount of any relocation assistance or rent waiver provided pursuant to this subdivision shall be recoverable as damages in an action to recover possession.

(C) The relocation assistance or rent waiver required by this section shall be credited against any other relocation assistance required by any other law.

(4) An owner's failure to strictly comply with this subdivision shall render the notice of termination void.

(e) This section shall not apply to the following types of residential real properties or residential circumstances:

(1) Transient and tourist hotel occupancy as defined in subdivision (b) of Section 1940 of the Civil Code.

(2) Housing accommodations in a nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or an adult residential facility, as defined in Chapter 6 of Division 6 of Title 22 of the Manual of Policies and Procedures published by the State Department of Social Services.

(3) Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school.

(4) Housing accommodations in which the tenant shares bathroom or kitchen facilities with the owner who maintains their principal residence at the residential real property.

(5) Single-family owner-occupied residences, including a residence in which the owner-occupant rents or leases no more than two units or bedrooms, including, but not limited to, an accessory dwelling unit or a junior accessory dwelling unit.

(6) A duplex in which the owner occupied one of the units as the owner's principal place of residence at the beginning of the tenancy, so long as the owner continues in occupancy.

(7) Housing that has been issued a certificate of occupancy within the previous 15 years.

(8) Residential real property that is alienable separate from the title to any other dwelling unit, provided that the following applies:

(A) The owner is not any of the following:

(i) A real estate investment trust, as defined in Section 856 of the Internal Revenue Code.

(ii) A corporation.

(iii) A limited liability company in which at least one member is a corporation.

(9) Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code or comparable federal statutes.

(f) Any waiver of the rights under this section shall be void as contrary to public policy.

(g) For the purposes of this Chapter, the following definitions shall apply:

(1) “Owner” and “residential real property” have the same meaning as those terms are defined in Civil Code Section 1954.51.

(2) Tenancy” means the lawful occupation of residential real property and includes a lease or sublease.

EXHIBIT B
RENTAL RATE LIMIT PROVISIONS

These rent cap provisions of the urgency ordinance shall be known as the “Rental Rate Limit Provisions.”

(a) Subject to subdivision (b), an owner of residential real property shall not increase the gross rental rate for a dwelling or a unit more than 9 percent of the gross rental rate charged for that dwelling or unit prior to the effective date of these Rental Rate Limit Provisions. In determining the gross rental amount pursuant to this section, any rent discounts, incentives, concessions, or credits offered by the owner of such unit of residential real property and accepted by the tenant shall be excluded. The gross per-month rental rate and any owner-offered discounts, incentives, concessions, or credits shall be separately listed and identified in the lease or rental agreement or any amendments to an existing lease or rental agreement.

(b) For a new tenancy in which no tenant from the prior tenancy remains in lawful possession of the residential real property, the owner may establish the initial rental rate not subject to subdivision (a). Subdivision (a) is only applicable to subsequent increases after that initial rental rate has been established.

(c) A tenant of residential real property subject to this section shall not enter into a sublease that results in a total rent for the premises that exceeds the allowable rental rate authorized by subdivision (a). Nothing in this subdivision authorizes a tenant to sublet or assign the tenant’s interest where otherwise prohibited.

(d) This section shall not apply to the following residential real properties:

(1) Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code or comparable federal statutes.

(2) Dormitories constructed and maintained in connection with any higher education institution within the state for use and occupancy by students in attendance at the institution.

(3) Housing that has been issued a certificate of occupancy after February 1, 1995.

(4) Residential real property that is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision as specified in subdivision (b), (d), or (f) of Section 11004.5 of the Business and Professions Code.

(5) A duplex in which the owner occupied one of the units as the owner's principal place of residence at the beginning of the tenancy, so long as the owner continues in occupancy.

(e) An owner shall provide notice of any increase in the rental rate, pursuant to subdivision (a), to each tenant in accordance with Section 827.

(f) For the purposes of this section, the following definitions shall apply:

(1) "Owner" and "residential real property" shall have the same meaning as those terms are defined in Section 1954.51.

(2) "Tenancy" means the lawful occupation of residential real property and includes a lease or sublease.

(g) In the event that an owner has sent any rent increase notice on or after December 17, 2019, the increased rent may not be by more than the amount permissible under subdivision (a) and the rental rate increase will be deemed to be the rental rate increase permitted by subdivision (a).

(h) Any waiver of the rights under this section shall be void as contrary to public policy.