December 4, 2018

Board of Supervisors
County of Marin
3501 Civic Center Drive
San Rafael, California 94903

SUBJECT: Ordinance requiring cause to terminate a residential tenancy (Just Cause for eviction).

Dear Board Members:

RECOMMENDATION:

1. Conduct a public hearing on the attached draft ordinance requiring cause to terminate a residential tenancy (Just Cause for eviction); and
2. At the conclusion of the hearing, consider conducting a first reading of the Ordinance and scheduling a merit hearing for December 18, 2018.

SUMMARY: At the Board of Supervisors hearing on September 11, 2018, your Board held a public workshop to consider establishing new rules prescribing the reasons that landlords in the unincorporated County may evict tenants. These types of rules are adopted by ordinance and are typically referred to as “Just Cause” for eviction. Although Just Cause policies have been generally discussed during prior Board hearings on housing policy initiatives, the workshop offered an opportunity for in-depth review and discussion of considerations for and arguments against optional provisions. Prior to the conclusion of workshop, the Board directed staff to prepare a draft Just Cause ordinance for consideration at a future public hearing. The draft Ordinance (Attachment 1) was prepared by staff following a series of meetings with the Board’s Housing Subcommittee that followed the September workshop. A draft of the Ordinance was circulated on November 16, 2018 for public review and comment.

BACKGROUND: Just Cause for eviction is one of several tenant protection and affordable housing measures identified by the Board of Supervisors for review in early 2016.¹ Since that time, the Board has set aside funding to support the acquisition and development of affordable housing, authorized financial incentives to landlords who choose to rent to housing voucher holders,² adopted a Fair Housing Ordinance (Source of Income Protection)³, established the Rental Housing Dispute Resolution (“Mandatory Mediation”)⁴ program, and approved code amendments to encourage the creation of accessory dwellings.⁵ The Board also endorsed enhancements to the

¹ The Board of Supervisors developed a work plan to preserve housing affordability and prevent displacement at a hearing on February 9, 2016.
² The Landlord Partnership Program was established, amended, and renewed at Board of Supervisors hearings on July 26, 2016, August 1, 2017, and August 7, 2018 respectively.
³ Marin County Municipal Code Chapter 5.53, “Income-based rental housing discrimination.”
⁴ Marin County Municipal Code Chapter 5.95, “Rental housing dispute resolution.”
⁵ Marin County Ord. No. 3666
Environmental Health Services (EHS) multi-family housing inspection program to strengthen the County's oversight and enforcement of environmental health regulations.6

In addition, education and outreach have been a focus for Community Development Agency staff on both the proposed Just Cause Ordinance and the Mandatory Mediation program. Outreach efforts include community and stakeholder meetings, and distribution of outreach materials to over 1,300 subscribers. Agency staff have been providing public information by responding to numerous inquiries from the landlord and tenant communities. The District Attorney's Consumer Protection Unit continues to offer mediation and education for both landlords and tenants.

Under California law, landlords have the legal right to terminate a periodic tenancy without reason so long as they furnish the tenant proper written notice of termination. For a written notice of termination to be legally sufficient under State law, a residential tenant living in a home for less than one year must be provided with at least 30-days' written notice; the termination of a tenancy where the tenant has resided in a home for one year or more must be noticed at least 60 days in advance. Landlords can also serve tenants with a three-day written eviction notice for any cause consistent with the California Code of Civil Procedure §1161, such as non-payment of rent or violation of a covenant in the lease. In addition, the Ellis Act7 allows Californians to withdraw their property from the residential rental market.

Just Cause policies are intended to provide stability for households who rent by regulating the grounds for eviction, typically by prohibiting termination of a residential tenancy without express reason. These policies serve to promote greater awareness of the rights and responsibilities of landlords and tenants and provide a clear and transparent process for evictions and lease terminations,8 particularly when rental agreements do not exist or lack specificity.

In California jurisdictions with Just Cause ordinances, landlords have commonly maintained the right to evict tenants who fail to pay rent, breach material terms of the rental agreement, or commit nuisance, or damage to the property. Additionally, landlords may "go out of business" by withdrawing buildings with residential units from the rental market. Landlords are also free to set and adjust rents through rental agreements without predetermined limits. Despite the rights landlords retain under Just Cause ordinances, landlords and rental property owners may view Just Cause ordinances as being cumbersome to the current eviction process, in which a landlord only has to provide notice to initiate termination of a tenancy. Some landlords and rental property owners have expressed concerns that the limits on evictions established by Just Cause regulations may discourage investment in rental property, increase operating costs and rental prices, and make it more difficult to remove problematic tenants. Landlords have also expressed concern that adoption of a Just Cause ordinance could foretell a future rent stabilization ordinance. Landlord organizations also point to existing laws that protect renters from arbitrary or

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6 The Board of Supervisors approved enhancements to the County's multi-unit housing inspection program at a public workshop on September 11, 2018.

7 California Government Code §7060-7060.7

8 A formal eviction occurs when a landlord obtains a court order to terminate a tenancy and remove a tenant from the rental unit. The court order may affect the ability of a tenant to relocate since landlord's screen rental applicants through court records. Lease terminations are a less-formal means of ending a tenancy by non-renewal of the lease.
unreasonable evictions. For example, State law prohibits renters from being evicted in retaliation for exercising protected rights such as filing a complaint about unsafe or unhealthy living conditions.

**DISCUSSION:** Owners of property subject to the draft Ordinance may evict tenants for reasons enumerated and established in the ordinance. These reasons fall into two categories: "For Cause" and "No Cause" evictions.

In the first category for Just Causes, "For Cause," a residential tenancy can be terminated if an owner or landlord demonstrates any of the circumstances defined in §5.10.040(b), including:

- Failure to pay rent;
- Breach of the rental contract; and
- The tenant uses the unit for illegal activities.

The breach of rental contract eviction may be invoked in various circumstances under which the landlord has specified responsibilities and acceptable behavior of the tenant in the rental agreement.

In the second category of Just Causes, reasons for "No Fault" terminations include:

- Landlord will permanently remove the unit from the rental market;
- Landlord or family member will move in to the unit; and
- Landlord will make substantial repairs to the unit that cannot be completed while the unit is occupied.

To maintain flexibility for property owners, the draft Ordinance also allows for landlords and tenants to negotiate or agree to end a tenancy voluntarily (§5.10.040(d)).

Several other aspects of the draft Just Cause Ordinance discussed below were the focus of discussions with the Housing Subcommittee.

*The appropriate threshold for applying Just Cause (§5.100.020 and §5.100.030)*

Applicability defines the rental properties subject to and exempt from the Ordinance, as well as the overall reach of the Ordinance within the rental market.

At the September workshop, the Board of Supervisors expressed interest in developing exemptions for Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs), and for owners of rental properties with limited numbers of rental units, as such owners may have fewer assets over which to absorb risks associated with the rental housing market.

The draft Ordinance contains exemptions for ADUs and JADUs. The Housing Subcommittee considered two ways of defining applicability by number of rental units:

1. The total number of units owned by a landlord, including multiple properties under common ownership within the unincorporated County; or
2. The number of units on a single property within the unincorporated County.

With the goal of creating a model ordinance that could be implemented by other Marin cities and towns, the draft Ordinance proposes to apply Just Cause provisions to
individual properties with three or more rental units, rather than the total number of rental units on multiple properties under common ownership. This definition of applicability aligns with that used by EHS to determine what properties are subject to its multi-family housing code inspections program.

Since single-family residences and duplexes constitute approximately 64% and 3%\(^9\) of the housing stock in the unincorporated County respectively, the above exemptions would limit applicability to a relatively small percentage of the overall rental housing market. More detailed estimates are available in Attachment 2.

*Collection of rental data, scope and method (§ 5.100.050 and § 5.100.055).*

In recent years, the Board of Supervisors and a variety of stakeholder groups participating in conversations about the affordable housing crisis have expressed an interest in collecting quality, localized data to inform discussions and decisions around housing policy. Records regarding the number of evictions ordered through unlawful detainers issued by the Marin County Superior Court are shown in Attachment 2. However, this information does not include the non-renewal of leases or rental agreements terminated through 30 or 60-day notices pursuant to State law.

To enhance the accuracy and timeliness of data on the rental market within the unincorporated County, a local tool for collecting information is being proposed to document and report on such factors as evictions, non-renewal of leases and adjustment of rental rates. The proposed Ordinance includes two means of collecting data. First, owners of property subject to the Ordinance would be required to send a copy of the Notice of Termination for a lease or rental agreement to the County, listing one or more causes for which the tenancy is being terminated. The draft Ordinance would also establish a new rental registry, which as proposed, would collect information annually on the number of rental units, ownership, location, occupancy status and rental rates for properties subject to the Ordinance. The Housing Subcommittee did not reach a consensus on the question of whether to collect information on rental rates through the registry and Notice of Termination.

The registry could be primarily hosted online, with fillable PDFs and hardcopy forms available as reasonable accommodations. To limit redundant data entry for landlords, the registry would have secure login accounts for landlords to allow data to be carried forward in renewal applications. This would reduce the administrative burden for landlords, who would need only to delete or add units as they are sold or acquired, update information on rents and occupancy, or adjust their information and credentials as necessary. The County's secure server would host the online database as well as the Notice of Termination, which would feature similar provisions for reasonable accommodations. To allow enough lead time for landlords to comply with the registry provisions, an online registry could be released by April 1, 2019, with landlords being required to register their units by June 1, 2019.

The proposed registry does not authorize the collection of any tenant identification data, such as name or contact information. In the Notice of Termination, a tenant may only be identified through the information provided on a lease agreement, and then

\(^9\) U.S. Census Bureau. (2016). *Tenure by Units in Structure, 2012-2016 American Community Survey 5-year estimates.* Retrieved from [https://factfinder.census.gov](https://factfinder.census.gov). These estimates do not consider households living in mobile homes, boats, RVs, vans, etc. as those identifiers are insufficient to determine the applicability of this draft ordinance.
only in instances where a landlord proposes to terminate a tenancy for breach of contract, in which case a copy of the corresponding lease is required for documentation. Identifying information provided in the lease will not be searchable in the database and unredacted leases will not be available to the public.

**Enforcement of the Ordinance (§ 5.100.080 and § 5.100.090).**

The draft Ordinance includes a provision for civil remedy procedures and creates a private right of action for enforcement. Accordingly, if a landlord fails to comply with the Ordinance, including through issuing an eviction notice which is inconsistent with the For Cause or No Fault provisions enumerated by the Ordinance, a tenant may initiate civil proceedings for monetary damages, injunctive relief, or both. A tenant may also challenge the validity of a lease termination. The Ordinance requires that landlords must have a valid business license, comply with Environmental Health housing inspection requirements, register their unit and provide a copy of the termination notice to the County for a termination to be valid.

**CONCLUSION:** The draft Ordinance is intended to provide stability to the renter community while retaining the rights of landlords to evict tenants based on clearly defined and reasonable justifications. If your Board decides the draft Ordinance is sufficient to be considered for adoption, the Board should conduct a first reading of the draft Ordinance at your December 4, 2018 hearing and schedule a merit hearing for the draft Ordinance for the Board's December 18, 2018 hearing at 1:30 p.m.

**REVIEWED BY:**

- [ ] Auditor Controller
- [x] County Counsel
- [ ] Human Resources
- [ ] N/A
- [x] N/A
- [x] N/A

Respectfully submitted,

[Signature]

Leelee Thomas
Planning Manager

[Signature]

Brian C. Crawford
Director

**Attachments:**

1. Draft housing ordinance requiring cause to terminate a residential tenancy ("Just Cause for eviction")
2. Rental housing data
3. Staff Report September 11, 2018
4. Administrative record (comments received)

A full reference copy of this staff report and associated attachments will become available for public review at the Board of Supervisors office, 3501 Civic Center Drive, Suite 329 (8:00 a.m. to 5:00 p.m., Monday through Friday) and at the Community Development Agency, Planning Division, 3501 Civic Center Drive, Suite 308 (8:00 a.m. to 4:00 p.m., Monday through Thursday, closed Fridays).