

RENT CONTROL ORDINANCE REGULATION 22-02

IMPLEMENTING REGULATIONS FOLLOWING THE TERMINATION OF THE LOCAL EMERGENCY DUE TO THE COVID-19 PANDEMIC (1) CONCERNING THE TEMPORARY MORATORIUM ON RESIDENTIAL EVICTIONS, PERMISSIBLE RENT INCREASES, AND THE USE OF BANKING AND (2) REPEALING COVID-19 URGENCY REGULATIONS 20-01 AND 20-02.

Whereas, on March 17, 2020, the City of Alameda declared a local state of emergency based on the COVID-19 pandemic; and

Whereas, beginning March 17, 2020, and on several occasions thereafter, as a result of the local state of emergency and government ordered directives, the City Council adopted a number of urgency ordinances to help protect residential tenants who have experienced, or who may experience, sudden income loss, leaving such tenants vulnerable to eviction and rent increases (collectively, “Local Law Rental Protections” [as defined in this Regulation]); and

Whereas, to implement the Local Law Rental Protections, the City also adopted COVID-19 Urgency Regulations 20-01 and 20-02; and

Whereas, various State laws have also been enacted designed to protect residential tenants in response to the COVID-19 pandemic; and

Whereas, the City’s Declaration of Local Emergency has been terminated as of October 18, 2022, which termination bears on the Local Law Rental Protections; and

Whereas, in light of the termination of the Declaration of Local Emergency, the COVID-19 Urgency Regulations are no longer necessary; and

Whereas, in October 2020, Regulation 20-05 was promulgated concerning the banking of Annual General Adjustments, some provisions of which may conflict with the Regulations herein; and

Whereas, Section 3 of Ordinance No. 3315 provides that the Program Administrator has the authority to promulgate regulations to implement the requirements and fulfill the purposes of the Rent Ordinance; and

NOW, THEREFORE, under Section 3 of Ordinance No. 3315, and taking into consideration the Local Law Rental Protections that continue to exist notwithstanding the termination of the Local Emergency and taking into consideration the State Law Rental Protections to the extent they are applicable to Tenants in Alameda, the Program Administrator adopts the following implementing regulations concerning the temporary moratorium on residential rent increases and the eviction of residential tenants due to the COVID-19 pandemic.

Section 1. Capitalized terms shall have the same meaning as Capitalized terms as defined in Ordinance Nos. 3250 and 3275. In addition, the following definitions are adopted:

- A. "Declaration of Local Emergency" shall mean the declaration of a local state of emergency adopted by the City Council on March 17, 2020.
- B. "Local Law Rental Protections" refers to those Ordinances passed by the Alameda City Council, and any Rent Regulations adopted to implement such Ordinances, concerning defenses to evictions for non-payment of rent arising out of the COVID-19 pandemic and prohibiting rent increases and certain no fault evictions.
- C. "State Law Rental Protections" refers to those Executive Orders issued and State laws enacted concerning defenses to eviction for non-payment of rent arising out of the COVID-19 pandemic.

Section 2. The Governor has issued a number of Executive Orders and the State Legislature has enacted a number of laws, the intent of which are to protect tenants from evictions due to unpaid rent caused by circumstances arising out of the COVID-19 pandemic. These State Law Rental Protections are complex and to some extent overlap with the protections to Tenants that are embodied in the Rent Ordinance and the Local Law Rental Protections. This Regulation does not address State Law Rental Protections. It addresses only the protections to tenants under the City's Rent Ordinance and Local Law Rental Protections.

Section 3. Concerning unpaid Rent between March 1, 2020 and November 17, 2022. Local Law Rental Protections provide that Tenants have until November 17, 2023, to assert an affirmative defense to an eviction action for nonpayment of rent if the non-payment of rent was due to a "substantial loss of income" arising out of the COVID-19 pandemic; provided, however, if State Law Rental Protections preempt local law as to this issue, the affirmative defense would be available only through May 17, 2023.

Section 4. Beginning November 18, 2022, for those Tenants that have not received a permissible Rent Increase since March 1, 2020, a Tenant must pay the full amount of the Rent as the Tenant did before March 1, 2020, or be subject to eviction for failing to pay Rent. Tenants that received a permissible Rent Increase since March 1, 2020, must continue to pay such Rent or be subject to eviction for failing to pay Rent. State Law Rental Protections provide that Tenants were to begin paying some or all of the full amount of their Rent earlier than November 18, 2022.

Section 5. During the Declaration of the Local Emergency, any agreement between the Landlord and the Tenant, or a Landlord's unilateral decision, to reduce temporarily the Base Rent for the Rental Unit shall not be grounds for the Program Administrator to establish a lower Base Rent for such Rental Unit. If the Base Rent has been temporarily reduced as provided in the previous sentence, the restoration of the Base Rent shall not be considered a Rent increase. The Program Administrator may ask a Landlord for documentation to substantiate that a rent reduction was temporary.

Section 6. Any notice of a Rent Increase served prior to May 1, 2022 that would increase Rent after April 22, 2020 is void and has no force or effect. For purposes of this Regulation, any notice of a Rent Increase that was mailed to a Tenant prior to May 1, 2022 that would increase Rent after April 22, 2020 and service complied with the requirements of Code of Civil Procedure, Section 1013 shall be considered "served" as of May 1, 2022.

Section 7. Any Annual General Adjustment Rent Increases that a landlord was prohibited from imposing

during the Declaration of Local Emergency due to Local Law Rental Protections shall be considered banked as provided in Section 6-58.70 of Ordinance No. 3250. Unless a Landlord has served a notice of a Rent Increase (based on the 2021-2022 AGA effective September 1, 2021, or on the 2022-2023 AGA effective September 1, 2022) between May 1, 2022 and December 17, 2022, a Landlord shall not serve a notice of a Rent Increase using banked amounts until December 18, 2022. Landlords who have served a notice of a Rent Increase (based on the 2021-2022 AGA effective September 1, 2021, or on the 2022-2023 AGA effective September 1, 2022) between June 1, 2022 and December 17, 2022 shall not increase Rent, whether the Rent Increase includes banked amounts or not, for 12 months. Landlords must comply with all requirements of Ordinance No. 3250 to implement a Rent Increase using banked amounts, including but not limited to the following:

1. No Landlord shall increase the Rent of any Rental Unit more than once in any 12-month period. See Section 6-58.50(A).
2. If a notice of Rent Increase includes banked amounts, the Landlord must attach a copy of Form RP-203 to the notice. Within three days of service on the Tenant, the Landlord must file with the Program Administrator a copy of the notice and a proof of service. See Section 6-58.70(D).
3. A Landlord shall not bank a total of more than 8.0 percent. See Section 6-58.70(E).
4. Regardless of the banked amount and its use to increase Rent, a Landlord shall not increase Rent (a) to a Rent that exceeds the Maximum Allowable Rent as determined by the Program Administrator or (b) by a percentage that exceeds the current year's AGA plus 3.0%, whichever, i.e., (a) or (b), is smaller. See Section 6-58.70(E).
5. A Landlord shall not impose a Rent Increase using banked amounts in consecutive years. See Section 6-58.70(E).
6. A Landlord shall not impose a Rent Increase using banked amounts more than three times during any one tenancy. See Section 6-58.70(E).
7. Banked amounts expire when a new tenancy is created. A Landlord shall not impose amounts banked under a previous tenancy on a new tenant. See Section 6-58.70(F)
8. Banked amounts expire when a Landlord transfers ownership of the property. A Landlord shall not impose amounts banked under a previous owner. See Section 6-58.70(F)

In addition, see Attachment 1 that provides examples of how banking may be used.

Section 8. No Landlord shall retaliate against a Tenant for non-payment of rent for exercising their rights under State Law Rental Protections or under Local Law Rental Protections.

Section 9. Between March 1, 2020, and November 17, 2022, no landlord shall take action to terminate a tenancy based on the "no fault" grounds of Owner Move-In or an approved Capital Improvement Plan.

Section 10. The protections provided by State Law Rental Protections, Local Law Rental Protections, and this Regulation shall be available to all Tenants, regardless of any agreement wherein a Tenant waives or purports to waive the Tenant's rights under those Protections or this Regulation.

Section 11. If there are provisions in this Regulation that conflict with the provisions in Regulation 20-05 (concerning banking of Annual General Adjustments), the provisions in this Regulation shall prevail.

Section 12. COVID-19 Urgency Ordinance Regulations 20-01 and 20-02 are repealed in their entirety.



Revised: February 13, 2023

Bill Chapin, Rent Program Director

ATTACHMENT 1

A landlord “banks” Rent Increases when, for example, a landlord chooses not to impose the full amount of the Annual General Adjustment (“AGA”) or, as occurred more recently, when Local Law Rental Protections prohibited a Landlord from imposing an AGA Rent Increase. The AGA for 19/20 (9/1/19 to 8/31/20) was 2.8%; for 20/21, 1.0%; for FY 21/22, 2.7%; and for FY 22/23, 3.5%. City Council adopted an urgency ordinance in April 2020 freezing Rent Increases and providing that any notice of a Rent Increase served prior to April 22, 2020, which Rent Increase was to take effect on or after April 22, 2022 was null and void. That freeze on Rent Increases remained in effect until May 1, 2022. Accordingly, if a Landlord had not imposed a Rent Increase on or before April 22, 2020, as of September 1, 2021, a Landlord would have banked 3.828% (as the AGA percentage is compounded). If a Landlord had not imposed a Rent Increase on or before April 22, 2020 and did not notice a Rent Increase between May 1, 2022 and August 31, 2022, a Landlord would have banked 6.631% (with compounding). A Landlord, however, may not use any more than 3.0% of the banked amount in connection with a Rent Increase. Moreover, under the Local Law Rental Protections, a Landlord may not use banked amounts until after December 17, 2022. In each of the examples below, it is assumed that a Landlord has not imposed a 2.8% Rent Increase effective between September 2019 and on or before April 22, 2020.

Example 1: Since April 22, 2020, the Landlord noticed a Rent Increase between May 1, 2022 and August 31, 2022. Because the use of banking was prohibited under the Local Law Rental Protections, the Landlord was permitted to increase Rent only by the AGA for 21/22, i.e., 2.7%. Moreover, such landlord must wait 12 months from the effective date of the 2.7% Rent Increase to use any banking and the AGA (3.5%) for 22/23. Furthermore, although the Landlord would have banked 3.828%, the Landlord may use only 3.0% (leaving 0.828% banked).

Example 2: Since April 22, 2020, a Landlord first noticed a Rent Increase between September 1, 2022 and December 17, 2022. The Landlord was permitted to increase rent only by the AGA for 22/23, i.e. 3.5%. Such landlord must wait 12 months from the effective date of 3.5% Rent Increase to use any banking. Even though such Landlord would have banked 6.631%, if the Landlord increases the Rent after the 12 months, the Landlord may impose no more than the 23/24 AGA plus 3.0% of the banked amount (leaving 3.631% banked).

Example 3: Since April 22, 2020, a Landlord first noticed a Rent Increase after December 17, 2022. As set forth in Example 2, the Landlord was permitted to increase rent by no more than the AGA for 22/23 plus 3.0% of the banked amount (leaving 3.631% banked.) If the Landlord had used a banked amount, the Landlord would need to wait 24 months before using any further banked amounts as banked amounts may not be used in consecutive years.

Example 4: Since April 22, 2020, a Landlord has not noticed a Rent Increase through August 31, 2023. The Landlord, on paper, has banked 10.363% (with compounding). Under the Ordinance, however, a Landlord may not bank more than 8.0%. Accordingly, if the Landlord notices a Rent Increase after September 1, 2023, the Landlord may not increase the Rent by more than the 23/24 AGA plus 3.0%. Assuming that was done, the Landlord would have remaining as a banked amount only 5.0%, not 7.363%.

In all the examples above, the percentages, whether the AGA percentage or the banked percentage, are applied to a Tenant’s current Rent