

ALAMEDA CITY COUNCIL MEETING

Tuesday, October 18, 2022

Staff Presenter(s):

Nancy Bronstein
Interim City Manager

Bill Chapin
Director of Rent Program

John D. Lê
Assistant City Attorney
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.
- Governor announced he is lifting the state emergency, which remains in place until February 28, 2023.

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 **until February 28, 2023** 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

City of Alameda Rental Protections

Current Protection

Effect of Terminating Local Emergency

“No Fault” Eviction Moratorium

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| <ul style="list-style-type: none">• Prohibition on certain “no fault” evictions (Owner Move-In & Capital Improvement Plans). <i>Ord. 3275, Sec. 1(E)</i> | <ul style="list-style-type: none">• Ends 30 days after termination of local emergency. <i>Ord. 3275, Sec. 2(A)</i> |
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Banked Rent Increases

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| <ul style="list-style-type: none">• No AGA rent increases after March 1, 2020 (automatically banked). <i>Ord. 3275, Sec. 7.</i>• Starting May 1, 2022, landlords may resume imposing AGA rent increases, but not banked rent increases. <i>Ord. 3315, Sec. 2(a)</i> | <ul style="list-style-type: none">• Prohibition on banked increases ends after 60 days. <i>Ord. 3315, Sec. 2(a)</i>• Landlords may impose banked increases but may not take more than any one increase in a 12 month period. <i>AMC sec. 6-58.50(A)</i> |
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Utility Shutoffs

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| <ul style="list-style-type: none">• Landlord must refrain from cutting off utilities during local emergency, except for emergency repairs. <i>Ord. 3275, Sec. 6</i> | <ul style="list-style-type: none">• This protection would end immediately upon termination of local emergency. <i>Ord. 3275, Sec. 6</i> |
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City of Alameda Rental Protections

Current Protection

Effect of Terminating Local Emergency

Nonpayment of Rent - Eviction Moratorium & Deferred Payment

- Tenants have affirmative defense to eviction for nonpayment of rent due to “substantial loss of income” (COVID-19 related). *Ord. 3275, Sec. 2*
- Rent owed has no due date until termination of local emergency. *Ord. 3275, Sec. 2*

- Tenants must resume regular and ongoing rent payments 30 days after termination of local emergency. All unpaid rent to be paid within 13 months, but state law may require earlier payment. *Ord. 3275, Sec. 3; Ord. 3284, Sec. 2*
- Affirmative defense to eviction available for 7 months (if preempted by state law) or 13 months (if not preempted). *Ord. 3275, Sec. 2(A) & 3; C.C.P. § 1179.05(b)*

Deferred Payment Agreements

- If the parties agreed to a deferred payment agreement, the landlord must waive their right to evict. *Ord. 3287, Sec. 2*

- Termination of local emergency has no impact.

State Law Rental Protections

Current Protection

Effect of Terminating Local Emergency

Nonpayment of Rent - Eviction Moratorium & Deferred Payment

- If certain requirements have been met (e.g. tenants provided financial hardship declarations and paid 25% of owed rent beginning September 2020), unpaid rent converts to consumer debt and may not be grounds for eviction. *AB 3088, SB 91, AB 832, AB 2179, C.C.P. § 1179.05(a)(2)(B)-(C) & (c)(5)*
- Tenants must resume regular and ongoing rent payments beginning August 1, 2022; all unpaid rent to be paid by August 31, 2023. *C.C.P. § 1179.05(a)(2)(A)-(B)*
- City's affirmative defense to eviction terminates 7 months after local emergency ends. *Ord. 3275, Sec. 3; C.C.P. § 1179.05(b)*
- Otherwise, same as under current protections.

Alameda County's Eviction Moratorium

- Alameda County's eviction moratorium remains in effect until 60 days after County Public Health Emergency ends.
- Prohibits all evictions with few exceptions.
 - 12 months to repay overdue rent
 - All unpaid rent is consumer debt and not grounds for eviction
- 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.*

Summary of Staff Recommendation

- Adopt a resolution terminating the local emergency in response to the COVID-19 pandemic, consistent with Government Code Section 8630(d).
- Adopt an uncodified ordinance repealing ordinances to effectuate termination of local emergency, including preserving certain administrative authorities allowing for remote work and remote meetings until AB 361 is rescinded (February 28, 2023).
- Introduce ordinance amending sunset provision of Third Party Food Delivery Services 15% fee cap to coincide with State's termination of emergency.