

ALAMEDA CITY COUNCIL MEETING

Tuesday, October 18, 2022

Staff Presenter(s):

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Interim City Manager

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Alameda City Attorney's Office

Termination of Local Emergency



Current Considerations Affecting Terminating or Continuing Local Emergency Declaration

Since March 2020, the City Council has taken numerous actions to protect the health of Alameda residents and our local businesses. Some of the same policy actions are presented for the Council's consideration of whether to terminate the local emergency:

- Business Protections
- Operational Impacts
- Remote meetings
- Rent Control Protections

Business Protections

- Under AMC § 6-62.1 et seq., the Council capped delivery service charges to restaurants at 15%.
- Cap is tied to duration of local emergency.
- If local emergency terminates, amend AMC § 6-62.1 et seq to sunset with termination of state emergency.

Operational Impacts

- Ordinances 3267 and 3272 authorized City Manager to:
 - Suspend competitive bidding; and
 - Spend up to \$2 million to address local and operational impacts.
 - These authorities will terminate.
- Request authorization to permit City Manager, and the City Attorney for City Attorney staff, to continue permitting remote and/or flexible work schedules and redeployment of affected staff, consistent with applicable laws, Council directions, and labor agreements.
- Unused COVID-19 administrative leave authorized by Ordinance 3267 will be moved to an administrative leave bank for each applicable employee.

Remote Meetings

- AB 361
- Sunshine Ordinance (Ordinance 3271)
 - Sunset provision tied to local emergency
- If local emergency terminates, Council has authority to meet remotely under AB 361 with technical amendments to Ord. 3271 to conform to state law.

Rent Control Protections

- Alameda's Eviction Moratorium
- Banked Rent Increases
- Unpaid Rent Deferral and Repayment Time Frames
- Deferred Payment Agreements
- Utility Shutoffs
- State Law Provisions
- Alameda County's Eviction Moratorium

Alameda Rental Protections

Current Protection

Effect of Terminating Local Emergency

Eviction Moratorium

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| <ul style="list-style-type: none">• In Alameda, tenants have affirmative defense (AD) to eviction for nonpayment of rent for “substantial loss of income” caused by the pandemic. Ord. 3275, Sec. 2.• Similar protection exists under state law (AB 3088, SB 91, AB 832, AB 2179), but tenants must meet requirements (file declaration and pay 25% of “covered period” rent (3/1/20 to 9/30/21)). C.C.P. § 1179.05(c)(5). If requirements met, rent converted to “consumer debt”. | <ul style="list-style-type: none">• Assuming State law preemption: if local emergency terminates, tenants cannot be evicted for at least 7 months for rent owed between 3/1/20 to 6/30/22. Ord. 3275, Sec. 3; C.C.P. § 1179.05(b).• If not preempted by State law, AD is available for 13 total months. Ord. 3284, Sec. 2 |
| <ul style="list-style-type: none">• Prohibition on certain “no fault” evictions (OMI, CIP). Ord. 3275, Sec. 1(E). | <ul style="list-style-type: none">• Ends 30 days after termination of local emergency. Ord. 3275, Sec. 2(A). |

Alameda Rental Protections (Cont'd)

Current Protection

Effect of Terminating Local Emergency

Deferred Rent

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| <ul style="list-style-type: none">• Under local law, rent owed since beginning of pandemic has no due date until the Council terminates the local emergency.• Under state law, tenants must start paying “covered period (3/1/2020 to 9/30/2021)” rent on August 1, 2022 with final payments due by August 31, 2023. C.C.P. § 1179.05(a)(2)(B)-(C). | <ul style="list-style-type: none">• Assuming state law preemption, if local emergency terminates, tenants must fully pay non-covered period rent (10/1/2021 to 30 days after termination of local emergency) within 7 months. Ord. 3275, Sec. 3; C.C.P. § 1179.05(b).• If not preempted, tenants have 13 total months. Ord. 3284, Sec. 2.• If not already resumed, regular rent payments must resume 30 days after termination of local emergency. Ord. 3275, Sec. 3; Ord. 3284, Sec. 2. |
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Deferred Payment Agreements

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| <ul style="list-style-type: none">• If the parties agreed to a deferred payment agreement, the landlord must waive their right to evict. Ord. 3287, Sec. 2. | <ul style="list-style-type: none">• Termination of local emergency has no impact. |
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Utility Shutoffs

Alameda County's Eviction Moratorium

- Alameda County's eviction moratorium remains in effect until 60 days after County Public Health Emergency ends. Alameda County's Public Health Emergency currently remains in effect.
- Alameda County moratorium prohibits all evictions with few exceptions, including Ellis Act evictions, compliance with governmental order, and where continued occupancy poses imminent threat to health/safety.
 - Violations of the order punishable by \$1,000 fine and constitute "absolute" affirmative defense to eviction.
 - Allows tenants to repay overdue rent within 12 months after Order ends but all unpaid rent is consumer debt, not grounds for eviction.
 - Prohibits late fees, fines, or interest on unpaid rent due after March 24, 2020 until 60 days after Order is lifted.
- **The City's position has been County laws/regulations generally do not apply in incorporated cities, including the City of Alameda. See Cal. Const., art. XI, § 7, City of South San Francisco v. Berry (1953) 120 Cal.App.2d 252, 253.**
- The County eviction moratorium is the subject of multiple ongoing legal challenges, including one brought by landlords and the Housing Providers of America (Williams v. Alameda County Board of Supervisors et al. (3:22-cv-01274-LB)).