

RENT ORDINANCE REGULATION 20-03

SECTION 8 IMPLEMENTING REGULATION CONCERNING THE APPLICABILITY OF THE RENT ORDINANCE (ORDINANCE 3250) TO LANDLORDS WHO RENT DWELLING UNITS THAT ARE IN THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM OR IN A SIMILAR PROGRAM

Whereas, on September 17, 2019, the City Council of the City of Alameda adopted Ordinance No. 3250 (beginning at Section 6-58.10 and following of the Alameda Municipal Code) (" Rent Ordinance"), restating and revising previous Ordinances concerning rent control, limitations on evictions and relocation payments to certain tenants; and

Whereas, Section 6-58.155 of the Alameda Municipal Code (all further section references are to the Alameda Municipal Code unless stated otherwise) provides that the City Manager or the City Manager's designee has the authority to promulgate regulations to implement the requirements and fulfill the purposes of Rent Ordinance; and

Whereas, Section 6-58.20 A provides that Dwelling Units, regardless of ownership, for which Rents are subsidized or regulated by federal law or by regulatory agreements between a Landlord and (i) the City, (ii) the Housing Authority or (iii) any agency of the State of California or the Federal Government, are exempt from all provisions of the Rent Ordinance; provided, however, if the Dwelling Unit is in the Section 8 Housing Choice Voucher Program and is not owned by a public entity or a bona fide not for profit organization dedicated to the provision of affordable housing, as further defined by Regulations, the Dwelling Unit is exempt only as to rent control provisions of the Rent t Ordinance; and

Whereas, the Section 8 Housing Choice Voucher Program (42 U.S.C Section 1437f with implementing regulations Title 24 of the Code of Federal Regulation(CFR) Part 982 et seq.) ("Section 8 Program") is a federally funded subsidized housing program that assists very low income households in securing quality, affordable, decent and safe housing; and

Whereas, the Section 8 Program is administered locally by public housing agencies ("PHAs") that receive federal funds from the U.S. Department of Housing and Urban Development ("HUD") to administer the Section 8 Program; in the City of Alameda, the Section 8 Program is administered by the Housing Authority of the City of Alameda ("AHA"); and

Whereas, HUD's general eligibility requirements for the Section 8 Program are based on the applicant's total annual gross income and household size; the Section 8 Program allows a rent subsidy to be designated directly to a rental unit through (i) a Project-Based Voucher (PBV) (voucher issued through the PBV program (42 U.S.C. Section 1437f (o)(13) with implementing regulations at 24 CFR Part 983 et seq. when the rental unit is occupied, or (ii) directly to a participant through a tenant-based Housing Choice Voucher; the Section 8 Program allows participants to find housing in the private rental market and provides that a housing subsidy is paid to the Landlord directly by the PHA on behalf of the participant and the participant pays the difference as determined by the PHA; and

Whereas, the Low Income Housing Tax Credit ("LIHTC") Program (enacted under the Tax Reform Act of 1986) provides incentives for the utilization of private equity in the development of affordable housing aimed at low-income households by offering tax incentives to property owners and currently provides funding for the overwhelming majority of all affordable rental housing developments; and

Whereas, the Shelter Plus Care Program (McKinney-Vento Homelessness Assistance Act, as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), enacted on May 20, 2009) (“S+C Program”) is a federal program administered by continuum of care consortia, including PHAs, that provides rental assistance for homeless persons with disabilities, through grants directly to the tenants, contracts between a tenant and a non-profit organization or community mental health agency, or grants directly to a private property owner who leases the rental unit to the tenant; and

Whereas, the Family Unification Program (“FUP Program”) is a federal program, administered by PHAs, under which Housing Choice Vouchers are provided to families for whom the lack of adequate housing is a primary factor in the imminent placement of the family’s child or children in out-of-home care; and

Whereas, the HUD-Veterans Affairs Supportive Housing Program (“VASH Program”) is a federal program, typically administered by PHAs, that combines Housing Choice Voucher rental assistance for homeless veterans with case management and clinical services provided by the U.S. Department of Veterans Affairs; and

Whereas, the Moderate Rehabilitation Program (implementing regulations at 24 CFR Part 882, Subpart D and E)(“Mod Rehab Program ") is a federally funded, housing rental program which provides assistance to very low-income individuals and families in privately owned, rehabilitated, multifamily buildings; and

Whereas, Section 6-58.80 A. provides that a Landlord may terminate a tenancy for failure to pay Rent but the failure to pay Rent shall not be cause for eviction if the Tenant tenders some or all of the Rent due and the Landlord accepts some or all of the Rent; and

Whereas, as to Landlords who participate in the Section 8 Program, Landlords receive Rent from two sources: (i) the Tenant’s share of the Rent, and (ii) a subsidy amount provided by HUD through the AHA; and

Whereas, Section 6-58.85 provides that a Landlord must make permanent and/or temporary Relocation Payments to a Tenant under certain circumstances.; and

Whereas, all capitalized terms not defined herein shall have the meaning ascribed to such terms in the Rent Ordinance.

NOW, THEREFORE, under Section 6-58.155, the Interim Community Development Director, as the City Manager's designee, promulgates the following Rent Ordinance Regulation 20-03 (“Regulation”) implementing and concerning the applicability of the Rent Ordinance, as that Ordinance may be amended from time to time, to Landlords that rent Rental Units to participants in the Section 8 Program and similar programs, such as the ones described in the Whereas provisions of this Regulation, or to participants who will be in programs of a similar kind to those described above that may be adopted by the Federal, State or County Government. The Recitals set forth above are true and correct and hereby incorporated herein by this reference.

1. Definitions. Unless otherwise indicated, words or terms that are capitalized have the same definitions as the words and terms in Section 6-58.15. For ease of administration, “Section 8 Program”, as used in Section 6.58.20 A, and in this Regulation, means not only the Section 8

Housing Choice Voucher Program as more fully described in the Whereas provisions of this Regulation but also the LIHTC, S+C, FUP, VASH, and Mod Rehab Programs also described in the Whereas provisions of this Regulation, as well as any similar programs that may be adopted by the Federal, State or County Government (collectively, the “Section 8 Program(s)”). A “Managing Partner” as used in Section 6-58.20 and in this Regulation, means an investment general partnership that owns the rental property and is a bona fide not-for-profit organization or entity dedicated to providing affordable housing. “Housing Authority” or “AHA”, as used in Section 6-58.20 and in this Regulation, means the Housing Authority of the City of Alameda and the various non-profit organizations that the AHA has formed or will form including, but not limited to, the Alameda Affordable Housing Corporation , a California non-profit public benefit corporation and Island City Development, a California non-profit public benefit corporation. “Registered Non-Profit Organizations” shall mean an organization that has tax exempt status under 26 United States Codes, Section 501 (c) (3), provides rooms in a Dwelling Unit, building or facility and satisfies at least one of the criteria set forth in subsections G, I, or J of Section 6-58.20. The term “Section 8 Program Payment Standard” used in this Regulation shall mean the maximum amount of subsidy that can be paid by AHA for a Dwelling Unit of a particular size (see 24 CFR Sections 982.1,982.4,982.402,982.503 and 982.505). The term, “Section 8 Program Contract Rent” as used in this Regulation shall mean the total monthly Rent payable to the Landlord under the lease for the Dwelling Unit.

2. Purpose. The purpose of this Regulation is (1) to define more specifically which Dwelling Units in the Section 8 Program are exempt from all or some provisions of the Rent Ordinance, (2) to clarify, in context of the Section 8 Program, what constitutes the Landlord’s acceptance of Rent for purposes of waiving the Landlord’s right to pursue eviction for a Tenant’s failure to pay Rent, and (3) to clarify the circumstances under which a Landlord is obligated to make Relocation Payments to a Tenant in a Rental Unit in the Section 8 Program and, if those payments are to be made, the amount thereof.

3. Dwelling Units Exempt from All or Some of the Provisions of the Rent Ordinance.

A. A Landlord renting a Dwelling Unit, or a room in a Dwelling Unit, building or facility, is exempt from all provisions of the Rent Ordinance if the Landlord rents a Dwelling Unit or room in a Dwelling Unit, building or facility to a Tenant participating in one of the Section 8 Programs described in this Regulation and the Landlord is the AHA, a Managing Partner or a Registered Non-Profit Organization.

B. A Landlord renting a Dwelling Unit is exempt from only Sections 6-58.60, 6-58.65, 6-58.70 and 6-58.75 of the Rent Ordinance if the Landlord rents a Dwelling Unit to a Tenant participating in one of the Section 8 Programs described in this Regulation and the Landlord is not the AHA, a Managing Partner nor a Registered Non-Profit Organization.

4. Landlord’s Right to Pursue Eviction for a Section 8 Program Tenant’s Failure to Pay Rent.

Landlords who rent Dwelling Units in the private rental market to Tenants in one of the Section 8 Programs described in this Regulation typically receive rent from two sources: (i) a payment by AHA to the Landlord for rent to the Landlord under the Tenant’s lease (“Housing Assistance

Payment”) , and (ii) a payment from the Tenant accounting for the difference between the AHA-approved Rent (established by contract) charged by the Landlord and the Housing Assistance Payment (see 24 CFR Sections 982.4 and 982.515). Under Section 6-58.80 A., a Landlord may initiate eviction proceedings for a Tenant’s failure to pay Rent. Also under Section 6-58.80 A., the Landlord’s acceptance of a portion of the Rent, however, precludes a Landlord from pursuing eviction proceedings. For purposes of determining whether a Landlord has accepted a portion of the Rent such that the Landlord may not initiate eviction proceedings for a Tenant’s failure to pay Rent, the Landlord’s acceptance of the Housing Assistance Payment the Landlord receives from the AHA shall not be considered partial acceptance of Rent. A Landlord is precluded from proceeding with eviction only if the Landlord has accepted the Tenant’s portion of the rent to Landlord. A Landlord is also precluded from proceeding with eviction for the AHA’s non-payment of the Housing Assistance Payment.

5. Landlord’s Obligation to Make Relocation Payments.

A. There may be conditions in a Rental Unit occupied by a Tenant in a Section 8 Program that compel a governmental agency (other than the AHA) to issue an order that the Rental Unit be vacated until certain conditions are corrected. If a Tenant participating in a Section 8 Program has vacated a Rental Unit in compliance with a governmental order to vacate, the Landlord shall make Relocation Payments to Tenant as provided in Section 6-58.85, 6-58.90 and 6-58.95 and in the Relocation Payment Schedule adopted by the Council.

C. If (1) a Landlord who is not the AHA, a Managing Partner nor a Registered Non-Profit Organization is participating in the Section 8 Program and, as to a specific Rental Unit in the Section 8 Program, serves a notice of a Rent increase that has the result of (a) increasing the Section 8 Program Contract Rent above the applicable Section 8 Program Payment Standard and (b) directly increasing the Tenant’s portion of the rent by more than 10%, and (2) the number of bedrooms in the Tenant’s Section 8 Program voucher matches the number of bedrooms in the Tenant’s Rental Unit (i.e. the Tenant is not “over housed” [over housed means the actual number of bedrooms in the Tenant’s Rental Unit exceeds the number of bedrooms for which the Tenant has received a Section 8 Program voucher]), and (3) the Tenant voluntarily vacates the Rental Unit within 90 days of receipt of such notice, the Landlord shall make Relocation Payments to Tenant as provided in Sections 6-58.85, 6-58.90 and 6-58.95 and in the Relocation Payment Schedule adopted by Council resolution.

D. When required to make Relocation Payments to a Tenant, a Landlord shall make the Relocation Payments as provided in Section 6-58.100. A Tenant shall provide to the Landlord prior to receiving a Relocation Payment a completed Internal Revenue Service Form W-9, which form the Landlord shall provide to the Tenant. The Landlord shall keep the information provided on the Form W-9 confidential. The Landlord shall provide to the Tenant, by January 31 of the year following the year in which the Relocation Payment was made, a completed Internal Revenue Service Form 1099 showing the amount of the Relocation Payment for the year in which the Relocation Payment was made.

Dated: November 14, 2020

Lois Butler
Interim Director of Community Development