

ORDINANCE NO. 1972

**AN ORDINANCE OF THE CITY OF SAN RAFAEL CITY COUNCIL
ADDING NEW CHAPTER 10.105 TO THE SAN RAFAEL MUNICIPAL CODE,
ENTITLED “CAUSE REQUIRED FOR EVICTION”**

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 1. FINDINGS.

WHEREAS, over 57,700 people permanently reside in the incorporated City of San Rafael, which population is projected to grow by approximately 11,000 additional residents by 2040, as identified in Appendix B: Background Report of the 2015-2023 San Rafael Housing Element; and

WHEREAS, 48 percent of the 24,000 housing units in the City of San Rafael are occupied by renters, as identified in Appendix B: Background Report of the 2015-2023 San Rafael Housing Element; and

WHEREAS, vacancy rate measures the overall housing availability in a community and is often a good indicator of how efficiently for-sale and rental housing units are meeting the current demand for housing; a low vacancy rate may indicate that households are having difficulty in finding housing that is affordable, which can lead to housing overpayment and/or overcrowding; and

WHEREAS, housing overpayment, as defined by the state and federal government, refers to spending more than 30 percent of income on housing; severe overpayment is spending greater than 50 percent of income on housing; and

WHEREAS, in 2010, 53 percent of renter households were overpaying for housing and 30% of households were severely overpaying for housing, as identified in Appendix B: Background Report of the 2015-2023 San Rafael Housing Element; and

WHEREAS, if a renter receives an eviction notice in a rental market with a low vacancy rate, it can be very difficult to find new housing and displacement is more likely to occur; and

WHEREAS, as of 2018, the rental vacancy rate in Marin County was below 3%, according to the Marin County Community Development Agency; a healthy rate is closer to 6% to 7%; and

WHEREAS, the 2013, 2015, and 2017 Homeless Point-in-Time Counts each identify the lack of affordable housing as the leading cause of homelessness in Marin County; and

WHEREAS, the 2018-2019 City Council Goals and Objectives includes “exploring protections to increase rental and ownership housing affordability”; and

WHEREAS, at the February 4, 2019 City Council Meeting, staff presented potential renter protection policies to address the issue of rental housing affordability and stability; and

WHEREAS, the City Council formed an ad hoc Renter Protections Subcommittee to vet these policy options in more detail, solicit feedback from the public, and incorporate the feedback of local stakeholders; and

WHEREAS, on May 4, 2019, the Renter Protections Subcommittee recommended that the City establish a Just Cause for Eviction program with the goal of promoting greater awareness of the rights and responsibilities of landlords and tenants and to provide a clear and transparent process for evictions and lease terminations;

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

DIVISION 2. AMENDMENT OF MUNICIPAL CODE.

Title 10 of the San Rafael Municipal Code, entitled “Businesses, Professions, Occupations, Industries and Trades” is hereby amended by adding new Chapter 10.105, entitled “Cause Required for Eviction” to read in its entirety as follows:

10.105.010 Purpose and intent.

It is the purpose and intent of this Chapter to encourage certainty and fairness in the residential rental market within the City of San Rafael in order to promote the health, safety, and general welfare of residents and property owners within the City. This Chapter regulates the reason(s) for and defines certain minimum term(s) under which certain residential tenancies may be terminated by Landlords of rental Dwelling Units located within the City.

10.105.020 Applicability.

- A. General Application. Except as provided in Section 10.105.020(B) below, the provisions of this Chapter shall apply to all properties in the City of San Rafael that contain at least three: (1) Dwelling Units in a multifamily or multipurpose dwelling; (2) Dwelling Units in Single Room Occupancy residential structures; or (3) units in a structure that is being used for residential uses whether or not the residential use is a conforming use permitted under the San Rafael Municipal Code, which is hired, rented, or leased to a household within the meaning of California Civil Code section 1940.
- B. Exceptions. Notwithstanding anything to the contrary above, the provisions of this Chapter shall not apply to the following types of Dwelling Units:
 - (1) Any Dwelling Unit for which one of the following is true: (a) the Dwelling Unit is owned or operated by any government agency; or (b) the Rent is directly subsidized by a government agency such that the Tenant's portion of the Rent does not exceed 30% of household income; or

- (2) Any Dwelling Unit located in a development where no fewer than forty-nine percent (49%) of the Dwelling Units are subject to legally binding restrictions enforceable against and/or governing such units that limit the Rent to no more than an affordable rent, as such term is defined in California Health & Safety Code Section 50053; or
- (3) Any Dwelling Unit occupied by a Tenant employed by the Landlord for the purpose of managing the property; or
- (4) Any Dwelling Unit occupied in whole or in part by the property owner or the property owner's family members, including parents, children, brothers, sisters, aunts, uncles, nieces, and/or nephews.

10.105.030 Definitions.

For the purpose of this Chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section shall have the meanings given to them in this section:

- A. "City" means the City of San Rafael.
- B. "CDD Director" means the City Community Development Department Director or their designee unless otherwise specified.
- C. Dwelling unit" means one or more rooms designed, occupied or intended for occupancy as separate living quarters, with a kitchen, sleeping facilities, and sanitary facilities for the exclusive use of one household.
- D. "For Cause" termination has the meaning provided in subsection (B) of Section 10.105.040.
- E. "Guidelines" means any written regulations and forms for the administration and implementation of this Chapter adopted by the CDD Director.
- F. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive Rent for the use and occupancy of any Dwelling Unit or portion thereof.
- G. "No Fault" termination has the meaning provided in subsection (C) of Section 10.105.040.
- H. "Notice of Termination" means a written notice that includes all of the components identified in Section 10.105.050.
- I. "Primary Residence" means a Dwelling Unit that an owner occupies as a primary residence, as evidenced by the Dwelling Unit qualifying for a homeowner's property tax exemption.
- J. "Rent" means the consideration, including any funds, labor, bonus, benefit, or gratuity, demanded or received by a Landlord for or in connection with the use and occupancy of

a Dwelling Unit and the housing services provided therewith, or for the assignment of a rental agreement for a Dwelling Unit.

- K. "Tenant" means a person entitled by written or oral agreement, or by sufferance, to the use or occupancy of a Dwelling Unit.
- L. "Tenant Household" means all Tenant(s) who occupy any individual Dwelling Unit, and each minor child, dependent, spouse or registered domestic partner of any Tenant whose primary residence is the Dwelling Unit.

10.105.040 Cause required to terminate tenancy.

A. Prerequisites to terminate. No Landlord may terminate a residential tenancy of a Dwelling Unit unless the Landlord can demonstrate:

- (1) the Landlord possesses a valid Business License in accordance with Chapter 10.04 of this Code; and
- (2) the Landlord has previously provided the Tenant with the Notice of Tenant Rights as required by Section 10.100.070 of this Code, or can otherwise demonstrate timely, good faith substantial compliance with the noticing requirements listed therein and in this Chapter; and
- (3) the Landlord has not accepted and will not accept rent or any other consideration in return for the continued use of the Dwelling Unit beyond the term of the terminated tenancy in compliance with California Civil Code sections 1945, 1946, and 1946.1; and
- (4) the termination qualifies as a For Cause or No Fault termination, as defined in this Section.

B. 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." Nothing in this section shall abrogate the protections afforded to survivors of violence consistent with the California Code of Civil Procedure Section 1161.3, as amended, and the Violence Against Women Act, Public Law 102-322, as amended:

- (1) Failure to Pay Rent. Tenant failed to pay Rent within three days of receiving written notice from the Landlord demanding payment as provided in subsection 2 of California Code of Civil Procedure section 1161;
- (2) Breach of Rental Contract. Tenant violated a material term of the rental agreement so as to give rise to Landlord's rights and obligations as set forth in California Code of Civil Procedure section 1161;
- (3) Tenant Illegal Activities. Tenant has been using the Dwelling Unit for an illegal purpose as provided in subsection 4 of California Code of Civil Procedure section 1161, including but not limited to the unlawful distribution of a controlled

substance as contemplated by California Civil Code section 3486, the unlawful use, manufacture, or possession of weapons and ammunition as contemplated by California Civil Code section 3485, or for a serious crime or violent felony as defined by applicable law, which occurred during the tenancy and within 1,000 feet of the Dwelling Unit. For purposes of this subsection, Tenant Household, after receiving a written notice, may cure the violation by removing, and demonstrating such removal, of the offending Tenant, provided, however, that such right to cure may not be exercised more than one time in any twelve-month period.

- (4) Threat of Violent Crime. Any statement made by a Tenant, or at his or her request, by his or her agent to any person who is on the property that includes the unit or to the Landlord, or his or her agent, threatening the commission of a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, when on its face and under the circumstances in which it is made, it is so unequivocal, immediate and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety;
- (5) Nuisance Behavior. The Tenant, after written notice to cease and the passage of a reasonable period of time to abate or cure, continues to be so disorderly or to cause such a nuisance as to interfere with the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Dwelling Unit. Such nuisance or disorderly conduct includes violations of state and federal criminal law that interfere with the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Dwelling Unit, or the creation or maintenance of a dangerous or unsanitary condition in violation of applicable local, state, and federal law, and may be further defined in Guidelines adopted by the CDD Director;
- (6) Notwithstanding the limitations of California Code of Civil Procedure Section 1161.3, as amended, an act or acts constituting domestic violence or sexual assault or stalking against the Tenant or a member of Tenant's household cannot form the substantial basis of a For Cause termination the tenancy of the victim of such acts. A member of a Tenant household may raise such facts as an affirmative defense to an action terminating the tenancy.

C. 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:"

- (1) Landlord Will Permanently Remove Unit from Rental Market. Landlord will imminently demolish the Dwelling Unit or otherwise permanently remove the Dwelling Unit from any residential rental use or purpose, in accordance with California Government Code sections 7060 – 7060.7;

- (2) Landlord Will Move in to Dwelling Unit. Landlord, or one of Landlord's family members, including parents, children, brothers, sisters, aunts, uncles, nieces, and/or nephews, intends to move into and reside in the Dwelling Unit as his, her, or their Primary Residence. The Dwelling Unit must be occupied as the Primary Residence within three months of the Tenant household vacating the Dwelling Unit, and the Dwelling Unit must continue to be occupied as the Primary Residence for at least one year;
- (3) Substantial Rehabilitation for Health and Safety. Landlord has applied for or obtained permits to undertake substantial repairs to the Dwelling Unit that cannot be completed while the Dwelling Unit is occupied. To qualify, such substantial repairs must be for the primary purpose of bringing the Dwelling Unit into compliance with applicable law;
- (4) Tenant's Refusal to Execute Lease. Tenant refuses to accept a lease at the outset of the tenancy, or to renew a lease on terms substantially similar to the Tenant's existing lease.

D. Buy-Out Agreements. Nothing in this Chapter shall expand or limit a Landlord and Tenant's ability to negotiate or agree to end a tenancy voluntarily in exchange for money or other consideration.

10.105.050 Notice of Termination.

- A. Contents of Notice of Termination. In addition to any information required by state or federal law, each Notice of Termination subject to this Chapter must include the following information.
- (1) The name and address of the Landlord where the Landlord will accept service of process; and
 - (2) The location of the Dwelling Unit; and
 - (3) The total length of the notice prior to termination of tenancy (expressed as number of days from delivery of notice until the anticipated final date of tenancy); and
 - (4) The intended final date of occupancy under the tenancy; and
 - (5) The monthly Rent applicable to the tenancy upon delivery of the Notice, and, if applicable, the date on which the final monthly Rent is due; and
 - (6) The beginning date of the tenancy and monthly Rent applicable at that time; and
 - (7) One applicable cause for which the tenancy will be terminated, in accordance with Section 10.105.040 of this Chapter.

- B. Language of Notice of Termination. If the Tenant's rental agreement was negotiated in a language other than English, then the Landlord shall provide the Notice of Termination in the language in which the rental agreement was negotiated.
- C. Delivery of Notice. Each Notice of Termination must be delivered to the Tenant Household in accordance with Civil Code sections 1946 and 1946.1, as applicable.

10.105.060 Extended notice for certain No Fault terminations.

Each Tenant household whose tenancy is terminated pursuant to subsection (C)(1) of Section 10.105.040 (Landlord will permanently remove unit from rental market) must receive notice of the termination at least one hundred twenty (120) days prior to the intended final date of occupancy under the tenancy.

10.105.070 Civil remedies.

- A. Affirmative Defense. A Landlord's failure to comply with this Chapter, including but not limited to the identification of an applicable cause for termination described in Section 10.105.040 and delivery of a completed Notice of Termination in accordance with Section 10.105.050, shall be an affirmative defense to an unlawful detainer action by Landlord.
- B. Civil Liability. Whenever a Landlord attempts to prevent a tenant from acquiring any rights under this Chapter, retaliates against a Tenant or Tenant Household for the exercise of any rights under this Chapter, or engages in activities prohibited under this Chapter, the Tenant or the Tenant Household 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. Whoever is found to have violated Section 10.105.040, or has failed to substantially comply with Section 10.105.050, shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees, and whatever other relief the court deems appropriate. In the case of an award of damages, said award may be trebled if the trier of fact finds that the Landlord acted in knowing violation, reckless disregard, or otherwise willfully failed to comply with the foregoing provisions.
- C. Civil Action to Determine Liability. Any Tenant may bring a civil action to determine the applicability of this Chapter to the tenancy.
- D. Other Private Rights of Action. Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a Tenant or non-Tenant third party for the damage done to said Landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.

10.105.080 Compliance with other local regulations

The requirements of this Chapter shall be in addition to and not in lieu of any other applicable laws and regulations.

10.105.090 Severability.

The provisions of this Chapter are declared to be severable. If for any reason, any section, paragraph, clause, or phrase of this Chapter or the application thereof to any person, entity, or circumstance 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.

DIVISION 3. ORDINANCE REVIEW.

The regulations adopted by this Ordinance shall be reviewed by the City Council after they have been in effect for one year.

DIVISION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

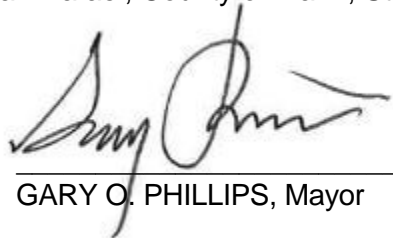
The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment, in that this ordinance applies residential tenant protection measures to existing residential units in San Rafael, which is solely an administrative process resulting in no physical changes to the environment.

DIVISION 5. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

DIVISION 6. EFFECTIVE DATE; PUBLICATION.

This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published, and circulated in the City of San Rafael, and shall be in full force and effect thirty (30) days after its final passage. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.



GARY O. PHILLIPS, Mayor

ATTEST:



LINDSAY LARA, City Clerk

The foregoing Ordinance No.1972 was read and introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 3rd day of June 2019 and ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Colin, McCullough & Mayor Phillips

NOES: Councilmembers: Gamblin

ABSENT: Councilmembers: Bushey

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 17th day of June 2019.



LINDSAY LARA, City Clerk