

URGENCY

NUMBER: 303

TITLE: AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS
ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 36937 ADDING
CHAPTER 4 TO TITLE XII OF THE MILPITAS MUNICIPAL CODE RELATING TO JUST
CAUSE EVICTION PROTECTIONS FOR TENANTS

HISTORY: This Ordinance was introduced and adopted by the City Council at its meeting of _____, upon
motion by _____. Said Ordinance was duly passed and ordered published in accordance with the
law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS:

WHEREAS, housing instability threatens the public peace, health, and safety as eviction from one's home can lead to prolonged homelessness; increased residential mobility; loss of community; strain on household finances due to the necessity of paying rental application fees and security deposits; stress and anxiety experienced by those displaced; increased commute times and traffic impacts if displaced workers cannot find affordable housing within the city in which they work; and interruption of the education of children in the home; and

WHEREAS, eviction creates particular hardships for individuals and households of limited means, given the shortage of affordable housing within the City of Milpitas and the region generally; and

WHEREAS, in the 2019 Homeless Census and Survey conducted by the County of Santa Clara, eviction was found to be the cause of homelessness for 14% of all homeless individuals surveyed and for 25% of families experiencing homelessness surveyed;¹ and

WHEREAS, the City Council has received public testimony at multiple meetings from Milpitas residents who declared that they and their neighbors were unwilling to register complaints against their landlords over unsuitable living conditions and/or violations of their leases by landlords or management companies, based on a fear of being evicted without just cause; and

WHEREAS, on September 11, 2019, the State legislature passed Assembly Bill No. 1482, the Tenant Protection Act of 2019 ("AB 1482"), which would, with certain exceptions, prohibit an owner of residential property from terminating a tenancy without just cause, and would additionally prohibit an owner of residential real property from, over the course of any 12-month period, increasing rent for a dwelling or unit more than 5% plus the percentage change in the cost of living or 10%, whichever is lower, and AB 1482 is currently awaiting the Governor's signature; and

WHEREAS, if AB 1482 is signed by the Governor, the restrictions on rent increases would apply to all rent increases occurring on or after March 15, 2019, but the prohibitions on eviction without just cause would not go into effect until January 1, 2020; and

WHEREAS, there is risk that landlords could seek to evict tenants without cause during the period before AB 1482 goes into effect in order to implement rent increases that would not otherwise be possible, and the City desires to prohibit such evictions without just cause during such period; and

WHEREAS, at a joint meeting of the Council's Housing Subcommittee and study session of the City Council on September 24, 2019, the City Council directed staff to prepare an urgency ordinance preserving existing affordable housing in the City by prohibiting eviction without just cause in a manner consistent with AB 1482; and

WHEREAS, the City Council finds and determines that regulating the relations between residential landlords and tenants will increase certainty and fairness within the residential rental market in the City and thereby serve the public peace, health, and safety; and

WHEREAS, this Ordinance is adopted pursuant to the City's police powers, afforded by the State Constitution and State law to protect the peace, health, and safety of the public.

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

SECTION 1. INCORPORATION OF RECITALS

¹ 2019 Santa Clara County Homeless Census & Survey Comprehensive Report, pp. 22 and 44 (available online at: <https://www.sccgov.org/sites/osh/ContinuumofCare/ReportsandPublications/Pages/HomelessnessCensusandSurvey.aspx>)

The City Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

SECTION 2. FINDINGS

The City Council hereby finds, determines and declares that this Urgency Ordinance adopted pursuant to California Government Code Section 36937 is necessary because:

- A. Housing, particularly affordable housing, is difficult to procure in the San Francisco Bay Area, including in Milpitas. Evictions without just cause destabilize the housing market and can result in the loss of affordable housing.
- B. For the immediate preservation of the public peace, health and safety, the City Council finds that it is necessary to adopt an ordinance regulating just cause evictions, for all of the reasons set forth in the recitals above, which are hereby incorporated by reference.
- C. Without the imposition of this Urgency Ordinance, evictions without just cause may result in the displacement of residential tenants who would be forced to find new housing in an ever-more expensive housing market before a non-urgency ordinance or AB 1482 would become effective, and would significantly increase the risk of residential tenants becoming homeless.
- D. There is a current and immediate threat to the public peace, health, and safety of the City and its community due in part to the adoption of AB 1482 which increases the risk of evictions without just cause prior to the effective date of such bill, thereby necessitating the immediate enactment of this Urgency Ordinance in order to ensure that tenants are not turned out of their homes without just cause.

SECTION 3. URGENT NEED

Based on the foregoing recitals and findings, all of which are deemed true and correct, this ordinance is urgently needed for the immediate preservation of the public peace, health, and safety. This Urgency Ordinance shall take effect immediately upon adoption in accordance with the provisions set forth in Government Code Section 36937.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE, TITLE XII, CHAPTER 4

Chapter 4 is hereby added to Title XII of the Milpitas Municipal Code to read as follows:

Title XII - HOUSING

CHAPTER 4 - JUST CAUSE EVICTIONS

Section 1 – Citation.

This Chapter shall be known as the “Just Cause Eviction Ordinance.”

Section 2 – Restrictions on Termination of Tenancy Without Cause

XII-4-2.00

Notwithstanding any other law, after a tenant has continuously and lawfully occupied a residential real property for 12 months, the owner of the residential real property shall not terminate the tenancy without just cause, which shall be stated in the written notice to terminate tenancy. If any additional adult tenants are added to the lease before an existing tenant has continuously and lawfully occupied the residential real property for 24 months, then this section shall only apply if either of the following are satisfied:

1. All of the tenants have continuously and lawfully occupied the residential real property for 12 months or more.
2. One or more tenants have continuously and lawfully occupied the residential real property for 24 months or more.

XII-4-2.01

For purposes of this section, “just cause” includes either of the following:

1. At-fault just cause, which is any of the following:

- (a) Default in the payment of rent.

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

- (c) Maintaining, committing, or permitting the maintenance or commission of a nuisance as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.

- (d) Committing waste as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.

- (e) The tenant had a written lease that terminated on or after October 15, 2019, and after a written request or demand from the owner, the tenant has refused to execute a written extension or renewal of the lease for an additional term of similar duration with similar provisions, provided that those terms do not violate this section or any other provision of law.

- (f) 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 Penal Code, on or off the residential real property, that is directed at any owner or agent of the owner of the residential real property.

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

- (h) The tenant’s refusal to allow the owner to enter the residential real property as authorized by Sections 1101.5 and 1954 of the Civil Code, and Sections 13113.7 and 17926.1 of the Health and Safety Code.

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

- (j) 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 Code of Civil Procedure.

- (k) 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 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 landlord, but fails to deliver possession at the time specified in that written notice as described in paragraph (5) of Section 1161 of the Code of Civil Procedure.

2. No-fault just cause, which includes any of the following:

- (a) (i) Intent to occupy the residential real property by the owner or their spouse, domestic partner, children, grandchildren, parents, or grandparents.

(ii) For leases entered into on or after July 1, 2020, clause (i) shall apply only if the tenant agrees, in writing, to the termination, or if a provision of the lease allows the owner to terminate the lease if the owner, or their spouse, domestic partner, children, grandchildren, parents, or grandparents, unilaterally decides to occupy the residential real property. Addition of a provision allowing the owner to terminate the lease as described in this clause to a new or renewed rental agreement or fixed-term lease constitutes a similar provision for the purposes of subparagraph (e) of paragraph (1).

(b) Withdrawal of the residential real property from the rental market.

(c) (i) The owner complying with any of the following:

(1) An order issued by a government agency or court relating to habitability that necessitates vacating the residential real property.

(2) An order issued by a government agency or court to vacate the residential real property.

(3) A local ordinance that necessitates vacating the residential real property.

(ii) If it is determined by any government agency or court that the tenant is at fault for the condition or conditions triggering the order or need to vacate under clause (i), the tenant shall not be entitled to relocation assistance as outlined in paragraph (3) of Section XII-4-2.03.

(d) (i) Intent to demolish or to substantially remodel the residential real property.

(ii) For purposes of this subparagraph, “substantially remodel” means the replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a governmental agency, or the abatement of hazardous materials, including lead-based paint, mold, or asbestos, in accordance with applicable federal, State, and local laws, that cannot be reasonably accomplished in a safe manner with the tenant in place and that requires the tenant to vacate the residential real property for at least 30 days. Cosmetic improvements alone, including painting, decorating, and minor repairs, or other work that can be performed safely without having the residential real property vacated, do not qualify as substantial rehabilitation.

XII-4-2.02

Before an owner of residential real property issues a notice to terminate a tenancy for just cause that is a curable lease violation, the owner shall first give notice of the violation to the tenant with an opportunity to cure the violation pursuant to paragraph (3) of Section 1161 of the Code of Civil Procedure. If the violation is not cured within the time period set forth in the notice, a three-day notice to quit without an opportunity to cure may thereafter be served to terminate the tenancy.

XII-4-2.03

1. For a tenancy for which just cause is required to terminate the tenancy under Section XII-4-2.01, if an owner of residential real property issues a termination notice based on a no-fault just cause described in paragraph (2) of Section XII-4-2.01, the owner shall, regardless of the tenant’s income, at the owner’s option, do one of the following:

(a) Assist the tenant to relocate by providing a direct payment to the tenant as described in paragraph 3, below.

(b) Waive in writing the payment of rent for the final month of the tenancy, prior to the rent becoming due.

2. If an owner issues a notice to terminate a tenancy for no-fault just cause, the owner shall notify the tenant of the tenant’s right to relocation assistance or rent waiver pursuant to this section. If the owner elects to waive the rent for

the final month of the tenancy as provided in subparagraph (a) of paragraph (1), the notice shall state the amount of rent waived and that no rent is due for the final month of the tenancy.

3. (a) The amount of relocation assistance or rent waiver shall be equal to one month of the tenant's rent that was in effect when the owner issued the notice to terminate the tenancy. Any relocation assistance shall be provided within 15 calendar days of service of the notice.

(b) If a tenant fails to vacate after the expiration of the notice to terminate the tenancy, the actual amount of any relocation assistance or rent waiver provided pursuant to this subdivision shall be recoverable as damages in an action to recover possession.

(c) The relocation assistance or rent waiver required by this section shall be credited against any other relocation assistance required by any other law.

4. An owner's failure to strictly comply with this section shall render the notice of termination void.

XII-4-2.04

This section shall not apply to the following types of residential real properties or residential circumstances:

1. Transient and tourist hotel occupancy as defined in subdivision (b) of Section 1940 of the 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:

(i) A real estate investment trust, as defined in Section 856 of the Internal Revenue Code.

(ii) A corporation.

(iii) A limited liability company in which at least one member is a corporation.

(b) (i) The tenants have been provided written notice that the residential property is exempt from this section using the following statement:

“This property is not subject to the just cause requirements of Chapter 4 of Title XII of the City of Milpitas Municipal Code . This property meets the requirements of Section XII-4-2.04(8) of the City of Milpitas Municipal Code and the owner is not any of the following: (1) a real estate investment trust, as defined by Section 856 of the Internal Revenue Code; (2) a corporation; or (3) a limited liability company in which at least one member is a corporation.”

(ii) For a tenancy existing before July 1, 2020, the notice required under clause (i) may, but is not required to, be provided in the rental agreement.

(iii) For any tenancy commenced or renewed on or after July 1, 2020, the notice required under clause (i) must be provided in the rental agreement.

(iv) Addition of a provision containing the notice required under clause (i) to any new or renewed rental agreement or fixed-term lease constitutes a similar provision for the purposes of paragraph (e) of Section XII-4-2.01.

9. 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.

XII-4-2.05

An owner of residential real property subject to this section shall provide notice to the tenant as follows:

1. For any tenancy commenced or renewed on or after July 1, 2020, as an addendum to the lease or rental agreement, or as a written notice signed by the tenant, with a copy provided to the tenant.

2. For a tenancy existing prior to July 1, 2020, by written notice to the tenant no later than August 1, 2020, or as an addendum to the lease or rental agreement.

3. The notification or lease provision shall be in no less than 12-point type, and shall include the following:

“The City of Milpitas Municipal Code provides that after all of the tenants have continuously and lawfully occupied the property for 12 months or more or at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Chapter 4 of Title XII of the City of Milpitas Municipal Code for more information.”

XII-4-2.06

Any waiver of the rights under this section shall be void as contrary to public policy.

XII-4-2.07

For the purposes of this Chapter, the following definitions shall apply:

(1) “Owner” and “residential real property” have the same meaning as those terms are defined in Civil Code Section 1954.51.

(2) “Tenancy” means the lawful occupation of residential real property and includes a lease or sublease.

SECTION 5. AUTHORITY

This Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council of the City of Milpitas by Government Code 36937, and therefore shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council.

SECTION 6. EFFECTIVENESS OF ORDINANCE

This Ordinance shall remain in effect until Civil Code Section 1946.2, as enacted by AB 1482 becomes effective. On the day that Civil Code Section 1946.2 becomes effective, this Ordinance shall be repealed and shall be of no further force and effect.

SECTION 7. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 8. CERTIFICATION

The City Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.