

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

AN URGENCY UNCODIFIED ORDINANCE IMPOSING WITHIN THE CITY OF ALAMEDA A TEMPORARY (60 DAY) MORATORIUM ON (A) EVICTIONS FROM ALL RESIDENTIAL RENTAL UNITS DUE TO THE COVID-19 PANDEMIC AND (B) LANDLORDS' SHUTTING OF UTILITIES IN RENTAL UNITS EXCEPT FOR EMERGENCY SITUATIONS

WHEREAS, Section 3-12 of the City Charter authorizes the City Council, with a 4/5 vote, to adopt, as an urgency measure, an ordinance for the immediate preservation of the public health or safety without following the procedures otherwise required prior to adoption of an ordinance; and

WHEREAS, Government Code Section 36937 allows a city, including a charter city, to adopt an urgency ordinance to take effect immediately upon its adoption for the preservation of the public peace, health or safety upon a finding of facts constituting the urgency thereof; and

WHEREAS, conditions of extreme peril to the health, safety and welfare of persons have arisen in the world, the nation, the State, the County of Alameda and the City of Alameda due to the following:

A novel coronavirus (named COVID-19 by the World Health Organization) was first detected in December 2019. The Center for Disease Control and Prevention (CDC) has stated that COVID-19 is a serious public health threat, based on current information. Cases of COVID-19 have been diagnosed throughout the world, the United States, the State of California, the County of Alameda and the City of Alameda.

The exact modes of transmission of COVID-19, the factors facilitating human to human transmission, the extent of asymptomatic viral shedding, the groups most at risk of serious illness, the attack rate, and the case fatality rate all remain active areas of investigation. The CDC believes, at this time, the symptoms appear two to fourteen days after exposure. Currently, there are no vaccine or specific anti-viral treatment for COVID-19.

Actions are being taken to protect public health and limit the spread of COVID-19 but the whether those actions will be successful is unknown at this time.

Due to COVID-19, the President of the United States has declared a national emergency, the Governor of the State of California has declared a State of Emergency for the State and for all the Counties in the State, and the City Council of the City of Alameda has declared a local emergency; and

WHEREAS, as a result of these various declarations and the threat to public health and safety due to the contagious nature of COVID-19, public and private gatherings of

persons have been prohibited, most schools, kindergartens, day care centers have been closed, many businesses have been shuttered or their hours or means of operation curtailed, and many businesses, especially service related businesses, such as restaurants, have been impacted financially due to a lack of business; and

WHEREAS, because of these impacts, many employers have laid off or will need to lay off employees, working Alameda residents with children may be compelled not to work in order to provide care for their children, and many Alameda 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

WHEREAS, those residents financially impacted due to COVID-19 may not be able to pay rent or be faced with the Hobson's Choice of paying rent and not having sufficient funds for food, medical care or other necessities for themselves and their families; and

WHEREAS, residents unable to pay rent under these circumstances would be faced with the prospect of being evicted from their homes; and

WHEREAS, neither existing State law nor City of Alameda ordinance prohibits this type of just cause evictions during the States of Emergency that have been declared; and

WHEREAS, due to the COVID-19 pandemic in the City of Alameda, the public health, safety and welfare are not adequately protected by the lack of just cause evictions for failure to pay rent, and it is in the interest of the City, of owners and residents of rental units, and of the community as a whole that City adopt an ordinance to protect residents who face eviction due to a substantial loss of income arising out of the COVID-19 pandemic; and

WHEREAS, if a landlord were to shut off a tenant's utility for reasons unrelated to an emergency, such shut off would also cause a tenant to be displaced from the tenant's rental unit at a time when residents are being encouraged to remain in their residences and finding alternative housing would expose tenants unnecessarily to COVID-19; and

WHEREAS, in light of the numerous concerns noted herein, including but not limited to the current and immediate threat to the health, safety, and welfare of the City's residents and the adverse impacts that would result from evictions due to a resident's loss of substantial income, or from a tenant's being displaced due to utilities being shut off for non-emergency purposes, the City Council determines it is in the interest of immediately preserving the public health, safety and general welfare to adopt this urgency ordinance; and

WHEREAS, the City Council finds and determines that, if a temporary moratorium on just cause evictions from residential rental units due to a resident's loss of substantial income arising out of the consequences of the COVID-19 pandemic were not imposed now, the public health, safety and welfare will be immediately threatened

because landlords could initiate action to evict tenants who were unable to pay rent due to a substantial loss of income; and

WHEREAS, the City Council finds and determines that, if a temporary moratorium on landlords' shutting off a tenant's utilities for non-emergency purposes is not imposed now, the public health, safety and welfare will be immediately threatened because tenants will be forced to leave their rental units to find alternative housing, thereby causing them and their households to be unnecessarily exposed to COVID-19; and

WHEREAS, for reasons set forth above, this ordinance is declared by the City Council to be necessary for preserving the public welfare, health, or safety and to avoid a current, immediate and direct threat to the health, safety, or welfare of the community, and the recitals above taken together constitute the City Council's statements of the reasons constituting such necessity and urgency; and

WHEREAS, adoption of this ordinance is exempt from review under the California Environmental Quality Act: Section 15378 (not a project); and Section 15061(b)(3) (no significant environmental impact); and

WHEREAS, by the staff report, testimony, and documentary evidence presented at the March 17, 2020 City Council meeting, the City Council has been provided with additional information upon which the findings and actions set forth in this ordinance are based.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA does ordain as follows:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby incorporates them into this ordinance.

SECTION 2. From the effective date of this urgency ordinance and continuing for a period of sixty (60) days, unless extended, the following is adopted:

SUBSTANTIVE EVICTION DEFENSE FOR UNLAWFUL DETAINERS INSTITUTED FOR NON-PAYMENT OF RENT RESULTING FROM THE COVID 19 PANDEMIC AND PROHIBITING LANDLORDS FROM SHUTTING OFF A TENANT'S UTILITIES EXCEPT FOR EMERGENCY SITUATIONS.

1. For purposes of this Ordinance, the following terms shall have the following meanings:
 - A. Substantial Loss of Income shall mean (1) a reduction of 20% or more of a tenant's monthly gross pay, when that monthly gross pay is compared to the tenant's average gross monthly pay during calendar year 2019; (2) extraordinary out-of-pocket medical expenses; or (3) extraordinary child

care needs arising from school or childcare closures, relating to or resulting from the COVID-19 pandemic, including but not limited to, the need to remain off work due to COVID-19 symptoms of the tenant or a member of the tenant's household or due to the need of the tenant to self-quarantine because of the exposure to COVID-19 and the lack of paid sick leave, a reduction in the number of hours for which the tenant is paid, job loss due closure of the enterprise, business, restaurant, office, store etc. that employed the tenant, or the need to be off work to care for children whose School is closed.

- B. School shall mean any public, private, or parochial institution that provides educational instruction and/or after school programs for students in any or all of the grades from kindergarten through twelfth grade, any State licensed child care center, and/or any State licensed family day care center

2. It shall be a defense in any eviction action instituted under State law if:

- A. The eviction action is instituted for non-payment of rent;
- B. The tenant demonstrates by substantial evidence that the tenant or the tenant's household has suffered a Substantial Loss of Income; or if the tenant is sick with COVID-19 or caring for a household or family member who is sick with COVID-19 and
- C. The notice to quit or pay rent was served on or after March 1, 2020.

3. No landlord shall shut off a tenant's utilities for reasons unrelated to an emergency.

4. The City Manager is authorized to extend the expiration date of this Ordinance so long as the State of California remains in a declared a State of Emergency relating to the COVID-19 pandemic and the Council is unable to timely meet.

SECTION 3: This ordinance is enacted pursuant to the City of Alameda's general police powers, Section 3-12 of the Charter of the City of Alameda, Article XI of the California Constitution, and Government Code Section 36937.

SECTION 4. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

SECTION 5. All evictions based on a Substantial Loss of Income on or after the date of final passage and adoption of this Ordinance shall be subject to this Ordinance.

As an emergency ordinance, this Ordinance becomes effective immediately upon its adoption at a first reading by a four-fifths vote of the City Council.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

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I certify that the foregoing Ordinance was passed and adopted by the City Council of the City of Alameda at a regular meeting thereof held on March 17, 2020 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 18th day of March 2020.

Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

Yibin Shen, City Attorney
City of Alameda