

**RENT CONTROL ORDINANCE REGULATION 23-02 IMPLEMENTING
REGULATIONS CONCERNING WHETHER AN EXEMPTION FROM CERTAIN
PROVISIONS OF THE RENT CONTROL ORDINANCE APPLY FOLLOWING A
CERTIFICATE OF OCCUPANCY ISSUED AFTER FEBRUARY 1, 1995**

WHEREAS, on September 17, 2019, the City Council of the City of Alameda adopted Ordinance 3250 (beginning at Section 6-58.10 and following of the Alameda Municipal Code), as may be amended from time to time, (“the Ordinance”), restating the revising previous Ordinances concerning rent control, limitations on evictions and relocation payments to certain tenants; and

WHEREAS, Section 6-58.155, Alameda Municipal Code (all further section references are to the Alameda Municipal Code unless stated otherwise) provides that the Rent Program Administrator has the authority to promulgate regulations to implement and fulfill the purpose of the Ordinance; and

WHEREAS, the primary purpose of the Ordinance is to relieve the burden on the finances of many Alameda residents and to prevent many Alameda residents from being compelled either to pay increased rents or face the choice, due to a critically low vacancy factor in the City, of either finding housing elsewhere or not paying for food, clothing, and medical care for themselves and their families; and

WHEREAS, the Ordinance defines “State Law” to mean any California law, whether constitutional, statutory or executive order that pre-empts local rent control, including the Costa-Hawkins Residential Rental Act (California Civil Code, section 1954.50 and following [“Costa-Hawkins”]), which Act, in relevant part, exempts Rental Units from certain aspects of local rent control where a certificate of occupancy (“COO”) was issued after February 1, 1995; and

WHEREAS, reported California Court of Appeal decisions have examined the purposes of Costa-Hawkins and similar exemptions from local rent control, see, for example, *Burien, LLC v. Wiley* (2014) 230 Cal App 4th 1039, *NCR Properties, LLC v. City of Berkeley* (2023) ___ Cal App 5th ___ 2023 Cal. App. LEXIS 171, and *DaVinci Group v. San Francisco Residential Rent Etc. Bd.* (1992) 5 Cal App 4th 24; and

WHEREAS, these cases have examined whether all provisions of local rent controls apply when a multi-unit residential property is rehabilitated, renovated, converted to a different residential use, and/or were uninhabited or uninhabitable at the time of rehabilitation, renovation or conversion; and

WHEREAS, these cases hold that the purpose of the exemption is to encourage enlarging the housing supply but that a COO based solely on the rehabilitation or renovation of residential property, regardless of whether such property has been uninhabited or uninhabitable for a long period of time, and/or whether such property has been converted to a different residential use, does not enlarge the housing supply; and

WHEREAS, these cases hold that the certificate of occupancy exemption (whether under Costa-Hawkins or otherwise) applies only where a COO has been issued prior to the property's being used for residential purposes.

NOW, THEREFORE, under Section 6-58.155, the Rent Program Administrator adopts the following regulations concerning exemptions from certain provisions of the Ordinance based on certificates of occupancy issued after February 1, 1995.

1. Purpose. The purpose of this Regulation is to clarify when the exemption to certain provisions of the Ordinance will apply when a COO has been issued after February 1, 1995.
2. Definitions. Unless otherwise stated, words or terms that are capitalized in the Regulation have the same meaning as the words and terms in Section 6-58.15.
3. When the Exemption Will Not Apply. The exemption under State Law to certain provisions of the Ordinance based on a COO being issued after February 1, 1995, will not apply if the property for which the COO has been issued was used for residential purposes prior to February 1, 1995. If the property has been used and occupied for residential purposes prior to February 1, 1995, the exemption will not apply even if the property in question was dilapidated, uninhabited or uninhabitable, regardless of the length of those conditions, and/or has been rehabilitated, renovated, or converted to a different residential use. Residential use shall be broadly construed to include all living accommodation uses, regardless of whether the accommodations were made available to the general public or restricted to a subset of the population by residency, employment, age, military status, income, group affiliation or other factors.
4. Effect if the Exemption Applies. If the exemption under State Law based on the issuance of a COO after February 1, 1995, applies, the exemption applies only to the rent control provisions of the Ordinance and does not apply to all other aspects of the Ordinance, e.g., registration of the Rental Units with the Rent Program, payment of Program Fees, compliance with the "just cause" provisions and requirement to make relocation payments, etc.

Dated: April 3, 2023



Bill Chapin
Rent Program Administrator