



**CITY OF SALINAS
COUNCIL STAFF REPORT**

DATE: December 3, 2019

DEPARTMENT: OFFICE OF THE CITY ATTORNEY

FROM: CHRISTOPHER A. CALLIHAN, CITY ATTORNEY

TITLE: EMERGENCY ORDINANCE TEMPORARILY PROHIBITING NO-FAULT EVICTIONS

RECOMMENDED MOTION:

A motion to adopt an emergency ordinance temporarily prohibiting no-fault evictions.

RECOMMENDATION:

It is recommended that the City Council adopt the proposed emergency ordinance.

EXECUTIVE SUMMARY:

This emergency ordinance, proposed pursuant to Salinas Charter Section 11, addresses the affordable housing and homelessness crises in Salinas by temporarily prohibiting no-fault evictions until California Assembly Bill 1482 (the Tenant Protection Act of 2019) takes effect on January 1, 2020. The emergency ordinance, with certain exceptions, prohibits an owner of residential real property from terminating a tenancy without just cause, which is required to be stated in the written notice to terminate tenancy when one or more tenants have continuously and lawfully occupied the residential real property for twelve (12) months or more.

This item was recommended by Council members Davis and Barrera, with the support of Mayor Gunter. Pursuant to Salinas Charter Section 11.8(a), the proposed emergency ordinance may be passed only upon the affirmative votes of six (6) City Council members and will take effect immediately.

DISCUSSION:

On September 11, 2019, California Assembly Bill 1482 (AB 1482) passed the legislature and on October 8, 2019, the Governor signed AB 1482 into law. AB 1482 becomes effective on January 1, 2020 and will limit annual rent increases and will prohibit an owner from terminating a tenancy without just cause if the tenant has lived in a unit for twelve (12) months or more. After AB 1482

becomes effective, the prohibitions on eviction without just cause will go into effect and if rents were increased after March 15, 2019, the rent on January 1, 2020, is reduced to the rent as of March 15, 2019, plus the maximum increase allowed by AB 1482. The proposed emergency ordinance addresses only no-fault evictions and does not address rent limits.

AB1482 includes no-fault eviction protections for tenants if they have lived in a unit for twelve (12) months or more. Just cause eviction protection would require a landlord to have a valid reason for terminating a tenancy. Some examples include non-payment of rent, violation of a lease term, and the creation of a nuisance.

The proposed emergency ordinance would temporarily prohibit no-fault evictions through December 31, 2019, for residential real property that will be subject to the protections of AB 1482 beginning on January 1, 2020. The prohibition on no-fault evictions is not retroactive. The proposed emergency ordinance is substantially similar to AB 1482 and local ordinances adopted by neighboring jurisdictions, including the City of Seaside and Monterey County.

Prior to drafting the proposed emergency ordinance, the City Attorney met with community members representing tenants and community members representing property owners and landlords to listen to their concerns regarding AB 1482 and the effects on their respective constituencies. On November 20, 2019, the City Attorney met with Daniel Gonzalez, Sabino Lopez, and Armando Asencio from the Center for Community Advocacy; and Monica Gurmilan and Cesar Lara from Building Healthy Communities. On that same day, the City Attorney met with Gloria Moore, Chuck Cryder, Gail Valdez, and Carrie Appling from the Monterey County Association of Realtors. All of these community members' insights, knowledge, and experience were critical to the preparation of the proposed ordinance. All understood and acknowledged the need to protect tenants from no-fault evictions.

CEQA CONSIDERATION:

The action of adopting the proposed ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Guidelines section 15061(b)(3).

STRATEGIC PLAN INITIATIVE:

Adoption of the proposed emergency ordinance supports the City Council's goal of promoting a safe and livable community.

FISCAL AND SUSTAINABILITY IMPACT:

The City Council's adoption of the proposed emergency ordinance would not have an impact on the City's General Fund, Measure E, or Measure G.

DEPARTMENTAL COORDINATION

The City Attorney's Department did not coordinate with other City Departments on the proposed emergency ordinance.

ATTACHMENTS:

Emergency Ordinance
AB 1482

ORDINANCE NO. _____ (N.C.S.)

**AN EMERGENCY ORDINANCE ENACTING A TEMPORARY PROHIBITION ON
NO-FAULT EVICTIONS**

City Attorney Impartial Analysis

This emergency ordinance, proposed pursuant to Salinas Charter Section 11, addresses the affordable housing and homelessness crises in Salinas by temporarily prohibiting no-fault evictions until California Assembly Bill 1482 (the Tenant Protection Act of 2019) takes effect on January 1, 2020. The emergency ordinance, with certain exceptions, prohibits an owner of residential real property from terminating a tenancy without just cause, which is required to be stated in the written notice to terminate tenancy when one or more tenants have continuously and lawfully occupied the residential real property for twelve (12) months or more.

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution, the City of Salinas (City) has broad authority to maintain the public peace, health, and safety of its community and to preserve the quality of life for its residents and may make and enforce all regulations and ordinances using its police powers in order to do so; and

WHEREAS, On October 8, 2019, California’s Governor signed into law the Tenant Protection Act of 2019, Assembly Bill 1482 (AB 1482), which in part addresses California’s affordable housing crisis by prohibiting evictions without “just cause,” otherwise known as “no-fault” evictions, and the raising of rents above a specified amount; and

WHEREAS, AB 1482 will not become effective until January 1, 2020; and

WHEREAS, the City has one of the least affordable housing markets in California and the United States: the Salinas metropolitan area is one of seven in California that ranks in the top ten least affordable in the United States according to an analysis of 2016 census data by Harvard’s Joint Center for Housing Studies; and

WHEREAS, eviction creates particular hardships for individuals with households of limited means, given the shortage of housing, particularly affordable housing, within the City of Salinas and the Monterey Bay region, generally; and

WHEREAS, Salinas is experiencing an affordable housing crisis and a humanitarian crisis of homelessness; and

WHEREAS, in advance of the implementation of AB 1482, no-fault eviction notices and threats of eviction have increased; and

WHEREAS, the City is aware of specific instances where long-term tenants have received rent increase notice in excess of what will be lawful under AB 1482, have received eviction notices

based upon the premise of a need for repairs to the rental units, and in some cases tenants have received both rent increase and eviction notices; and

WHEREAS, among those affected are low and very-low income tenants who have no other viable housing options once evicted from their rental units due, for example, to a lack of resources and/or a lack of vacant and affordable units; and

WHEREAS, due to a lack of education, a lack of resources, and in some cases having an undocumented status, some residents facing either rent increases, eviction, or both have no resource against unlawful rent increases and/or no-fault evictions; and

WHEREAS, when families with children are evicted from their rental units, the children's education may be interrupted; moving during the middle of a school year may affect a child's ability to remain within the same school district and to remain at the same school site; and

WHEREAS, in light of the presence of no-fault evictions occurring prior to AB 1482's effective date, Salinas can expect that more of its residents will be subject to no-fault evictions that would otherwise violation AB 1482; and

WHEREAS, such evictions present an immediate threat to public peace, health, and safety of Salinas residents and an emergency to Salinas residents who would be subject to no-fault evictions in that they will cause a displacement of residents during the winter and close to the November and December holidays and, with a shortage of both market rate and affordable rental units, will contribute to an increase in the homeless population in the City; and

WHEREAS, the Salinas City Council declares that based on these findings no-fault evictions prior to AB 1482's effective date will create an emergency situation which may be addressed through an emergency ordinance implementing provisions of AB 1482 prior to its effective date; and

WHEREAS, Salinas Charter Section 11.8(a) allows an emergency ordinance to be passed by six (6) voted of the City Council; and

WHEREAS, Salinas Charter Section 11.8(b) allows an emergency ordinance to take effect immediately, as indicated in the emergency ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF SALINAS as follows:

SECTION 1. Recitals. The above recitals are true and correct and are by this reference incorporated herein in their entirety.

SECTION 2. Title. The title of this emergency ordinance shall be "Temporary Prohibition of No-Fault Evictions."

SECTION 3. Findings and Purpose.

A. On October 8, 2019, Assembly Bill 1482 (AB 1482), the Tenant Protections Act of 2019, was passed to address a key cause of California’s affordable housing crisis by preventing rent gouging and arbitrary evictions.

B. Escalating real estate values provide an incentive to landlords to evict long-term, lower-income tenants, without cause or under the guise of a need for repairs, to raise rents and to attract wealthier tenants, before AB 1482 becomes effective. Tenants in Salinas have reported experiencing an increase of no-fault eviction notices and threats of eviction; therefore, it is imperative that the City implement temporary strategies to keep people housed.

C. This ordinance will temporarily prohibit no-fault evictions through December 31, 2019, for residential real property that will be covered by AB 1482 beginning on January 1, 2020.

SECTION 4. Definitions.

The following words and phrases, whenever used in this ordinance, shall be construed as defined in this Section:

A. Owner. The term “Owner” is any person, acting as a principal or through an agent, offering residential real property for rent, and includes a predecessor in interest to the owner.

B. Residential Real Property. The term “residential real property” is any dwelling or unit that is intended to be used for human habitation.

SECTION 5. Temporary Prohibition on No-Fault Evictions.

A. Until the effective date of AB 1482, after one or more tenants have continuously and lawfully occupied a residential real property for twelve (12) months or more, the owner of residential real property shall not terminate the tenancy without at-fault just cause, which shall be stated in the written notice of termination of tenancy. This prohibition shall also apply to an owner’s action that constitutes constructive eviction under California law. An owner’s failure to comply with this ordinance shall render any notice of termination of tenancy void. This section may be asserted as an affirmative defense in an unlawful detainer action. Terminations that are required to comply with an order issued by a government agency or court requiring that the residential real property be vacated, or comport with due process, federal, or state law, are exempted from this prohibition. An owner’s failure to comply with this ordinance does not constitute a criminal offense.

B. At-fault just cause is the following:

1. Default in the payment of rent.

2. A breach of a material term of the lease, as described in paragraph (3) of Section 1161 of the California Code of Civil Procedure, including, but not limited to, violation of a provision of a lease after being issued a written notice to correct the violation.

3. Maintaining, committing, or permitting the maintenance or continuation of a nuisance as described in paragraph (4) of Section 1161 of the California Code of Civil Procedure.

4. Criminal activity by the tenant on the residential real property, including common areas, or any criminal activity or criminal threat, as defined in subdivision (a) of Section 422 of the California Penal Code, on or off the residential real property against the owner of residential real property.

5. Assigning or subletting the premises in violation of the tenant's lease, as described in paragraph (4) of Section 1161 of the California Code of Civil Procedure.

6. The tenant's refusal to allow the owner to enter the residential real property as authorized by Sections 1101.5 and 1954 of the California Civil Code, and Sections 13113.7 and 17926.1 of the California Health and Safety Code.

7. Using the premises for an unlawful purpose as described in paragraph (4) of Section 1161 of the California Code of Civil Procedure.

8. The employee, agent, or licensee's failure to vacate after their termination as an employee, agent, or licensee as described in paragraph (1) of Section 1161 of the California Code of Civil Procedure.

9. When the tenant fails to deliver possession of the residential real property after providing the owner written notice as provided in Section 1946 of the California Code of Civil Procedure of the tenant's intention to terminate the hiring of real property, or makes a written offer to surrender that is accepted in writing by the owner, but fails to deliver possession at the time specified in the written notice as described in paragraph (5) of Section 1161 of the California Code of Civil Procedure.

C. If an owner can show any of the following circumstances related to a termination of tenancy, the termination will be exempt from the provisions of this ordinance:

1. Owner will imminently demolish the residential real property or otherwise permanently remove the real property from any residential use or purpose in accordance with California Government Code Sections 7060-7060.7.

2. The owner, or one of the owner's parents, grandparents, grandchildren, children, spouse, domestic partner intent to move into and to reside in the residential real property as his, her, or their primary residence. The residential real property must be occupied as the primary residence within three months of the tenant vacating the residence and continue to occupy the residential property for at least one year.

3. The need to make substantial repairs in order for a dwelling to be habitable and to be in compliance with applicable health and safety codes, and that such repairs cannot be completed while the dwelling unit is occupied.

D. This ordinance shall not apply to and of the following residential real property or residential circumstances:

1. Transient and tourist hotel occupancy as defined in Subdivision (b) of Section 1940 of the California Civil Code.

2. Housing accommodations in a non-profit hospital, religious facility, extended care facility, licensed residential care facility for the elderly, as defined in Section 1569.2 of the California Health and Safety Code, or an adult residential facility, as defined in Chapter 6 of Division 6 of Title 22 of the Manual of Policies and Procedures published by the State Department of Social Services.

3. Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school.

4. Housing accommodations in which the tenant shares bathroom or kitchen facilities with the owner who maintains their principal residence at the residential real property.

5. Single-family owner-occupied residences, including a resident in which the owner-occupant rents or leases no more than two (2) units or bedrooms, including, but not limited to, an accessory dwelling unit or a junior accessory dwelling unit.

6. A duplex in which the owner occupied one (1) of the units as the owner's principal place of residence at the beginning of the tenancy, so long as the owner continues in occupancy.

7. Housing that has been issued a certificate of occupancy within the previous fifteen (15) years.

8. Residential real property that is alienable separate from the title to any other dwelling unit, provided that the owner is not any of the following:

- a. A real estate investment trust, as defined in Section 856 of the Internal Revenue Code.
- b. A corporation.
- c. A limited liability company in which at least one member is a corporation.

9. Housing restricted by deed, regulatory restriction contained in an agreement with a governmental agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code or comparable federal statutes.

SECTION 6. Application.

This ordinance shall apply to tenancies where the tenant remains in possession and the eviction lawsuit has not been adjudicated.

SECTION 7. 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 provisions of this ordinance. The Salinas City Council hereby declares that it would have adopted this ordinance and each provision thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 8. Effective Date. This emergency ordinance shall be effective on December 3, 2019 and shall expire at midnight on December 31, 2019.

PASSED AND ADOPTED this 3rd day of December 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Joe Gunter, Mayor

ATTEST:

Patricia M. Barajas, City Clerk

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney