

ORDINANCE NO. 11-21 N.S.

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND ADDING
CHAPTER 11.103 ENTITLED "TENANT ANTI-HARASSMENT ORDINANCE" TO
THE RICHMOND MUNICIPAL CODE**

WHEREAS, there is an imbalance between the supply of and demand for rental housing in Richmond. The imbalance is the result of both a shortage of rental housing and an overwhelming market demand for affordable housing; and

WHEREAS, the imbalance between supply and demand creates an imbalance of bargaining power between residential landlords and tenants; and

WHEREAS, because of this power imbalance and other related factors, Richmond residential tenants may be unwilling or unable to assert their legal rights; and

WHEREAS, the City Council seeks to expand residential tenants' rights since it believes the market and bargaining power imbalances are detrimental to the health, safety and general welfare of Richmond residents because the stability, security and quality of housing opportunities are reduced; and

WHEREAS, given the large number of rental housing units in Richmond, the City Council desires to improve communication among residential tenants and between residential tenants and landlords as well as to provide additional tenant protections; and

WHEREAS, the City Council further recognizes that the displacement of residential tenants, particularly during the COVID-19 pandemic, increases the risk that Richmond residents will lack stable and appropriate housing and therefore seek to institute measures to reduce the impacts of displacement on tenants, particularly tenants of limited financial means; and

WHEREAS, the City Council finds that reasonable regulation of aspects of the residential landlord-tenant relationship is necessary to foster constructive communication, maintain an adequate supply of rental housing units and protect the health, safety and general welfare of the public; and

WHEREAS, the purpose of this policy is to deter harassing behavior by landlords against residential tenants, to encourage residential landlords to follow the law and uphold their responsibility to provide habitable rental properties, and to give residential tenants and the City of Richmond legal recourse when tenants are subjected to harassing behavior by their landlords; and

WHEREAS, the City Council joins the cities of Oakland, Berkeley, San Francisco, Santa Monica, West Hollywood and East Palo Alto, each having passed ordinances prohibiting various forms of harassment by landlords against residential tenants; and

WHEREAS, the City Council recognizes the importance of maintaining peaceful relations in the community and minimizing breaches of the peace by discouraging self-help evictions, protecting vulnerable populations of the Richmond community, preserving Richmond's affordable residential housing stock, minimizing the further burden on the City's healthcare system caused by involuntary displacement, and minimizing additional burdens on the City's school system created by students being forced to withdraw from or change schools due to family displacement; and

WHEREAS, based on feedback from the Richmond Rent Program housing advisors who speak directly to Richmond residential tenants and landlords, between one-third to one-half of counseling sessions involve landlord harassment of tenants in some respect. Based on the Rent Program's average number of monthly counseling sessions, this equates to roughly 150 to 230 consultations involving residential tenant harassment each month; and

WHEREAS, according to Bay Area Legal Aid's requests for assistance from Richmond residents, from March 1, 2020 to May 19, 2021, approximately 41% of those requests were related to landlord harassment.

NOW, THEREFORE, the City Council of the City of Richmond does ordain as follows:

SECTION I.

Article XI of the Richmond Municipal Code is hereby amended to add a new Chapter to be numbered and to read as follows:

**Chapter 11.103
TENANT ANTI-HARASSMENT ORDINANCE**

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11.103.010 Short Title

This Ordinance shall be known as the "Tenant Anti-Harassment Ordinance."

11.103.020 Purpose

The Tenant Anti-Harassment Ordinance provided in this Chapter augments existing protections provided to residential Tenants under federal, state, and local laws to prohibit and deter Tenant harassment by Landlords in all residential Rental Units, including single-family residences and condominiums.

11.103.030 Applicability

The Tenant Anti-Harassment Ordinance shall apply to all Rental Units within the City of Richmond where there is a Rental Agreement between a Landlord and one or more Tenants, unless exempted herein. The application of this Ordinance includes Rental Units that may not be covered by the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance.

11.103.040 Definitions

- A. "Housing Services" has the same definition as "Housing Services" in the Richmond Fair Rent, Just Cause for Eviction and Homeowner Ordinance, as amended (Richmond Municipal Code Chapter 11.100).
- B. "Landlord" has the same definition as "Landlord" in the Richmond Fair Rent, Just Cause for Eviction and Homeowner Ordinance, as amended (Richmond Municipal Code Chapter 11.100).
- C. "Rent" has the same definition as "Rent" in the Richmond Fair Rent, Just Cause for Eviction and Homeowner Ordinance, as amended (Richmond Municipal Code Chapter 11.100).

- D. "Rental Agreement" has the same definition as "Rental Housing Agreement" in the Richmond Fair Rent, Just Cause for Eviction and Homeowner Ordinance, as amended (Richmond Municipal Code Chapter 11.100).
- E. "Rental Unit" has the same definition as "Rental Unit" in the Richmond Fair Rent, Just Cause for Eviction and Homeowner Ordinance, as amended (Richmond Municipal Code Chapter 11.100).
- F. "Tenant" has the same definition as "Tenant" in the Richmond Fair Rent, Just Cause for Eviction and Homeowner Ordinance, as amended (Richmond Municipal Code Chapter 11.100).

11.103.050 Exemptions

- A. Rental Units in any hospital, skilled nursing facility or health facility.
- B. 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 and is licensed for such purpose where such license is required.
- C. Rental Units in a nonprofit facility that provides a structured living environment with the primary purpose of helping homeless persons obtain skills necessary for independent living in permanent housing and where the occupancy is restricted to a limited and specific period of time of not more than twenty-four (24) months, and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception and is licensed for such purpose where such license is required.
- D. Rental Units exempted from Part 4, Title 4, Chapter 2 of the California Civil Code by section 1940(b)(transient occupancy in hotels/motels), or successor statute, unless either the Landlord offers for Rent or Rents the Rental Unit for a period of thirty (30) days or more, or the Landlord violates California Civil Code section 1940.1, or successor statute, to avoid tenancy status.

11.103.060 Tenant Harassment

No Landlord, and no agent or employee of the Landlord, shall do any of the following in bad faith:

- A. Interrupt, terminate, or fail to provide Housing Services or threaten to interrupt, terminate or fail to provide Housing Services required by a Rental Agreement or by state, county or local housing health or safety laws. This includes the following:
 - 1. Curtailing any utility services by any means whatsoever including, but not limited to, the cutting or removal of wires, removal of fuses, switching of breakers, and non-payment of bills for utilities that are part of the Housing Services. Utility services includes, but is not limited to, water, heat, electricity, gas, telephone, cable, internet, garbage and recycling collection, and sewage.
 - 2. Impeding reasonable access to the Rental Unit.
 - 3. Removing, without replacement within a reasonable time period, when building permits are obtained, if required, doors or windows of the Rental Unit.
- B. Fail to perform repairs or threaten to fail to perform repairs or maintenance required by a Rental Agreement or by state, county or local housing, health or safety laws.
- C. Fail to exercise due diligence in completing repairs or maintenance once undertaken or fail to follow appropriate industry repair containment or remediation protocols designed to

minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts.

- D. Abuse the right of access into a Rental Unit as established and limited by California Civil Code section 1954 or successor statute, including entering or photographing portions of the Rental Unit that are beyond the scope of a lawful entry or inspection.
- E. Remove from the Rental Unit personal property, furnishings, or other items that belong to the Tenant or that are part of the Housing Services without the prior written consent of the Tenant, except when done pursuant to the procedures set forth in Civil Code section 1980 *et seq.*, or successor statute.
- F. Influence or attempt to influence a Tenant to vacate a Rental Unit through fraud, intimidation, or coercion. This includes threatening to report a Tenant or other person known to the Landlord to be associated with the Tenant to any local, state, or federal agency based on their perceived or actual immigration status. The prohibition shall not be construed as preventing communication with such agencies regarding an alleged immigration violation as permitted by law. This provision shall also not be construed to conflict with Civil Code section 1940.2(a)(5) or successor statute.
- G. Offer payments to a Tenant to vacate more than once in six (6) months, after the Tenant has notified the Landlord in writing the Tenant does not desire to receive further offers of payments to vacate.
- H. Attempt to coerce a Tenant to vacate with offer(s) of payments to vacate that are accompanied with threats or intimidation.
- I. Threaten the Tenant, or their guests, by word or gesture, with physical harm.
- J. Interfere with a Tenant's right to quiet use and enjoyment of a Rental Unit as that right is defined by California law.
- K. Violate a law that prohibits discrimination based on actual or perceived race, gender, sexual preference, sexual orientation, ethnic background, nationality, place of birth, immigration or citizenship status, religion, age, parenthood, marriage, pregnancy, disability, AIDS or occupancy by a minor child.
- K. Refuse to accept or acknowledge receipt of a Tenant's lawful Rent payment.
- L. Refuse to cash a Rent check or money order for more than 30 days.
- M. Interfere with a Tenant's right to privacy or request information that violates a Tenant's right to privacy, including, but not limited to, residency or citizenship status or social security number, except as authorized by law.
- N. Misrepresent to a Tenant that they are required to vacate a Rental Unit or otherwise entice a Tenant to vacate a Rental Unit through misrepresentations or concealment of material facts.
- O. Force a Tenant to vacate their Rental Unit and reregister to avoid classification as a Tenant under Civil Code section 1940.1. Forced vacation can be implied from the totality of the circumstances.
- P. Unilaterally impose or require an existing Tenant to agree to material new terms of tenancy or to a new Rental Housing Agreement, unless: (1) the change in the terms of tenancy is authorized by the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance (RMC 11.100 *et seq.*), California Civil Code sections 1946.2(f), 1947.5, or 1947.12, or successor statutes, or is required by federal, state, or local law or regulatory agreement with a government agency, or (2) the change in the terms of the tenancy was accepted in writing by the Tenant after receipt of written notice from the Landlord that the Tenant need not accept such new terms as part of the Rental Agreement. Notwithstanding (1) and (2) of this section,

where a Rental Unit is regulated by the rent control provisions of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance (RMC 11.100 *et seq.*), all change in terms of tenancy must comply with the provisions of Richmond Municipal Code section 11.100 *et seq.* and accompanying Rent Board Regulations.

- Q. Other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, peace or quiet of any person lawfully entitled to occupancy of such Rental Unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled to occupancy of a Rental Unit to vacate such Rental Unit or to surrender or waive any rights in relation to such occupancy.

11.103.070 Retaliation Prohibited

Retaliation against a Tenant because of the Tenant's exercise of rights under this Chapter is prohibited. Retaliation claims may only be brought in court and may not be addressed administratively. A court may consider the protections afforded by this Chapter in evaluating a claim of retaliation.

11.103.080 Notices

- A. Landlords are required to provide a written notice via a form prescribed by the City regarding the provisions of section 11.103.060 to all Tenants using the form prescribed by the City, at the beginning of the tenancy and with any notice of termination of tenancy.
- B. If a Rental Unit is already occupied, a Landlord shall provide a written notice regarding the provisions of section 11.103.060 to all existing Tenants in the form prescribed by the City, within 30 days of the effectiveness of this Chapter.
- C. If Rental Units subject to this Chapter are in a building with an interior common area to which all the building's Tenants have access, the Landlord must post a written notice regarding the provisions of section 11.103.060 in at least one such common area in the building via a form prescribed by the City.

11.103.090 Severances Prohibited

The following amenities, supplied in connection with use or occupancy of a Rental Unit, may not be severed from a tenancy without good cause: garage facilities, parking facilities, driveways, storage spaces, laundry rooms, decks, patios, backyards, gardens on the same lot, kitchen facilities, toilet facilities, or lobbies in residential hotels.

For purposes of this section, good cause shall include:

- (1) Required by federal, state, or local law;
- (2) For Rental Units that do not fall under the Rent control provisions of Richmond Municipal Code Section 11.100 *et seq.*, acceptance of the severance in writing by the Tenant after receipt of written notice from the Landlord that the Tenant need not accept the severance;
- (3) For Rental Units that fall under the Rent Control provisions of Richmond Municipal Code Section 11.100 *et seq.*, Richmond Rent Board or Hearing Examiner approval of the removal of amenities in a manner consistent with Richmond Rent Board Regulations; or
- (4) Severance results from the removal of a balcony for which repair or removal was necessary for safety and the Landlord has obtained all necessary permits for the removal.

A severance does not include noticed temporary unavailability of the above Housing Services to perform necessary work with all required permits.

11.103.100 Non-Waiverability

It is against public policy, void and unenforceable to waive or modify any provision of this Chapter in an oral or written Rental Housing Agreement.

11.103.110 Civil Remedies

- A. Civil. Any aggrieved person, or the City, may enforce the provisions of this Chapter by means of a civil action. The burden of proof in such cases shall be preponderance of the evidence.
- B. Injunction/Equitable Relief. Any person who commits an act or engages in any pattern and practice that violates 11.103.060 may be enjoined therefrom by a court of competent jurisdiction. A court may issue other equitable relief as appropriate. An action for injunction under this subsection may be brought by an aggrieved person, by the City Attorney, or by any person or entity who will fairly or adequately represent the interests of the protected class.
- C. Penalties and Other Monetary Awards. Any person who violates, or aids or incites another person to violate, the provisions of this Chapter is liable in a court action for each and every such offense for money damages of not less than three times actual damages suffered by an aggrieved Tenant (including damages for mental or emotional distress), or for the minimum damages in the sum of one thousand dollars (\$1000.00), whichever is greater, or whatever other relief the court deems appropriate, and shall be liable for such attorneys' fees and costs as may be determined by the court. In the case of an award for damages for mental or emotional distress, said award shall be trebled only if the trier of fact finds that the Landlord acted in knowing violation of or reckless disregard of this Chapter. A prevailing defendant in a civil action under this section shall be entitled to an award of attorneys' fees only if it is determined by the Court that the action was devoid of merit and brought in bad faith. Moreover, any person who violates, or aids or incites another person to violate, this Chapter shall be liable for an additional civil penalty of up to five thousand dollars for each offense committed against a person who is disabled within the meaning of California Government Code section 12926, *et seq.* or successor statute, or aged sixty-five (65) or over. The court may also award punitive damages to any plaintiff, including the city, in a proper case as defined by Civil Code section 3294 or successor statute.
- D. Nonexclusive Remedies and Penalties. The remedies provided in this section are not exclusive and are not intended to be exclusive of each other or to any other existing legal remedies.

SECTION II. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, the remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed each section, subsection, paragraph, sentence, clause, or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, paragraph, sentence, clause or phrase.

SECTION III. Effective Date. This Ordinance shall take effect thirty (30) days after adoption and the title thereof shall be published once prior to adoption.

First introduced at a regular meeting of the City Council of the City of Richmond held July 6, 2021, and finally passed and adopted at a regular meeting held July 22, 2021, by the following vote:

AYES: Councilmembers Bates, Jimenez, Martinez, McLaughlin, Willis, Vice Mayor Johnson III, and Mayor Butt.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:
TOM BUTT
Mayor

Approved as to form:
TERESA STRICKER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Ordinance No. 11-21 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on July 22, 2021.



Pamela Christian, City Clerk of the City of Richmond