

ORDINANCE NO. 839-17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNION CITY ADDING CHAPTER 5.50 "RESIDENTIAL LANDLORD AND TENANT RELATIONS" TO THE UNION CITY MUNICIPAL CODE

WHEREAS, there is an increasing demand for rental housing in the City of Union City leading to rising rents; and

WHEREAS, according to RealFacts (Third Quarter, 2016), the average rent for market-rate units in apartment buildings of 50 units or more in the City of Union City have increased 60% between 2011 and 2016; and

WHEREAS, according to 2009-2013 Comprehensive Housing Affordability Strategy (CHAS) data, 3,370 extremely-low to moderate income renters in Union City pay more than thirty percent (30%) of their gross income on housing and are at greater risk of displacement; and

WHEREAS, the demand for rental housing in City creates an incentive for some landlords to pressure existing tenants to move so that rents can be quickly raised; and

WHEREAS, the City does not currently regulate the relationship between owner and managers of residential property and tenants; and

WHEREAS, secure and stable shelter is a basic necessity of life; and

WHEREAS, on May 17, 2016, the City Council held a study session to review possible tenant protection measures to address rising rents and displacement; and

WHEREAS, on July 12, 2016, the City Council formed a Rent and Tenant Taskforce ("Taskforce") to assist with the consideration of possible tenant protection measures; and

WHEREAS, on September 13, 2016, the City Council appointed fifteen (15) members to the Taskforce and the Taskforce convened seven (7) public meetings from October 2016 to January 2017; and

WHEREAS, on January 31, 2017, the City Council considered the Taskforce's recommendations; and

WHEREAS, on February 14, 2017, the City Council directed staff to develop a just cause eviction and harassment protection ordinance; and

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the City Council wishes to regulate the relations between residential landlords and tenants in order to increase certainty and fairness within the residential rental market; and

WHEREAS, secure and stable rental housing is important for maintaining and protecting the public health, safety and the general welfare; and

WHEREAS, the City Council desires to prohibit residential landlords from terminating the tenancy of a residential tenant without a good, just, non-arbitrary, non-discriminatory reason and to prohibit residential landlords from engaging in harassing behavior; and

WHEREAS, such protections are consistent with City policies; and

WHEREAS, the amendments to the Municipal Code propose to add Chapter 5.50 as shown in Exhibit A, which exhibit is attached and incorporated herein by reference.

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

SECTION 1. Recitals. The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. 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 3. Findings. The City Council makes the following findings in support of approving this Ordinance, based on the whole of the record before it.

1. The City has a substantial government interest in regulating the relations between residential landlords and tenants in order to increase certainty, stability, and fairness within the residential rental market.
2. The amendments are neither overbroad nor vague, and are consistent with the City's efforts to protect the public health, safety and the general welfare.

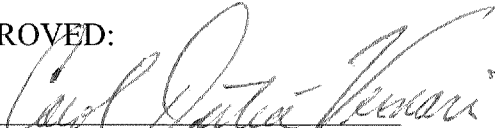
SECTION 4. Approval. The City Council hereby approves the amendments to the Municipal Code, more particularly, adding Chapter 5.50 as shown in attached Exhibit A, which is incorporated herein by reference and available for review in the City Clerk's office during normal business hours.

SECTION 5. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 6. Publication and effective date. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City at a regular meeting held on April 11, 2017 by the following vote:

- AYES: Councilmembers Duncan, Singh, Vice Mayor Gacoscos, and Mayor Dutra-Vernaci
- NOES: None
- ABSENT: Councilmember Ellis
- ABSTAIN: None

APPROVED:

 Carol Dutra-Vernaci, Mayor

ATTEST:

 Anna Brown, City Clerk

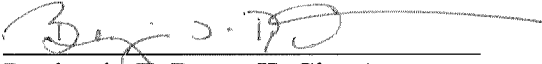
APPROVED AS TO FORM:

 Benjamin D. Reyes II, City Attorney

EXHIBIT A

Chapter 5.50

RESIDENTIAL LANDLORD AND TENANT RELATIONS

5.50.010 Purpose.

The purposes of this chapter are to regulate relations between residential landlords and tenants and to protect tenants from arbitrary, discriminatory, or retaliatory evictions. This legislation is designed to preserve the public peace, health and safety, and advance the housing policies of the City.

5.50.020 Definitions.

A. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any rental unit or portion thereof, and includes any legal entity or other individuals, employees, agents, contractors, and subcontractors that comprise or represent the landlord.

B. "Notice of termination" means a written notice that includes all of the components identified in Section 5.50.060.

C. "Owner-occupied residence" means a single dwelling unit in which an individual retains no less than a fifty percent (50%) ownership interest in the individual unit, and resides in that unit as his or her permanent residence no less than ten (10) months of any calendar year.

D. "Rental Unit" 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. A rental unit includes a single family home.

E. "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.

5.50.030 Applicability.

A. The provisions of this chapter shall apply to all rental units within the City, including where a notice to vacate/quit any such rental unit has been served as of the effective date of this chapter 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 chapter, except that this chapter shall not apply to the following types of units:

1. Dwelling units in hotels, motels, and lodging rooming house, and boardinghouses, as those terms are defined in Title 18 of this Code, as long as the tenant(s) in a given dwelling unit do not reside in that unit for more than thirty (30) consecutive days. Terminating a tenancy or requiring an occupant to move, or to check out and reregister before the expiration of thirty (30) days' occupancy is prohibited if a purpose is to avoid the effects of this chapter.

2. The entirety of a single owner-occupied residence, when the owner-occupant rents or leases two (2) or fewer bedrooms.

3. Dwelling units in nonprofit cooperatives owned, occupied, and controlled by a majority of the residents.

4. Each dwelling unit where the rent is controlled, regulated, or restricted by a local, 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 is licensed for such purpose where such license is required.

6. 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.

7. 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.

B. The provisions of this chapter 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.

5.50.040 Cause For Termination.

No landlord may terminate a residential tenancy of a rental unit, recover possession of a rental unit or otherwise endeavor to recover possession of a rental unit in the City unless the landlord can demonstrate all of the following:

A. That the landlord possesses a valid business license pursuant to Chapter 5.08 of this Code and has properly registered the rental unit pursuant to Section 5.50.090; and

B. That the landlord has provided the tenant with a notice of tenant rights in accordance with Section 5.50.070; and

C. That the landlord served a notice of termination pursuant to Section 5.50.060; 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 rental unit beyond the term of the terminated tenancy in compliance with California Civil Code Sections 1945, 1946 and 1946.1; and

E. The existence of one of the following grounds for termination:

1. Failure to Pay Rent. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement within three (3) days of receiving written notice from the landlord demanding payment in accordance with California Code of Civil Procedure Section 1161.2. However, this subsection shall not constitute grounds for eviction where tenant has withheld rent pursuant to applicable law.

2. Breach of Rental Agreement. The tenant has violated a material term of the rental agreement.

3. Tenant Illegal Activities. Tenant has used the rental 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 3486.

4. Violations of Applicable Health and Safety Code. Tenant created or is maintaining a dangerous and unsanitary condition as described in the Union City Municipal Code or applicable Federal and State law, and that condition has not been promptly abated or repaired as contemplated by applicable law.

5. Tenant Rejected Written Lease Extension. Tenant failed to execute a written extension of an existing rental agreement.

6. Unit Will be Substantially Renovated. The landlord, after having obtained all necessary permits from the City to imminently begin and diligently complete the permitted work, seeks in good faith to undertake substantial repairs or planned capital improvements or other necessary rehabilitation that will temporarily remove the rental unit from the rental market because the rental unit will imminently become unfit for human habitation.

7. Landlord Returning from Deployment. Landlord has rented or leased the entirety of a single rental unit during the landlord's deployment by any United States Armed Forces, and once the deployment has concluded, landlord returns immediately to the rental unit as his or her residence that the landlord usually occupies for use during off-duty time.

8. Landlord Condominium Conversion. Landlord is converting the rental unit(s) to a condominium in accordance with Chapter 17.84 of the Union City Municipal Code.

9. Landlord Will Remove Unit from Market. Landlord will, within sixty (60) days, demolish the unit or otherwise remove the unit from any residential rental use or purpose for a minimum of a five (5) year period. Removal of the unit from the market includes a landlord's election to sell the unit to a bona fide purchaser. If the landlord terminating tenancy seeks to return the unit to the residential rental market prior to the expiration of the five (5) year period, the landlord shall comply with Section 5.50.040(F).

10. Landlord Will Move into Unit. Landlord, or one of landlord's parents or children, will, within sixty (60) days, move into and reside in the housing unit as his or her permanent residence no less than ten (10) months of any calendar year, for no less than two (2) years from the termination of tenancy. If a landlord seeks to return the unit to the residential rental market prior to the expiration of the two (2) year period, landlord shall comply with Section 5.50.040(F).

F. For a termination of tenancy pursuant to Section 5.50.040(E)(6), (9) or (10) the tenant is entitled to the right to return. The landlord must notify the tenant, upon notice of termination of tenancy, of the right to receive an offer to return to and rent the rental unit when the landlord returns the rental unit to the rental market. The tenant is entitled to receive an offer to return and rent the rental unit upon the following circumstances: (1) the tenant has provided to the landlord a current mailing address at which to receive an offer of the right to return; and (2) 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. Except as otherwise provided in this chapter, a tenant's right to return shall terminate after five (5) years.

5.50.050 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 (6) 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 thirty (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 prohibits the lawful eviction of a tenant by appropriate legal means.

5.50.060 Notice of Termination.

In order terminate a residential tenancy of a rental unit or otherwise endeavor to recover possession of a rental unit, a landlord must send the tenant a notice of termination that contains the reason for termination of the tenancy in accordance with 5.50.040(E). This requirement is in addition to any other notice requirements imposed by local, State or Federal law.

5.50.070 Notice of Tenant Rights.

A. Landlords must provide to each tenant in a rental unit a notice of tenant rights under this chapter in the three (3) predominant languages spoken in the City. Each notice shall include a proof of service. The City shall provide notices for landlord use. The use of the City provided forms shall be prima facie evidence that the landlord has provided the proper notice. The notice shall contain the information and be in substantially the same form as follows: The City of Union City regulates the relationship between most landlords and tenants within the City. Generally, a landlord may only terminate your tenancy for specific reasons, which are set forth in Chapter 5.50 of the Union City Municipal Code. Examples of such reasons include, but are not limited to, a failure to pay rent on time as agreed to in the rental contract. In addition to State and Federal Laws, Chapter 5.50 of the Union City Municipal Code creates certain rights for landlords and tenants. Visit the City of Union City website for more information.

B. Landlords must provide tenants with the notice of tenant rights in accordance with subsection (A) of this section in the following circumstances:

1. Within sixty (60) days of the effective date of this chapter;
2. When entering a lease or rental agreement;
3. When renewing a lease or rental agreement;
4. With a notice of termination;
5. At such times as required by the City of Union City, which may include, but is not limited to, when this chapter is significantly amended.

5.50.080 Civil Remedies.

A. Whenever a landlord retaliates against a tenant for the exercise of any rights under this chapter or engages in activities prohibited under this chapter, the tenant 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 this Chapter 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 required by this Chapter will invalidate, nullify, and avoid the effect of a 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 is 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 rental unit.

5.50.090 Property Registration and Fees.

A. A landlord shall register each rental unit within the City. The registration shall be on forms provided by the City and shall include the name and mailing address of the owner or owners of the rental unit as well as any other information deemed necessary by the City.

B. For the sole purpose of reimbursing the City for the reasonable costs of maintaining property registration records and related administrative systems required by this chapter, the landlord of each rental unit shall pay a fee in an amount to be set by the City for each rental unit.