

ORDINANCE NO. O-2020-21

AN ORDINANCE AMENDING CHAPTER 6.120 OF THE ALAMEDA COUNTY ORDINANCE CODE TO MODIFY THE TEMPORARY MORATORIUM ON EVICTIONS RESULTING FROM LOSS OF INCOME, INCREASED MEDICAL EXPENSES OR CHILD CARE NEEDS RELATED TO COVID-19 IN THE COUNTY OF ALAMEDA

SECTION I

In enacting this ordinance, the Board of Supervisors of the County of Alameda, State of California makes the following findings:

1. On March 4, 2020, the Governor of the State of California issued a Proclamation of a State of Emergency in the State of California related to the novel coronavirus that emerged in 2019 ("COVID-19"); and
2. On March 10, 2020, the County of Alameda ("County") ratified the County Health Officer's declaration of a local health emergency ("Emergency Declaration") as a result of COVID-19; and
3. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic; and
4. As of March 15, 2020, all eighteen (18) school districts within the County have suspended in-class instruction or closed all schools and as a result, parents and guardians are missing work to care for these children; and
5. On March 16, 2020, the Alameda County Sheriff's Office announced it would temporarily suspend evictions due to the COVID-19 health emergency; and
6. On March 16, 2020, the County of Alameda joined Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara counties and the City of Berkeley on an order directing their respective residents to shelter at home for three weeks beginning March 17 ("Shelter-in-Place Order"). The Shelter-in-Place Order also requires all businesses except essential businesses as described in the order to cease all activities at facilities located within the County except minimum basic operations and prohibits all public and private gatherings of any number of people except for limited purposes as well as all non-essential travel. These restrictions will reduce economic activity and as a result, household incomes during this time; and
7. Because of these impacts, many employers have laid off or will need to lay off employees, working County residents with children may be compelled not to work in order to provide care for their child(ren), and many County residents who are working and become ill due to COVID-19, or who must self-quarantine due to COVID-19 because they have been exposed to COVID-19, do not have paid sick leave; and

8. Those residents financially impacted due to COVID-19 may not be able to make timely rent or mortgage payments or be forced to choose between paying housing expenses and having sufficient funds for food, medical care or other necessities for themselves and their families; and
9. On March 14, 2020, the Alameda County Superior Court declared that all unlawful detainer mandatory settlement conferences for jury trials and jury trials currently set between Monday, March 16, and Friday, April 3, 2020 will be continued on a rolling basis for 3 weeks from the currently scheduled trial date, and, on March 16, ordered the stay of all evictions pending between Tuesday, March 17, 2020, up to and through Wednesday, April 8, 2020, the anticipated reopening of the Court, among other significant reductions in court operations; and
10. On March 18, 2020, the federal government announced temporary suspensions of certain foreclosures and related evictions to promote housing stability during the COVID-19 pandemic; and
11. As of March 18, 2020, there were 31 confirmed cases of COVID-19 in the County, as of March 26, 2020, there were 135 confirmed cases and two deaths, and the number of documented cases is likely to increase as more effective, accessible, and proactive testing methods are introduced and community spread worsens; and
12. As the response to the public health emergency escalates, many County residents will be economically impacted from COVID-19, including, but not limited to lost business through the hospitality, retail, entertainment, and gig economies. Both large and smaller events across the Bay Area are being cancelled or postponed due to the Shelter-in-Place Order and recommendations at all levels of government to cancel large gatherings amid concerns over spread of the COVID-19. These cancellations and postponements cause loss in revenue for the event, as well as surrounding local businesses that rely on such events to bring in patrons to their businesses; and
13. After the World Health Organization officially declared the spread of COVID-19 a pandemic on March 11, 2020, stocks entered a bear market and fell more than 20%, and in the week ending March 14, 2020, workers filed 281,000 unemployment claims, an increase of 70,000 from the previous week; and
14. Displacement through eviction destabilizes the living situation of tenants and homeowners and impacts the health of County residents by uprooting children from schools, disrupting the social ties and networks that are integral to citizens' welfare and the stability of communities. It also creates undue hardship for tenants and homeowners through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing; and
15. COVID-19 poses a unique threat to people experiencing homelessness, who lack resources for sanitation, stay in overcrowded shelters, encampments, vehicles and other

places, and already have a high rate of poorly treated chronic illnesses. In 2019, the Alameda County Point in Time Count estimated 349 people are homeless in the unincorporated area, an increase of 59% since the last count in 2017. The countywide increase was 47%; and

16. Such displacement, destabilization and any increase in homelessness would increase the risk of transmission of COVID-19 throughout the County by rendering it difficult or impossible for individuals to shelter-in-place and to observe social distancing and hygiene practices that are recommended to reduce the transmission of COVID-19; and
17. Pursuant to existing state law, specified evictions during declared states of emergency are illegal, specifically, Penal Code section 396, subdivision (f) provides: "It is unlawful for a person, business, or other entity to evict any residential tenant of residential housing after the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any city, county, or city and county, and for a period of 30 days following that proclamation or declaration, or any period that the proclamation or declaration is extended by the applicable authority and rent or offer to rent to another person at a rental price greater than the evicted tenant could be charged under this section. It shall not be a violation of this subdivision for a person, business, or other entity to continue an eviction process that was lawfully begun prior to the proclamation or declaration of emergency"; and
18. Pursuant to Executive Order N-28-20 issued by the Governor of the State of California on March 16, 2020, the protections afforded by Penal Code section 396, subdivision (f) are in effect through May 31, 2020; accordingly, no new evictions of residential tenants meeting the conditions specified may be pursued until May 31, 2020 at the earliest, as a matter of state law; and
19. Pursuant to Executive Order N-28-20, any provision of state law that would preempt or otherwise restrict a local government's exercise of its police power to impose substantive limitations on evictions due to specified financial burdens caused by COVID-19 are suspended; and
20. The County, pursuant to its police powers, has broad authority to maintain the public peace, health, safety and welfare for its residents; and
21. Pursuant to Government Code section 8634, during a local emergency, the Board of Supervisors may promulgate orders and regulations necessary to provide for the protection of life and property; and
22. The California Attorney General has opined that when a county has declared a local emergency within its jurisdictional boundaries in an area that includes both unincorporated and incorporated territory, the county may adopt emergency rules and regulations pursuant

- to Government Code section 8634 that will be effective in both unincorporated and incorporated areas (62 Ops. Cal. Atty. Gen. 701 (1979)); and
23. COVID-19 continues to spread rapidly throughout the community without regard to jurisdictional boundaries; and
 24. Both the County's Emergency Declaration and Shelter-in-Place Order apply throughout the County, to both the unincorporated area of the County and within each incorporated city in the County; and
 25. This ordinance is a temporary moratorium intended to promote the public peace, health, welfare and safety by reducing the public's exposure to the transmission of COVID-19 by enabling tenants and homeowners throughout the County whose income, medical expenses or child care needs are affected due to COVID-19 to remain in their homes in accordance with the Shelter-in-Place Order; and
 26. This ordinance is also intended to promote stability within the residential market in the County, including both the unincorporated and incorporated areas, during the COVID-19 pandemic outbreak and to prevent avoidable homelessness, thereby promoting the public health, welfare, peace, and safety by reducing the public's exposure to the transmission of COVID-19; and
 27. During the COVID-19 pandemic outbreak, affected tenants and homeowners who have lost available income due to the impact on the economy or their out-of-pocket medical or child care expenses may be at risk of homelessness if they are evicted for non-payment as they will have little or no available income and be unable to secure other housing if evicted; and
 28. This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) (because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment) and pursuant to Section 15378, which defines a "project" under CEQA (the ordinance is not a "project" because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment).

SECTION II

NOW, THEREFORE, the Board of Supervisors of the County of Alameda ordains as follows:

Chapter 6.120 of the Alameda County Ordinance Code is hereby amended to read in its entirety as follows:

Chapter 6.120 – Temporary Eviction Moratorium for the Incorporated and Unincorporated Areas of the County Due to COVID-19

6.120.010 - Purpose, Intent and Scope.

This ordinance is enacted to promote the public health, welfare, peace, and safety. The purposes of this ordinance are to reduce the transmission of COVID-19, to promote housing stability during the COVID-19 pandemic and to prevent avoidable homelessness. This ordinance is necessary for the promotion of the public health, welfare, peace, and safety because the COVID-19 pandemic has the potential for destabilizing the residential market for the reasons described in the findings made by the Board of Supervisors in enacting this ordinance. This ordinance is intended to enable tenants, homeowners, and mobilehome owners in the County whose income, medical expenses, or child care needs have been affected by the COVID-19 pandemic to be temporarily protected from eviction for non-payment of rent or mortgage payments and to reduce the risk that these events will lead to anxiety, stress and potential homelessness for the affected residents and their communities thereby serving the public health, welfare, peace, and safety. The temporary moratorium on evictions for non-payment imposed by this ordinance is created pursuant to the County's emergency authority pursuant to Government Code section 8634 and its general police powers to protect the health, safety, and welfare of its residents in addition to any rights and obligations under state and federal law.

The regulations in this ordinance shall apply to cities within the County of Alameda and to the unincorporated area of the County. To the extent that the governing body of a city or an official designated thereby enacts an ordinance or adopts a regulation that is more protective of residents, such city ordinance or regulation, during its effective period, shall apply in place of this ordinance.

6.120.020 - Definitions.

- A. “Affected Resident” shall mean a Tenant, Homeowner or their Household that has suffered a substantial loss in income, substantial out-of-pocket medical expenses or extraordinary child care needs, resulting in a substantial hardship or inability to pay rent or mortgage payments when due, as a result of the COVID-19 pandemic, including but not limited to, any COVID-19 related declaration of the County Public Health Officer, or other local, state or federal authority.
- B. “Homeowner” means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the Residential Unit. Homeowner includes the owner of a Mobilehome.
- C. “Household” means all of the individuals residing in the Residential Unit with the Tenant(s) and/or Homeowner(s).
- D. “Landlord” means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and/or occupancy of any Residential Unit by a Tenant and the agent, representative, or successor of any of the foregoing. Landlord includes a Mobilehome park owner leasing spaces to a Mobilehome owner.

- E. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more Residential Units, which person has the right to mortgage or similar payments from the Homeowner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.
- F. "Mobilehome" means a structure transportable in one or more sections, designed and equipped to contain not more than one dwelling unit, to be used with or without a foundation system.
- G. "Notice of Termination" shall mean the notice informing a Tenant or Homeowner of the termination of their right to occupy the Residential Unit in accordance with applicable California law, including but not limited to a 3- or 30-day notice to pay or quit.
- H. "Person" means an individual, firm, association, partnership, joint venture, corporation or any entity, public or private in nature.
- I. "Residential Unit" means a structure or Mobilehome or the portion thereof that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which person or household pays rent to a Landlord or mortgage payments to a Lender for the use and/or occupancy of the structure or Mobilehome, or the space where a Mobilehome is located, for periods of thirty (30) days or more whether or not the residential use is a conforming use permitted under the Alameda County Ordinance Code, applicable city's municipal code, or other applicable regulations.
- J. "Tenant" means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupancy of a Residential Unit.

6.120.030 - Moratorium on Evictions Based on Nonpayment Caused by COVID-19.

Beginning on the effective date of this ordinance and continuing for the duration of this ordinance and any extensions thereto, the County hereby places a moratorium on evictions from Residential Units in the unincorporated and incorporated areas of the County resulting from a substantial loss of income, substantial out-of-pocket medical expenses, or extraordinary child care needs, any of which are caused by COVID-19. No Landlord or Lender may evict an Affected Resident, or otherwise require an Affected Resident to vacate a Residential Unit, or retaliate against an Affected Resident for nonpayment of rent or mortgage payments, while this ordinance is in effect. Violation of this ordinance is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of a Residential Unit. As used in this ordinance, "caused by COVID-19" shall be interpreted broadly and includes the direct and indirect impacts of the COVID-19 pandemic, including but not limited to, any COVID-19 related illness, closures and limitations on business, schools and child care facilities, and any COVID-19 related declaration of the County Public Health Officer, or other local, state or federal authority.

6.120.040 - Procedures.

- A. A Landlord or Lender must provide a copy of this ordinance and the following notice in at least 12-point font to Affected Residents when serving Affected Residents with a Notice of Termination:

"NOTICE: THE COUNTY OF ALAMEDA HAS ADOPTED A TEMPORARY MORATORIUM ON EVICTIONS FOR NONPAYMENT OF RENT OR MORTGAGE PAYMENTS DUE TO COVID-19. A COPY OF THE COUNTY ORDINANCE IS ATTACHED. UPDATED INFORMATION MAY BE AVAILABLE FROM THE COUNTY'S HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT AT jennifer.pearce@acgov.org or 510-670-6474."

- B. To qualify for the protections of this ordinance, upon receipt of a Notice of Termination, Affected Residents must notify Landlord or Lender, as applicable, that they have substantial loss of income, substantial out-of-pocket medical expenses, or extraordinary child care needs caused by COVID-19 and must provide Landlord or Lender with the documentation described below within fifteen (15) days of Landlord's or Lender's request for such documentation. To the extent feasible, Affected Residents should notify their Landlord or Lender on or before the day rent or mortgage payment is due of their potential inability to pay the rent or mortgage because of COVID-19.
- C. A Landlord or Lender shall not execute an eviction or otherwise require an Affected Resident to vacate a Residential Unit, or retaliate against an Affected Resident for nonpayment of rent or mortgage payments or for nonpayment of late fees, fines or interest based on nonpayment, while this ordinance is in effect. A Landlord's or Lender's violation of this ordinance is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of or to cause an Affected Resident to vacate a Residential Unit.

6.120.050 - Documentation.

- A. To qualify for the protections of this ordinance, Affected Residents must demonstrate, through documentation or other objectively verifiable means, a substantial hardship or inability to make timely rent or mortgage payments caused by COVID-19. Affected Residents must show a substantial decrease in income, substantial out-of-pocket medical expenses, or extraordinary child care needs.
- B. The following documents shall create a rebuttable presumption that the Affected Resident has a substantial hardship or inability to make timely rent or mortgage payments caused by COVID-19:
1. Letter from employer or other source of income citing COVID-19 as a reason for reduced work hours, termination, or other substantial reduction in pay;
 2. Employer paycheck stubs showing a reduction in pay following the COVID-19 outbreak;

3. Bank statements showing a reduction in income following the COVID-19 outbreak;
 4. Documentation showing payment of substantial out-of-pocket medical expenses caused by COVID-19; or
 5. Documentation showing the closure of a school or child care facility where a child in the Affected Resident's care would otherwise be present during the Affected Resident's working hours.
- C. An Affected Resident may provide other documentation to demonstrate a substantial hardship or inability to make timely rent or mortgage payments caused by COVID-19.

6.120.060 - Retaliation Prohibited.

A Landlord or Lender shall not retaliate against an Affected Resident for nonpayment of rent or mortgage caused by COVID-19 or for exercising their rights under this ordinance, including but not limited to shutting off any utilities or reducing services or amenities to which the Affected Residents would otherwise be entitled.

6.120.070 - Violation and Remedies.

- A. Affirmative Defense. Each Landlord or Lender that seeks to recover possession of Residential Unit must comply with this ordinance. Non-compliance with any applicable provision of this ordinance shall constitute an affirmative defense for an Affected Resident against any unlawful detainer action under California Code of Civil Procedure section 1161, termination of tenancy in a Mobilehome park under the Mobilehome Residency Law (see Civil Code sections 798.55, et. seq.), petition for writ of possession, or any other action to recover possession of the Residential Unit or to otherwise cause Affected Residents to vacate the Residential Unit.
- B. Misdemeanor. Any person violating any of the provisions of this ordinance is guilty of a misdemeanor. Each person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of this ordinance is committed, continued or allowed in conjunction with the Landlord's or Lender's activities with respect to the Residential Unit, Residents and Households and is punishable accordingly. For purposes of this section, each and every day of violation includes each day on which a failure to comply with this ordinance continues. No proof of knowledge, intent, or other mental state is required to establish a violation.
- C. Civil Remedies.
 1. Any Landlord or Lender that fails to comply with this ordinance is subject to a fine of \$1000 per violation. Each person is liable for separate violation for each and every day during any portion of which any violation of any provision of this ordinance is committed, continued or allowed in conjunction with the Landlord's or Lender's activities with respect to the Residential Unit, Residents, and Resident Households. For purposes of this

section, each and every day of the violation includes each day on which a failure to comply with this ordinance continues. No proof of knowledge, intent, or other mental state is required to establish a violation.

2. Any Landlord or Lender that fails to comply with this ordinance may be subject to civil proceedings for displacement of Affected Residents initiated by the County or the Affected Residents.
 3. Any person found to have violated this ordinance shall be subject to appropriate injunctive relief and shall be liable to the Affected Resident for damages, costs, and reasonable attorneys' fees.
 4. Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a Resident or non-Resident third party for the damage done to said Residential Unit. Nothing herein is intended to limit the damages recoverable by any party through a private action.
- D. Cumulative Remedies. The remedies provided by this ordinance are cumulative and in addition to any other remedies available at law or in equity.

6.120.080 - Severability.

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

SECTION III

This ordinance shall be in force thirty (30) days after its passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for an against the same in the Inter-City Express, a newspaper published in the County of Alameda.

This ordinance shall be of no further force or effect ninety (90) days from its date of adoption, unless otherwise extended by the Board of Supervisors. This ordinance shall be in effect only during the time that an emergency declaration by local, state or federal authorities pertaining to COVID-19 is in effect and applicable to the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the 7th day of April, 2020, by the following called vote:

AYES: Supervisors Carson, Chan, Haggerty, Miley, & President Valle - 5
NOES: None

EXCUSED: None

RICHARD VALLE
President of the Board of Supervisors

ATTEST:
ANIKA CAMPBELL-BELTON
Clerk of the Board of Supervisors,

APPROVED AS TO FORM:
DONNA R. ZIEGLER, COUNTY COUNSEL

By: Heather Littlejohn, Deputy County Counsel