

COVID-19 URGENCY ORDINANCE REGULATION 20-01

IMPLEMENTING REGULATIONS CONCERNING THE TEMPORARY MORATORIUM ON RESIDENTIAL
EVICTIONS DUE TO THE COVID-19 PANDEMIC

Whereas, as a result of the serious public health issue caused by the COVID-19 virus, Governor Newsom has ordered all residents of California to stay at home except for conducting essential business and has issued an Executive Order giving cities broad authority to enact legislation concerning evictions; and

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

Whereas, on March 17, 2020, as a result of the local state of emergency and government ordered directives, the City Council adopted an urgency ordinance (Ordinance No. 3268) to help protect residential tenants who have experienced, or who may experience, sudden income loss, leaving such tenants vulnerable to eviction; and

Whereas, on April 7, 2020, as a result of the continuing local state of emergency and government ordered directives, the City Council adopted another urgency ordinance (Ordinance No. 3273) that repealed Ordinance No. 3268 but incorporated its protection from eviction to residential tenants; and

Whereas, on April 21, 2020, as a result of continuing Declaration of Local Emergency and government ordered directives, the City Council adopted an urgency ordinance (Ordinance No. 3275) that repealed Ordinance No. 3273 but incorporated its protections, froze rent increases from April 22, 2020 until January 1, 2021, and broadened the protection against eviction of residential tenants due to an owner move in or as part of an approved Capital Improvement Plan; and

Whereas, State law—AB 3088—has recently been enacted designed to protect residential tenants in response to the COVID-19 pandemic, which legislation leaves in place many protections provided by local ordinances but now imposes on tenants certain requirements in order to avoid eviction for failing to pay rent; and

Whereas, Section 5 of Ordinance No. 3275 provides that the Community Development Director has the authority to promulgate regulations to implement the requirements and fulfill the purposes of the Ordinance; and

NOW, THEREFORE, under Section 5 of Ordinance No. 3273, and taking into consideration AB 3088, the Community Development Director adopts the following implementing regulations concerning the temporary moratorium on 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. "Financial Distress" means any of the following: loss of income, increased expenses for doing essential work, increased expenses from COVID-19 health impacts, responsibilities arising from childcare or caring for a family member related to COVID-19 that impacts earnings or increases expenses, or other circumstances that increase expenses or reduces income. See California Code of Civil Procedure, Section 1179.02 (d).
- C. "Tenant" includes any member of a tenant's household who is legally responsible for paying rent.
- D. "Utilities" include water, gas, electricity, sewer, refuse service, cable television, internet services and laundry facilities.
- E. "Writing" may include email or text communications to a landlord or the landlord's representative with whom the Tenant has previously communicated or corresponded.

Section 2. Concerning unpaid Rent between March 1, 2020 and August 31, 2020. With respect to any Rent a Tenant did not pay between March 1, 2020 and August 31, 2020, a Tenant shall be deemed not to be in default of rent payment obligations and hence, not subject to eviction for failing to pay Rent, if the Tenant provides to the Landlord a Financial Distress declaration within 15 days after the Tenant receives a notice from the Landlord demanding Rent the Tenant did not pay for the period between March 1, 2020 and August 31, 2020. If the Tenant provides the Financial Distress declaration timely, (a) the Rent the Tenant did not pay becomes "consumer debt" that a Landlord may collect only through a small claims or superior court action and (b) a Tenant has until March 31, 2022 to pay the Rent that was not paid between March 1, 2020 and August 31, 2020.

Section 3. Concerning unpaid Rent between September 1, 2020 and January 31, 2021. With respect to any Rent a Tenant does not pay between September 1, 2020 and January 31, 2021, a Tenant shall be deemed not to be in default of rent payment obligations and hence, not subject to eviction for failing to pay Rent if (a) the Tenant provides to the Landlord a Financial Distress declaration within 15 days each time a Tenant receives a notice from the Landlord demanding unpaid Rent between September 1, 2020 and January 31, 2021 and (b) the Tenant pays by January 31, 2021 at least 25% of the total Rent that was due between September 1, 2020 and January 31, 2021. If the Tenant satisfies (a) and (b) in the previous sentence, the Rent the Tenant did not pay becomes "consumer debt" that a Landlord may collect only through a small claims or superior court action and a Tenant has until March 31, 2022 to pay the Rent that was not paid between September 1, 2020 and January 31, 2021.

Example 1: A Tenant's Rent is \$2000/month. The Tenant is able to pay the Landlord only one half of the Rent each month. If the Landlord serves the Tenant with a notice to pay rent and the Tenant provides the Landlord with a timely Financial Distress declaration each time the Tenant receives the notice to pay Rent, the Landlord may not evict the Tenant. The unpaid Rent--\$5000—would be consumer debt that the Tenant must repay by March 31, 2022. If not paid by then, the Landlord may collect that unpaid Rent only through a small claims or superior court action.

Example 2: A Tenant's Rent is \$2000/month. Between September 1, 2020 and January 31, 2021, the full amount of the Rent would be \$10,000. The Tenant does not pay any Rent due to Financial Distress for

those five months but is able to pay the Landlord \$2500 in January 2021. If the Landlord has served a Tenant with one or more notices to pay Rent during that five month period and if a Tenant has timely provided to the Landlord a Financial Distress declaration each time the Tenant has received a notice to pay Rent, the Tenant cannot be evicted for not paying the \$7500. The Tenant has until March 31, 2022 to repay the \$7500. If not, the Landlord may collect that \$7500 only through a small claims or superior court action.

Example 3: A Tenant's Rent is \$2000/month. The Tenant is able to pay the full amount of Rent for September and October but does not pay November Rent. The Landlord serves the Tenant with a notice to pay Rent but the Tenant fails to provide the Landlord with a Financial Distress declaration. The Landlord may file an eviction action against the Tenant for failing to pay November Rent.

Section 4. If a Tenant household that earns more than 130% of the Area Median Income, a Landlord may require the Tenant to prove, with documents, that the Tenant experienced Financial Distress.

Section 5. Beginning February 1, 2021, 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.

Section 6. If a Tenant has not paid Rent but has complied with AB 3088, Ordinance No. 3275 and this Regulation, a Landlord shall not charge, impose, or collect a late fee, penalties, fines, or interest for such unpaid Rent, nor impose an additional security deposit due to such unpaid Rent.

Section 7. During the Declaration of Local Emergency, no Landlord shall shut off, discontinue, or interrupt any utilities, including laundry facilities, serving a Tenant's rental unit except (a) for emergency repairs and then, only for the duration of the repairs or (b) as part of an "Essential Activity" as defined by the Alameda County Public Health Officer Order No. 20-04, dated March 31, 2020 and then, only for the shortest time necessary to conduct the Essential Activity. As to common laundry facilities, nothing prohibits a Landlord from imposing rules and regulations concerning their use so that social distancing is maintained.

Section 8. During the Declaration of 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. During the Declaration of Local Emergency, a Landlord's discontinuance of certain housing services in order to comply with State or County directives, such as prohibiting the use of a pool or recreational facilities, shall not be grounds for a downward adjustment of Rents.

Section 9. Landlords are encouraged to utilize the banking of Rent increase provisions under City Ordinance No. 3250.

Section 10. No Landlord shall retaliate against a Tenant for non-payment of rent due to Financial Distress or a Substantial Loss of Income or for exercising their rights under Ordinance No. 3250 or AB 3088, including, but not limited to, shutting off, discontinuing or interrupting any utilities except (a) for emergency repairs and then, only for the duration of the repairs or (b) as part of an "Essential Activity" as defined by the Alameda County Public Health Officer Order No. 20-04, dated March 31, 2020 and then, only for the shortest time necessary to conduct the Essential Activity.

Section 11. The protections provided by Ordinance No. 3275, AB 3088, 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 Ordinance No. 3275, AB 3088, or this Regulation.

Dated: October 30, 2020

Lois Butler, Interim Community Development Director

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