

ORDINANCE NO. 1034

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
REQUIRING CAUSE TO TERMINATE A RESIDENTIAL TENANCY
THROUGH DECEMBER 31, 2019

WHEREAS, the City of Capitola ("City") is authorized by Article XI, Section 7 of the California Constitution to make and enforce all regulations and ordinances using its police powers;

WHEREAS, Government Code sections 36934 and 36937 authorize ordinances to take effect immediately if they are for the immediate preservation of the public peace, health or safety, contain a declaration of the facts constituting the urgency, and are passed by a four-fifths vote of the City Council;

WHEREAS, the State of California, including the City of Capitola, is experiencing an unprecedented and critical housing shortage;

WHEREAS, on October 8, 2019, the California Governor signed into law the Tenant Protection Act of 2019, Assembly Bill 1482 ("AB 1482"), which, among other things, prohibits evictions without "just cause," and prohibits owners of residential rental property from increasing rents each year by more than 5 percent plus the change in the area Consumer Price Index or 10 percent, whichever is lower;

WHEREAS, AB 1482 will be effective on January 1, 2020;

WHEREAS, AB 1482 will provide protection to the nearly 2,500 rental households in the City of Capitola;

WHEREAS, many of the City's renters, including 70 to 85 percent of its low-income renters, spend over 30 percent of their annual incomes on rent already;

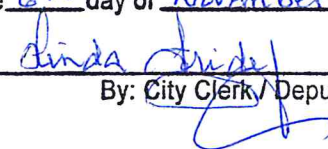
WHEREAS, while AB 1482 is expected to provide some relief for Capitola tenants, the lapse in time between the date AB 1482 became law, and January 1, 2020, combined with rapidly escalating real estate values, may provide an incentive to landlords to evict long-term, lower-income tenants, in order to raise rents and attract wealthier tenants, before AB 1482 becomes effective. The City has already received a report of the attempted eviction of an entire building, including several low-income tenants. It is imperative that the City act now to implement temporary strategies to keep people in their homes;

WHEREAS, particularly given the high cost of housing, evictions of tenants, particularly low-income tenants, could lead to long-term or permanent displacement, impacting the health and safety of these tenants, as well as the City of Capitola;

WHEREAS, the City Council is concerned that, in advance of the implementation of AB 1482, eviction notices and threats of eviction will surge;

WHEREAS, the City of Capitola wishes to protect renters from no-fault evictions through December 31, 2019, until the protections of AB 1482 become effective, in order to prevent displacement of tenants.

This is to certify that the above and foregoing is
a true and correct copy of Ordinance No. 1034
passed and adopted by the Capitola City Council
on the 6th day of November, 2019.


By: City Clerk/Deputy

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPITOLA AS FOLLOWS:

Section 1: Interim Urgency Ordinance. The City Council of the City of Capitola incorporates the findings above by reference and adopts the Urgency Ordinance attached hereto as Attachment A.

Section 2: Effective Date. This Ordinance shall take effect and be in force immediately. The ordinance shall expire on June 15, 2020.

Section 3: Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.


Section 4: Codification. This urgency ordinance shall not be codified in the Capitola Municipal Code.

Section 5: California Environmental Quality Act (CEQA). The City Council hereby finds that the action to adopt this Ordinance will not result in any change in the environment and thus is not a project subject to the requirements of CEQA. Further, even if the action to adopt this Ordinance was deemed to be a project subject to CEQA, the City Council finds the proposed Ordinance is exempt from CEQA under the common sense exemption set forth in Section 15061(b)(3), which provides that CEQA only applies to projects which have the potential for causing a significant effect on the environment, and thus where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

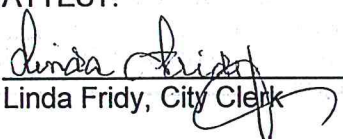
Section 6: Urgency Clause. The City Council finds and declares that this ordinance is required for the immediate protection of the public peace, health, and safety. Without it, City of Capitola tenants would suffer potentially irreversible displacement of tenants resulting from no-fault evictions prior to the effective date of AB 1482. The Council, therefore, adopts this ordinance to become effective immediately, pursuant to California Government Code Section 36937. This urgency ordinance was passed and adopted by the City Council of the City of Capitola on the 6th day of November, 2019, by the following vote:

AYES: Council Members Brooks, Petersen, and Storey and Mayor Bertrand
NOES: None
ABSENT: Council Members Bottorff
ABSTAIN: None

APPROVED:


Jacques Bertrand, Mayor

ATTEST:


Linda Fridy, City Clerk

ATTACHMENT A

SECTION 1: PURPOSE.

On October 8, 2019, California Governor Gavin Newsom signed Assembly Bill 1482 (AB 1482), the "Tenant Protections Act of 2019". AB 1482 addresses California's affordable housing crisis by preventing rent gouging and arbitrary evictions. AB 1482 becomes effective on January 1, 2020. The City of Capitola is home to approximately 2,000 rental households. There are currently no rent or eviction control protections in place in Capitola, exposing those rental households to significant and unexpected rent increases or eviction notices.

This section will 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.

SECTION 2: APPLICATION.

This Ordinance shall apply to tenancies for which the tenant remains in possession and the period of notice required under California Civil Code section 1946.1 has not expired.

SECTION 3: DEFINITIONS.

The following words and phrases, whenever used in this section, shall be construed as follows:

1. "Dwelling Unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one or more persons who maintain a household or common household.
2. "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.
3. "Owner" means any person, acting as principal or through an agent, offering residential real property for rent, and includes a predecessor in interest to the owner.
4. "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.
5. "Residential real property" means any dwelling or unit that is intended or used for human habitation.
6. "Tenant" means any person entitled by written or oral agreement, or by sufferance, to the use or occupancy of a Dwelling Unit.

SECTION 4: PROHIBITION ON EVICTIONS.

A. Through December 31, 2019, and for any Dwelling Unit in which all of the tenants have continuously and lawfully occupied the property for 12 months or more, or one or more of the tenants have continuously and lawfully occupied the property for 24 months or more, the owner of residential rental property shall not terminate a lawful tenancy unless the termination is a "for-cause termination," or a "no-fault termination," as defined in this Section, unless the termination is required to comply with an order issued by a government agency or court necessitating vacating the residential real property or to comport with due process, federal, or state law, 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 section shall render any notice of termination of tenancy void. This section may be asserted as an affirmative defense in an unlawful detainer action. An owner's failure to comply with this section does not constitute a criminal offense. If a property owner can show any of the following circumstances with respect to a termination of tenancy, the termination will qualify as "For Cause":

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 commission of a nuisance or waste 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 any 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 the 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 a 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 Civil Code of the tenant's intention to terminate the hiring of the 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 that written notice as described in paragraph (5) of Section 1161 of the California Code of Civil Procedure.

B. 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 imminently demolish the dwelling unit or otherwise permanently remove the Dwelling Unit from any residential use or purpose, in accordance with California Government Code sections 7060-7060.7.\
2. Landlord, or one of Landlord's parents or children, 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 continue to occupy the Dwelling Unit as his or her Primary Residence for at least one year.

3. Landlord has obtained permits to undertake substantial repairs to the Dwelling Unit and such repairs cannot be completed while the Dwelling Unit is occupied. To qualify for this exception, such repairs must be for the primary purpose of bringing the Dwelling Unit into compliance with applicable health and safety codes.

C. This section shall not apply to any 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 nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly, as defined in Section 1569.2 of the 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 residence in which the owner-occupant rents or leases no more than two 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 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 15 years.

8. Residential real property that is alienable separate from the title to any other dwelling unit, provided that both of the following apply:

(A) The owner is not any of the following:

- 1) A real estate investment trust, as defined in Section 856 of the internal Revenue Code.
- 2) A corporation.
- 3) A limited liability company in which at least one member is a corporation.

(B) Housing restricted by deed, regulatory restriction contained in an agreement with a government 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.

