

From: Curt Ries <curtries@gmail.com>

Sent: Wednesday, Sep 28, 2022 11:18 AM

To: Stephanie Hellman <shellman@townoffairfax.org>, Chance Cutrano <ccutrano@townoffairfax.org>, Renee Goddard <rgoddard@townoffairfax.org>, Barbara Coler <bcoler@townoffairfax.org>, Bruce Ackerman <backerman@townoffairfax.org>

Cc: Heather Abrams <habrams@townoffairfax.org>, Janet Coleson <Janet.Coleson@bbklaw.com>, Michele Gardner <mgardner@townoffairfax.org>

Subject: Correcting Just Cause & Rent Stabilization Loopholes

Good evening Fairfax council members and Fairfax staff,

I'd like to thank you for all your work to advance rent stabilization and just cause eviction protections in Fairfax and to urge you to ensure that the ordinances up for adoption on October 6th are as strong as possible.

At the last Fairfax Town Council meeting on 9/21/22, a number of last-minute changes to the proposed ordinances were put forward by Councilmember Coler that would significantly weaken renter protections and open up loopholes that landlords could exploit in order to fraudulently evict tenants and raise rents. Some of these proposed changes seemed to be accepted by the council, while others were left in an indeterminate state. I would urge all council members to reject and/or reverse *any* changes that would create unnecessary and avoidable loopholes that could undermine the intended effect of the law: to provide real housing security to Fairfax renters.

Below I hope to summarize the ordinance sections in need of reconsideration as clearly and succinctly as possible so that the council may make a final determination in favor of provisions that serve Fairfax community members.

UNITS WITHDRAWN FROM THE RENTAL MARKET PURSUANT TO THE ELLIS ACT

- At the 9/21/22 council meeting, the council appeared to have reached an informal consensus on reducing the amount of time—from ten years to two years—that a landlord may be liable or subject to civil proceedings, that a tenant may have a right of return, or that a unit's rent may be stabilized if a landlord attempts to re-rent that unit after claiming to have permanently taken it off the rental market pursuant the Ellis Act.
- This change would create an enormous and obvious incentive for landlords to simply claim that they are permanently removing their unit from the rental market, evict the current tenant with a stabilized rent, leave the unit vacant for two years, and then re-rent the unit at a much higher rent to a new tenant. This would hit long-term tenants who are especially dependent on their stabilized rents hardest, since those would be the tenants most profitable for the landlords to fraudulently evict in order to raise rents.
- The 2/5/10 year framework in the model ACCE ordinance and in the original ordinance proposed by staff is informed by years of watching landlords exploit similar loopholes. Landlords have proven in countless cases that they are more than willing to keep their units vacant for long periods of time if it means being able to raise rents back to whatever the market can bear.
- ***Recommendation:*** Reinstate the section as found in the ACCE model ordinance and staff-proposed ordinance, where landlord liability, the tenant's right of return, and rent

stabilization are extended and adapted for 2-year, 5-year, and 10-year re-rental scenarios.

REMEDIES / FAILURE TO COMPLY

- At the 9/21/22 council meeting, it was suggested to limit penalties for landlords found by a judge to have been in violation of the law. Specifically, Councilmember Coler suggested making landlords only subject to actual damages and not exemplary damages, damages to account for emotional distress, or treble (triple) damages, even when the landlords are found to have “acted willfully or with oppression, fraud or malice.”
- Stripping down penalties to only actual damages creates a clear incentive for landlords to violate the law by raising rents beyond the legal maximum or illegally evicting their tenant in order to create a vacancy and jack up rents on their new tenant.
- The best way to enforce the law and ensure landlords respect both the maximum allowable rent and their tenants’ just cause eviction protections is to create substantial penalties for landlords who knowingly break the law,
- ***Recommendation:*** *Keep the original language found in the ACCE model ordinance and staff-proposed ordinance in the “Remedies” section, the “Failure to Comply” section, and any other sections dealing with penalties or enforcement.*

TENANT HABITABILITY PLAN AND SHORT-TERM RELOCATION PLAN

- At the 9/21/22 council meeting, the council seemed to agree to strike this entire section from the proposed ordinances, meaning that landlords would not have to submit any kind of plan to the town when preparing for a major repair to their units that would require the temporary displacement of a tenant for more than 30 days.
- Tenant habitability plans are a tried and true mechanism for making landlords consider the safety and wellbeing of their tenants when making major renovations to their rental units. Without this requirement, it is all too easy for landlords to neglect critical safety and habitability considerations.
- Tenant habitability plans also give the town a chance to critically evaluate whether or not the stated major repairs are truly needed or whether the landlord is attempting to use them as a pretext for evicting their current tenants in order to jack up the rent.
- ***Recommendation:*** *Reinstate the section as found in the ACCE model ordinance and staff-proposed ordinance, requiring landlords to provide a Tenant Habitability Plan to the town if they plan to undertake major repairs that would displace their tenants for more than 30 days.*

Thank you for carefully reconsidering these sections. I urge you to take up these recommendations and pass the strongest possible rent stabilization and just cause eviction ordinances at the next town council meeting.

Thank you,

Curt Ries
Marin DSA Co-Chair

