

# CITY OF OAKLAND



**FROM:** Shola Olatoye

**DATE:** July 31, 2020

**RE: EVICTION MORATORIUM ORDINANCE REGULATIONS**

**WHEREAS**, on March 27, 2020, City Council passed an Emergency Ordinance (Ordinance No. 13589) imposing a moratorium on residential evictions, rent increases, and late fees during the local emergency, prohibiting certain commercial and residential evictions based on nonpayment of rent that became due during the local emergency, and prohibiting residential evictions for nonpayment of rent where the landlord impeded the payment of rent (“Ordinance”); and

**WHEREAS**, on May 19, 2020, the City Council amended the ordinance to extend the effective period of those provisions that have a termination date (Ordinance No. 13594); and

**WHEREAS**, Oakland is a Charter City and to the extent that the Ordinance conflicts with the Urgency Ordinance enacted by County of Alameda on March 24, 2020 (Alameda County Ordinance No. 2020-14) or any subsequent amendment to said ordinance, the Oakland Ordinance shall apply; and

**WHEREAS**, Section 18 of the Ordinance authorizes the City Administrator to issue regulations, guidance, and forms as needed to implement the Ordinance, including but not limited to guidelines for repayment of back rent; and

**WHEREAS**, the City Administrator, pursuant to their authority under the City Charter, has delegated their authority to issue regulations, guidance, and forms to the Department of Housing and Community Development;

**Now, Therefore**, the following regulations are issued by the Director of Housing and Community Development, and are effective immediately and shall remain in effect until rescinded or amended:

## **REGULATIONS APPLICABLE TO THE EMERGENCY EVICTION MORATORIUM ORDINANCE**

### **SECTION 3. Residential Eviction Moratorium.**

A. Imminent Threat to Health and Safety. Diagnosis of or exposure to COVID-19 or any other medical condition or illness shall not constitute an “imminent threat to the health or safety of other occupants” for purposes of this section.

B. Violation of Moratorium. A Landlord or anyone acting on a Landlord’s behalf who knowingly and in bad faith violates this section by evicting or attempting to evict covered Tenants while the moratorium is in effect shall be subject to liability under the Oakland Tenant Protection Ordinance in addition to other civil remedies available at law.

C. Expiration of Moratorium. After the expiration of the moratorium, the defense provided by this section shall remain in effect as to any notice that was served prior to the expiration of this section.

### **SECTION 4. Rent Increase Moratorium.**

A. Unlawful Rent Increases. Failure to pay an unlawful rent increase shall not constitute grounds for eviction.

### **SECTION 7. No Residential Evictions for Nonpayment of Rent that Became Due During the Local Emergency.**

#### **A. Repayment Guidelines**

1. Within twelve (12) months of the expiration of the Local Emergency, any rent that became due during the Local Emergency that was unpaid for reasons related to the COVID-19 pandemic, as set forth in the Ordinance (hereinafter “Delayed Rent”) shall be due and payable.
2. A Landlord may not charge or collect late fees or interest on Delayed Rent.
3. After the expiration of the Local Emergency, a Landlord may not credit rent payments against Delayed Rent, and instead must treat Delayed Rent as a separate obligation wholly distinct from the ongoing obligation to pay rent as it comes due.
4. The right of a Landlord to recover Delayed Rent is limited to monetary damages in the amount of the Delayed Rent, plus any court costs incurred.
5. A Landlord shall not have the right to recover possession of a rental unit for failure to pay Delayed Rent.
6. Landlords and Tenants are encouraged to enter into repayment agreements for Delayed Rent.

#### **B. Negotiation Requirements**

1. Prior to commencing repayment negotiations for Delayed Rent, a Landlord shall provide each Tenant in that rental unit with a written disclosure on a form prescribed by the City, which shall include, but is not limited to, the following:

- a. A statement that the Tenant has a right to refuse to enter into a repayment agreement or engage in repayment negotiations;
  - b. A statement that the Landlord may not retaliate against the Tenant for refusing to enter into a repayment agreement or engage in negotiations;
  - c. A statement that Tenants are not required to apply for or otherwise specially qualify for a repayment plan;
  - d. A statement that the Tenant may choose to consult with an attorney before entering into a repayment agreement or engaging in repayment negotiations;
  - e. A statement that the Tenant may rescind the repayment agreement for up to thirty (30) days after it is fully executed by all parties;
  - f. A statement that the Tenant may find information regarding tenants' rights and tenants' assistance organizations at the City's Rent Adjustment Program office or on the Rent Adjustment Program website, as well as information regarding the City's other relevant online resources;
  - g. A statement that third party mediation services are available at no cost through the Rent Adjustment Program; and
  - h. Contact information for legal services agencies and other tenants' assistance organizations, as provided by the Rent Adjustment Program.
2. If the Landlord fails to provide the above-described disclosure form, the Tenant retains the option to rescind their agreement at any time. Prior to the publication of the City-prescribed form, a Landlord may comply with disclosure requirements by providing the same information on a separate form prepared by the Landlord.

### C. Delayed Rent Repayment Agreements

1. A Delayed Rent repayment agreement may waive portions of what the Tenant owes, and may grant the Tenant additional time to pay beyond the minimum requirements in paragraph A.1 of Section 7 of these regulations.
2. By entering into a Delayed Rent repayment agreement, Tenants do not waive any rights under this Ordinance. Breach of a repayment agreement shall not constitute good cause for eviction if the Tenant would otherwise qualify for the defense provided by this Section.
3. Payment agreements entered into pursuant to this Section may not be conditioned on changes to the lease terms or the removal of housing services.
4. The Tenant must be provided with a copy of the repayment agreement within forty-eight (48) hours after it has been fully executed.
5. The Tenant shall have the right to rescind a repayment agreement for up to thirty (30) days after the Tenant has been provided with a fully executed copy. To rescind the agreement, the Tenant must notify the Landlord. If the Tenant was not timely provided with the required pre-negotiation disclosure form or entered into the agreement based on the Landlord's material misrepresentation with regard to the underlying moratorium, the Tenant retains the right to rescind the agreement at any time.

D. Mediation Encouraged. Landlords and Tenants who are unable to reach an agreement with respect to unpaid rent are encouraged to mediate disputes at no cost through the Oakland Rent Adjustment Program or a private mediation service. Parties interested in mediation may contact the Rent Adjustment Program at (510) 238-3721 or fill out a mediation request form online. Parties may also request information regarding private mediation services from the Rent Adjustment Program.

E. Acceptance of Partial Payments of Rent. Acceptance of a partial payment of rent shall not be a waiver of any default by a Tenant. A Landlord may accept partial payments of rent without prejudice to the Landlord's right to recover the balance of all rent due.

F. A knowing and intentional misrepresentation by a Landlord to a Tenant regarding their rights or the requirements of the Eviction Moratorium Ordinance may constitute a violation of the Tenant Protection Ordinance.

Date: 7/31/2020



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Shola Olatoye  
Director  
Housing and Community Development

Approved as to Form and Legality



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Office of the City Attorney