

CITY OF ALAMEDA ORDINANCE NO. \_\_\_\_\_

New Series

AN UNCODIFIED ORDINANCE AMENDING UNCODIFIED  
ORDINANCE NO. 3275 TO EXTEND THE TIME THAT TENANTS  
MUST REPAY "DEFERRED RENT" FROM 210 DAYS TO 395 DAYS  
FOLLOWING THE CITY COUNCIL'S RESCISSION OF THE LOCAL  
EMERGENCY

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 COVID-19 pandemic; and

WHEREAS, in response to this pandemic, and in order to protect public health and safety, the Governor of the State of California declared a State of Emergency; and

WHEREAS, in response to this pandemic, and in order to protect public health and safety, the City Council of the City of Alameda on March 17, 2020, declared a local emergency; and

WHEREAS, on April 7, 2020, and again on June 16, 2020, the City Council extended the local emergency until the State's declaration of emergency is rescinded, or sooner should it be appropriate to lift the declaration of local emergency; and

WHEREAS, due to the COVID-19 pandemic in the City of Alameda, the City Council determined that the public health, safety and welfare were not adequately protected from the possibility of evictions for the failure of a residential or commercial tenant to pay rent, or for evictions following a foreclosure of a mortgage, and it was in the interest of the City, all residential and commercial tenants, all residential and commercial mortgagors, and of the community as a whole, that the City adopt ordinances to protect residential and commercial tenants, and residential and commercial mortgagors, who face eviction due to a substantial loss of income or other adverse economic circumstances, arising out of the COVID-19 pandemic; and

WHEREAS, the Council most recently adopted Ordinance to protect residential and commercial tenants, and residential and commercial mortgagors, who face eviction due to substantial loss of income, or other adverse economic circumstances, arising out

of the COVID-19 pandemic was Ordinance No. 3275, adopted on April 21, 2020; and

WHEREAS, Ordinance No. 3275 provides in part that tenants have under certain circumstances a substantive defense for not paying rent between March 1, 2020 and 30 days after the City Council rescinds the declaration of local emergency, and that any “deferred rent” that accrues between March 1, 2020 and 30 days after the Council rescinds the declaration of local emergency must be paid within 180 days thereafter in order to avoid being evicted for failing to pay rent; and

WHEREAS, at the time Ordinance No. 3275 was adopted, it was uncertain how long the State or local emergency would be in effect and therefore providing tenants with a six-month time frame (commencing 30 days following the rescission of the declaration of local emergency) in which to pay deferred rent was a reasonable period of time in which to do so; and

WHEREAS, the State and local emergency continues, now into its fourth month, and there is no clear indication that either will be rescinded soon; and

WHEREAS, the Council finds the conditions that were expressed in its findings in Ordinance No. 3275 continue to exist and incorporate them herein by reference; and

WHEREAS, if the time period for tenants to pay any deferred rent were limited to 180 days (commencing 30 days following the rescission of the declaration of local emergency), the practical effect of such limitation would be that tenants would need to double their rent payments for six months, exacerbating what is already a financial hardship for many tenants

WHEREAS, in light of the numerous serious concerns set forth herein, including but not limited to the current and immediate threat to the health, safety, and welfare of the City’s residential and commercial tenants, and the adverse impacts that would result from evictions due to a residential or a commercial tenant’s loss of substantial income or other adverse financial circumstances arising out of the COVID-19 pandemic, the City Council determines it is in the interest of preserving the public health, safety and general welfare to adopt this ordinance; and

WHEREAS, the City Council finds and determines that, if a temporary moratorium on 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, the public health, safety and welfare will be threatened because tenants would have no affirmative defense in response to a landlord’s taking action to evict tenants who were unable to pay rent due to a substantial loss of income or other adverse financial circumstances arising out of the COVID-19 pandemic; and

WHEREAS, the City Council finds and determines that, if a temporary moratorium on commercial evictions due to loss of substantial income arising out of the consequences of the COVID-19 pandemic were not imposed, the public health, safety and welfare will be threatened because commercial tenants would have no affirmative defense in response to a landlord’s taking action to evict commercial tenants who

were unable to pay rent due to a substantial loss of income or other adverse financial circumstances arising out of the COVID-19 pandemic, and promoting stability amongst commercial tenancies is critical to protecting public health; 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 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

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 reports, testimony, and documentary evidence presented at the March 17, 2020, April 7, 2020, April 21, 2020, June 16, 2020, and July 21, 2020 City Council meetings, 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 ordinance, Paragraphs 3 and 4 of Section 2 of Ordinance No. 3275 are amended to read as follows:

3. Notwithstanding the time period in subparagraph A of paragraph 2 of this Section 2, the substantive defense set forth in subparagraph A of paragraph 2 of this Section 2 shall be available to residential and commercial tenants, and to residential and commercial mortgagors, between March 1, 2020 and 395 days after the conclusion of the COVID-19 pandemic as evidenced by the City rescinding its declaration of local emergency, as further explained by implementing regulations. This substantive defense shall not be available for the non-payment of rent, to a no fault eviction, or to an eviction proceeding following a foreclosure that occurred before March 1, 2020, nor the non-payment of rent, a no fault eviction, or an eviction proceeding following a foreclosure that accrues 30 days after the City rescinds its declaration of local emergency.

4. Nothing in this Ordinance shall relieve any tenant of liability for unpaid rent, whether such rent accrued before March 1, 2020, during the City's declaration of a local emergency, or 30 days after the City's rescission of the declaration of the local emergency. A landlord shall not, however, charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance and Ordinance No. 3275, as further explained by implementing regulations. If a tenant has not made the full amount of the rent payments between March 1, 2020 and 30 days after the rescission of the declaration of local emergency ("the Deferred Payment"), any rent

the landlord receives following the 30<sup>th</sup> day after the rescission of the declaration of local emergency that the tenant does not designate as a Deferred Payment shall not be allocated to the Deferred Payment.

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. This ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

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Presiding Officer of the City Council

Attest:

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Lara Weisiger, City Clerk

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I certify that the foregoing Ordinance was introduced on July 21, 2020 and passed and adopted by the City Council of the City of Alameda at a regular meeting thereof held on this \_\_\_\_\_ day of \_\_\_\_\_ 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

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

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Lara Weisiger, City Clerk  
City of Alameda

APPROVED AS TO FORM:

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Yibin Shen, City Attorney  
City of Alameda