



# City of Emeryville

INCORPORATED 1896

1333 Park Avenue

Emeryville, California 94608-3517

Tel: (510) 596-4300 | Fax: (510) 596-4389

## EVICTION AND HARASSMENT PROTECTION ORDINANCE REGULATIONS

Pursuant to Emeryville Municipal Code Section 5-40.01(b), the City hereby promulgates regulations to implement and enforce the City's Eviction and Harassment Protection Ordinance codified as Chapter 40, of Title Five of the Emeryville Municipal Code, referred to herein as "Ordinance". All citations to a section refer to a section of the Emeryville Municipal Code unless otherwise stated.

### 1. **Covered Unit [reg 5-4.02(a)]**

1.1 A "residential housing unit" includes units defined in Code Sections 9-2.201, 9-2.203, 9-2.205, and 9-2.207 of the Emeryville Municipal Code as well as each building or portion thereof for which a Landlord receives rent and that the Landlord knows or reasonably should know is used as a home, residence, or sleeping place, even if the use as a home, residence, or sleeping place is not authorized, permitted, or otherwise approved by the City.

1.2 A "dwelling unit" means a dwelling unit as defined in Code Section 9-8.204(q) of the Emeryville Municipal Code and includes each building or portion thereof for which a Landlord receives rent and that the Landlord knows or reasonably should know is used as a dwelling unit, even if the use as a dwelling unit is not authorized, permitted, or otherwise approved by the City.

1.3 For purposes of the Ordinance, any Residential Housing Unit or any Dwelling Unit for which more than fifty percent (50%) of the total requested rent is paid by the labor and/or services of one or more of the tenants occupying the Residential Housing Unit or Dwelling Unit shall not be considered a Covered Unit.

### 2. **Landlord: Large Landlord and Small Landlord [reg-5-40.02(d)]**

For purposes of determining whether a tenant is entitled to Relocation Assistance under Code Section 5-40.04(c) (relating to Large Landlords) or Code Section 5-40.04(d) (relating to Small Landlords), the following individuals' and entities' ownership interests must be combined as set forth below to determine whether a Landlord of a Covered Unit is a Landlord of more than four Covered Units.

2.1 Individuals, Sole Proprietorships, and Unincorporated Entities as Landlord. When the Landlord is an individual, two persons who are married or registered domestic partners, a sole proprietorship, or unincorporated entity, the Landlord's total Covered Units shall be the sum of (i) all of the Covered Units from which that individual, those individuals, the proprietor, or the entity receives rental income; and (ii) all of the Covered Units not directly owned by that Landlord but from which the Landlords' Affiliated Entity receives rental income. When the Landlord is an individual or two persons who are married or registered domestic partners, the Landlord's total Covered Units shall include all of the Covered Units from which the individual or the individual's spouse or registered domestic partner receives rental income, unless the individual or the individual's spouse can demonstrate that one or more Covered Units from which rental income is received is separate property. The total number of



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Covered Units must be calculated regardless of the form of ownership, including Covered Units held by a sole proprietorship, an unincorporated entity, or via an Affiliated Entity.

2.2 Corporation, Company, or Partnership as Landlord. When the Landlord is a Legal Entity the Landlord's total Covered Units shall be the sum of (a) each Covered Unit from which the Legal Entity receives rental income; and (b) each Covered Unit not directly owned by the Legal Entity but from which the Legal Entity's Parent Entity, or any Affiliated Entity receives rental income. To the extent that a Legal Entity, its Parent Entity, or its Affiliated Entity owns a fraction of a Covered Unit, all fractional interests in Covered Units must be summed, and that sum must be rounded to the nearest whole number and then added to all other Covered Units from which the Legal Entity, its Parent Entity, and its Affiliated Entity receives rental income.

## 2.3 Definitions.

(a) Affiliated Entity. For purposes of this regulation, an Affiliated Entity is any Legal Entity where at least fifty percent (50%) of the beneficial interest in the Legal Entity is held by the Landlord and/or by the Landlord's Parent Entity. The beneficial interest may be represented by stock, voting rights, membership interest, partnership interest, co-tenancy interest, or otherwise. An Affiliated Entity shall include one or more trustees that hold title to a Covered Unit on behalf of a beneficiary and distributes at least fifty percent (50%) of the benefits received from such Covered Units to a beneficiary that shall be deemed a Landlord for purposes of the Ordinance.

(b) Legal Entity. For purposes of this regulation a Legal Entity is any corporation, company, partnership, or any variation thereof that limits the responsibilities and/or liabilities of any stockholder, member, or partner of the Legal Entity.

(c) Parent Entity. For purposes of this regulation, a Parent Entity is any Legal Entity that holds at least fifty percent (50%) of the beneficial interest in the Landlord, regardless of the form of the Landlord as a corporation, company, partnership, or any variation thereof. The beneficial interest may be represented by stock, voting rights, membership interest, partnership interest, co-tenancy interest, or otherwise.

## 2.4 Examples.

(a) Married Landlords. If an individual who owns three Covered Units as separate property marries an individual who separately owns two Covered Units, and all of the units remain separate property, then both individuals will be considered Small Landlords.

(b) Married Landlords. If an individual who owns three Covered Units as separate property marries an individual and then the married couple acquires three Covered Units, then the married couple will be considered a Small Landlord owning three Covered Units, but the individual with separate property will be considered a Large Landlord based on receipt of the beneficial interest from more than four Covered Units.



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(c) LLC Landlord. If a corporation is the sole member of each of two limited liability companies, and each limited liability company owns one residential triplex containing three Covered Units, then each limited liability company and the corporation will all be considered a Large Landlord based on the combined ownership of six Covered Units.

(d) Fractional Ownership. If a corporation is the sole member of limited liability company Triplex 1, LLC, which owns one residential triplex containing three Covered Units, and the corporation is one of two members of limited liability company Triplex A, LLC, which owns one residential triplex containing three Covered Units, then the corporation and Triplex 1, LLC will both be considered a Large Landlord based on the ownership of more than four Covered Units.

The corporation and Triplex 1, LLC own five Covered Units for purposes of Code Sections 5-40.02 and 5-40.04 based on the three Covered Units owned by Triplex 1, LLC, plus two Covered Units based on the corporation's beneficial interest in Triplex A, LLC. The corporation's beneficial interest in Triplex A, LLC is calculated by dividing the number of Covered Units (3) by the number of members (2) and then rounding the quotient (1.5) to the nearest whole number (2).

### 3. **Just Cause for Termination: Landlord Options [reg-5-40.03]**

3.1 No Landlord may terminate a residential tenancy for a Covered Unit unless the Landlord complies with Code Section 5-40.03. Unless the Landlord can demonstrate compliance with subsections (a) through (e) of Code Section 5-40.03, including demonstration of circumstances that would qualify as a For Cause or No Fault termination, the Landlord must pursue one of the following options upon the conclusion of a term of tenancy.

(a) Renew the Rental Agreement. At the conclusion of any term of tenancy, a Landlord may offer to renew a rental agreement for a Covered Unit.

(b) Permit the Tenancy to Continue. At the conclusion of any term of tenancy, a Landlord may permit the tenancy to continue in accordance with California Civil Code Section 1945.

(c) Propose New Terms of Tenancy. At the conclusion of any term of tenancy, a Landlord may provide notice of new proposed terms of tenancy in accordance with California Civil Code Section 827.

### 4. **Just Cause for Termination: Breach of Rental Contract [reg-5-40.03(e)(1)(b)]**

4.1 For a Landlord to terminate a tenancy For Cause based on a tenant's violation of a material term of the rental agreement, the Landlord must provide written notice to the tenant of the alleged violation with a reasonable opportunity to cure the violation. If a tenant fails to cure the violation of the term of the rental agreement within ten (10) days after delivery of the written notice of the alleged violation (unless a shorter period of time is set forth in the rental agreement or authorized by state law), the tenant will be presumed to have violated a material term of the rental agreement, unless the tenant can show good cause why there was no violation, why the violation was not a violation



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of a material term of the rental agreement, or why the violation could not be cured within the applicable cure period (if any) and that the tenant was diligently pursuing a cure of the violation.

4.2 A "material term" is evidenced by the mutual intent of the Landlord and tenant as expressed in either or both of the following potential sources, which shall be used to determine whether a term is material to a rental agreement for purposes of this regulation and Code Section 5-40.03(e)(1)(b). One potential source of whether a term is material is the text of a written rental agreement. Another potential source of whether a term is material is the regular course of conduct of the Landlord and tenant(s) during the rental relationship.

## 5. **Just Cause for Termination: Landlord Access [reg-5-40.03(e)(1)(e)]**

5.1 Landlords are entitled to reasonable access to a Covered Unit in accordance with California Civil Code Section 1954. For purposes of Code Section 5-40.03(e)(1)(e), a tenant will have failed to allow a Landlord reasonable access to a Covered Unit if a Landlord has provided at least 24 hours written notice of the Landlord's intent to access the Covered Unit for a purpose specified in California Civil Code Section 1954 and the tenant either: (a) fails to respond to the Landlord's written notice with alternate, reasonable dates and/or times to allow the Landlord access to the Covered Unit and refuses the Landlord entry into the Covered Unit when requested by the Landlord, or (b) responds to the Landlord's written notice but offers only unreasonable dates and/or times to allow the Landlord access to the Covered Unit and refuses the Landlord entry into the Covered Unit when requested by the Landlord. For purposes of this regulation, a tenant's offer to allow Landlord access on a date or time different from the Landlord's requested date or time, will be presumed reasonable so long as the proposed date is within seven (7) days of the Landlord's requested date and the proposed time is between 7 am and 7 pm.

## 6. **Just Cause for Termination: Substantially and Materially Similar Extensions [reg-5-40.03(e)(1)(f)]**

6.1 For a Landlord to terminate a tenancy For Cause based on a tenant's rejection of a substantially and materially similar written lease extension, the Landlord must demonstrate that the offered lease extension was substantially and materially similar to the existing rental agreement. A lease extension will be presumed substantially and materially similar to the existing rental agreement based on the comparison of at least the following factors: the premises to be rented and any services included with the rent, the total occupancy permitted under the agreement, and the monthly rent charged. A request by a Landlord for additional security in accordance with California Civil Code Section 1950.5, or a request by a Landlord for funds in accordance with California Civil Code Section 1950.6 creates a rebuttable presumption that a lease extension is not substantially and materially similar to the existing rental agreement.

## 7. **Just Cause for Termination: Occupancy Restriction [reg-5-40.03(e)(1)(g)]**

7.1 Long Term Occupancy. For a Landlord to terminate a tenancy For Cause based on a tenant's violation of a long-term occupancy restriction, the Landlord must demonstrate both of the



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following elements. Any person residing in the Covered Unit for 29 or fewer consecutive days will be considered a guest and not a long-term occupant for purposes of the following calculations.

7.2 Unapproved Occupants. The Landlord must demonstrate that the Covered Unit is being occupied on a long-term basis, by one or more individuals and that the Landlord either (1) was not notified of the new long-term occupant(s), or (2) reasonably withheld approval of the new long-term occupant(s).

7.3 Exceeds Occupancy Limit. The Landlord must also demonstrate that the new long-term occupant(s) cause the total occupancy in the Covered Unit to exceed both: (1) the total number of long-term occupants contemplated in the rental agreement, and (2) the total of two persons multiplied by the number of bedrooms in the Covered Unit plus one person (e.g. two persons per studio, three persons per one-bedroom, and five persons per two bedroom).

## 8. **Just Cause for Termination: Landlord Move-In [reg-5-40.03(e)(2)(b)]**

8.1 For a Landlord to pursue a No Fault termination of tenancy to allow the Landlord, or one of the Landlord's parents or children to move into the Covered Unit, the individual who will reside in the Covered Unit (or who qualifies a parent or child to reside in the Covered Unit) must possess no less than a fifty percent (50%) ownership interest in the Covered Unit. For purposes of qualifying under this regulation, the fifty percent (50%) or greater ownership interest in the Covered Unit includes owning a majority of the stock in a corporation that owns the Covered Unit, being either the sole member or one of two members of a limited liability company that owns the Covered Unit, or possessing no less than a fifty percent (50%) partnership interest in a partnership that owns the Covered Unit.

## 9. **Relocation Assistance [reg-5-40.04]**

9.1 Interaction with Security Deposit. The Relocation Assistance provided under Code Section 5-40.04 must be separate from and have no bearing on any security deposit held by the Landlord in accordance with California Civil Code Section 1950.5. No Landlord may deduct any amount from Relocation Assistance for any purpose, including the purposes for which a Landlord may deduct amounts from a security deposit in accordance with California Civil Code Sections 1950.5(B)(1) through 1950.5(B)(4).

9.2 City Publication of Fair Market Rents. For purposes of Code Sections 5-40.04(c) and 5-40.04(d), the City will publish the most current Fair Market Rents as originally published annually by the U.S. Department of Housing and Urban Development ("HUD") for the Oakland-Fremont, California HUD Metro FMR Area in the Federal Register.

9.3 Tenant Consent to Varying Distributions of Relocation Assistance.

(a) Unequal Division Among Tenants. Notwithstanding the obligation under Code Sections 5-40.04(c) and 5-40.04(d), a Landlord will have fulfilled its obligation to divide Relocation Assistance equally among all tenants who are occupying the rental unit at the time the Notice of



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Termination is delivered to the tenant(s), if each tenant in the rental unit who is entitled to Relocation Assistance voluntarily agrees in writing to an unequal distribution of the Relocation Assistance.

(b) Distribution of Relocation Assistance. Notwithstanding the obligation under Code Section 5-40.04(b) to deliver the Relocation Assistance to the tenant(s) by the last day of tenancy for which the Landlord has received rent, the tenant(s) entitled to receive Relocation Assistance may voluntarily agree to receive the Relocation Assistance at a later date that includes but is not limited to the first date when the proceeds from the sale of the rental unit are available to the Landlord. If the eligible tenant(s) in a rental unit agree(s) to delayed delivery of the Relocation Assistance and the Landlord fails to deliver the Relocation Assistance as agreed, the Landlord will be liable for treble damages in a civil action by the tenant to obtain Relocation Assistance.

9.4 Exemption. A Large Landlord (as defined by Code Section 5-40.02(d) and reg-5-40.02(d)) may request and the City Manager may grant an exemption from the obligations to provide Relocation Assistance under Code Section 5-40.04 if the Large Landlord satisfactorily demonstrates the following circumstances for the property for which an exemption is requested. A Small Landlord (as defined by Code Section 5-40.02(d) and reg-5-40.02(d)) is ineligible for any exemption from the obligation to provide Relocation Assistance in accordance with Code Section 5-40.04.

(a) Exemption for All Covered Units in One Building. A Large Landlord that owns every Covered Unit in one building may request an exemption from the obligation to provide Relocation Assistance to the tenants in each Covered Unit in the building if the provision of Relocation Assistance to the tenants in each Covered Unit in the building would deprive the Large Landlord of a fair return.

(b) Rebuttable Presumption of Fair Return. For purposes of an exemption from the obligation to provide Relocation Assistance to the tenants in each Covered Unit in one building, it will be presumed that a Large Landlord would be deprived of a fair return by providing Relocation Assistance to tenant(s) in those Covered Units if the total amount of rent received for all of the Covered Units in the building for the last twelve months is equal to or less than fifty-eight and one-third percent ( $58\frac{1}{3}\%$ ) of the Fair Market Rents (as published by the City in accordance with reg-5-40.04(B)) for the same number of, and with the same number of bedrooms as, the occupied Covered Units in the building for which the exemption is requested.

(c) Calculation of Total Rent Received. To calculate the total amount of rent received for all of the Covered Units in the building for the last twelve months, the Landlord must provide documentation verifying the total amount of consideration received for the use and occupancy of each Covered Unit in the building. The documentation must identify the consideration received per Covered Unit per month for each Covered Unit in the building. The documentation must specify if a Covered Unit was vacant for any month or portion thereof during the last twelve months. The documentation must identify if the consideration received for the use and occupancy of any Covered Unit for any month or any portion thereof was a service or labor, including the service or labor of any on-site manager, custodian, or security provider. In calculating the total amount of rent received for all



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Covered Units in the building for the last twelve months, the City may infer the reasonable value of any labor or services provided as consideration for the use and occupancy of a Covered Unit.

(d) Calculation of Comparison Rents Using Published Fair Market Rents. For purposes of comparing the total amount of rent received for the use and occupancy of the Covered Units in a building for which an exemption is requested, the City must multiply the applicable Fair Market Rent based on the number of bedrooms in the relevant Covered Units by twelve. However, if any of the Covered Units in the building for which an exemption is requested were vacant during the previous twelve months, then the City must subtract a corresponding amount from the Fair Market Rent to coincide with the actual vacancy.

(e) Presumption Rebuttable. A presumption that provision of Relocation Assistance would deprive a Large Landlord of a fair return may be rebutted by evidence or documentation that the actual monthly rent received for any or all of the Covered Units for the last twelve months in a building for which an exemption is requested reasonably reflects the actual rental market value for those Covered Units. The City may infer the actual rental market value of any or all of the Covered Units in the building for which an exemption is requested by reviewing any of the following factors: the physical condition of any or all of the Covered Units, the physical condition of the building in which the Covered Units are located, the presence or absence of utilities or any other services that the Large Landlord previously agreed to provide, and any other factors that may reasonably impact the rental value of the Covered Units.

(f) Alternative Fair Return Methodology Permitted. Notwithstanding the methodology in reg-5-40.04(D)(2), to establish a rebuttable presumption that a Large Landlord would be deprived of a fair return by providing Relocation Assistance, a Large Landlord may propose, and the City Manager may accept, modify, or reject, an alternative methodology to determine whether the provision of Relocation Assistance by a Large Landlord to the tenants in each Covered Unit in a building would deprive the Large Landlord of a fair return. A Small Landlord (as defined by Code Section 5-40.02(d) and reg-5-40.02(d)) is ineligible for any exemption from the obligation to provide Relocation Assistance in accordance with Code Section 5-40.04.

(g) Request for Exemption; Timing and Documentation Required. Any request for exemption from Relocation Assistance obligations under this regulation must be received by the City Manager at least forty-five (45) days before Relocation Assistance must be paid to entitled tenants. The request for exemption must include a summary of the request that identifies each of the following for the building for which an exemption is requested:

- (i) the number of Covered Units; and
- (ii) the number of bedrooms in each Covered Unit; and
- (iii) the occupancy status (occupied or vacant) and the amount of rent requested per month for each Covered Unit for the previous twelve months; and
- (iv) the amount of rent, including any substitute labor or services, actually received for each Covered Unit for the previous twelve months; and



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(v) the name, current address, telephone number, and email address of each tenant that resides or has resided in a Covered Unit in the previous twelve (12) months.

In addition, the request must include satisfactory documentation of the requested amount of rent for each Covered Unit (such as a signed lease or rental agreement) as well as satisfactory documentation of the actual amount of rent received for the Covered Unit (such as a canceled check, documentation of an electronic funds transfer, etc.).

(h) Review of Request for Exemption; Appeal. The City Manager shall review each request for exemption from a Large Landlord. The City Manager may request additional documentation at his or her sole discretion, but must provide a written response to the Large Landlord either granting or denying the request for exemption within fifteen (15) days of receiving a request for exemption. The City Manager's decision to grant or deny a request for exemption may be appealed by a Large Landlord or one or more of the Large Landlord's tenants in accordance with the procedures set forth in Emeryville Municipal Code Sections 1-7.09 through 1-7.11.

(i) Expiration of Approved Exemption. A Large Landlord's exemption from Relocation Assistance obligations for a building that is approved by the City Manager shall be valid and effective for one hundred twenty (120) days from the date of approval. Thereafter, a Large Landlord must request a new exemption or provide Relocation Assistance to entitled tenants.

## 10. **Relocation Assistance: Small Landlord Waives Last Month Rent [reg-5-40.04(d)]**

10.1 A Small Landlord (as defined by Code Section 5-40.02(d) and reg-5-40.02(d)) may either partially or wholly fulfill its obligation to provide Relocation Assistance to all tenants who are occupying a Covered Unit at the time the Notice of Termination is delivered to the tenants by waiving any obligation of the tenants to pay rent for the final month of the tenancy. To provide Relocation Assistance via this method, the Small Landlord must notify the tenants that the Small Landlord is waiving any right to receive rent from the tenants for the last month of the tenancy concurrent with delivery of the Notice of Termination.