



Office of the Mayor

REVISED AGENDA MATERIAL

Meeting Date: June 13, 2023

Item Number: A

Item Description: Amendments to the COVID-19 Emergency Response Ordinance

Submitted by: Mayor Jesse Arreguin

In consultation with the City Attorney's Office, this revised material contains two additional amendments/clarifications. First, it provides clarity on when a tenant needs to provide documentation for a Covered Reason for Delayed Payment of rent to either 45 days after the landlord makes the request or the fifth day before the date set for trial of any Unlawful Detainer action. Second, it clarifies that a landlord can seek unpaid rent accrued during the Transition Period that is established as a Covered Reason for Delayed Payment, but does not qualify as a reason for eviction.



Office of the Mayor

ACTION CALENDAR
June 13~~6~~, 2023

To: Honorable Members of the City Council
From: Mayor Jesse Arreguín, Councilmembers Kate Harrison, Sophie Hahn, and Rigel Robinson
Subject: Amendments to the COVID-19 Emergency Response Ordinance

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Chapter 13.110, the COVID-19 Emergency Response Ordinance to adjust the required timeline to provide documentation proving that non-payment of rent was for a Covered Reason for Delayed Payment if an Unlawful Detainer is served.

BACKGROUND

The City of Berkeley first declared a local emergency on March 3, 2020 in response to the COVID-19 pandemic. Shortly thereafter, Council passed BMC Chapter 13.110 - the COVID-19 Emergency Response Ordinance (“Chapter 13.110”) - prohibiting most evictions in Berkeley, which has been subsequently updated over the past couple of years. Pursuant to Government Code section 8630(b) and Berkeley Municipal Code section 2.88.040.A.1, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69,312-N.S. That proclamation ~~is set to expire~~expired on May 20, 2023.

Before May 1, 2023, the only residential evictions that could take place in the City of Berkeley were to stop an imminent threat to the health and safety of other occupants. On February 27, 2023, the City Council adopted changes to Chapter 13.110 to create a Transition Period for the Eviction Moratorium. During this Transition Period, which lasts from May 1, 2023 through August 31, 2023, two additional types of evictions are allowed: Owner move-in evictions where the owner only owns one rental property in the City of Berkeley; and evictions for non-payment of rent where the tenant has not provided documentation establishing a Covered Reason for Delayed Payment. Starting on September 1, 2023, the Eviction Moratorium will be fully lifted and all just cause evictions will be allowed.

With eviction moratoriums in most jurisdictions recently lifted in Alameda County (Berkeley, Oakland, and San Leandro currently remain), May 2023 saw a surge in evictions. Between May 1 and May 19, 2023, 243 eviction lawsuits were filed in Alameda County. In all of May 2019, 299 eviction lawsuits were filed. It was 0 in 2020, 51 in 2021, and 50 in 2022.

As currently written, BMC 13.110.020.C(3) and BMC 13.110.040.C states that a tenant must provide documentation showing that they have a Covered Reason for Delayed Payment prior to the expiration of the notice to terminate tenancy. This refers to a three-day notice, meaning that the documentation must be submitted within that timeframe. In many cases, three days does not provide enough time to compile and produce such documentation, especially in low-income households who may work multiple jobs to make ends meet. This issue was brought up at the May 2, 2023 meeting of the 4x4 Joint Committee of the City Council and Rent Board. To resolve this, references to timelines for responses are removed. Additionally, BMC 13.110.040.C is updated to encourage tenants to provide such documentation in advance. Doing so would prevent an Unlawful Detainer from being served in the first place, preventing undue stress on all parties involved. This language was modeled after the ordinance recently adopted in the City of Oakland. BMC 13.110.050.B is updated to make it clear that evictions cannot take place anytime as a result of unpaid rent that accrues during the Transition Period if there is for a Covered Reason for Delayed Payment.

Other minor amendments to Chapter 13.110 include updating the Findings and Purposes based on recent developments since Chapter 13.110 was last amended.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

FISCAL IMPACTS OF RECOMMENDATION

None.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

ORDINANCE AMENDING CHAPTER 13.110 OF THE BERKELEY MUNICIPAL CODE,
THE COVID-19 EMERGENCY RESPONSE ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 13.110 is amended to read as follows:

**Chapter 13.110
COVID-19 EMERGENCY RESPONSE ORDINANCE**

Sections:

- 13.110.010 Findings and Purpose**
- 13.110.020 Prohibited Conduct**
- 13.110.030 Definitions**
- 13.110.040 Collection of Back Rent and Late Fees**
- 13.110.050 Application**
- 13.110.060 Implementing Regulations**
- 13.110.070 Waiver**
- 13.110.080 Remedies**
- 13.110.090 Severability**
- 13.110.100 Liberal Construction**

13.110.010 Findings and Purposes

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the Local Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, July 26, 2022, September 20, 2022, November 3, 2022, December 13, 2022, ~~and~~ January 31, 2023, and March 21, 2023 the council ratified an extension of the local emergency. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel. On March 31, 2020 this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing material income loss as a result of business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow.

On April 21, 2020, Alameda County enacted an urgency ordinance prohibiting eviction for any reason other than withdrawal of rental property under the Ellis Act or court-ordered eviction for public safety. Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is desirable to ensure that Berkeley residents have at least the same level of protection as the residents of unincorporated Alameda County.

During this State of Emergency and during the transition period thereafter, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness. It is the intent of this Ordinance to fully implement the suspension of the statutory bases for eviction for nonpayment of rent and for default in the payment of a mortgage as authorized by Executive Order N-28-20.

While COVID-19 remains prevalent in the community, the City has made significant progress in addressing the impacts of COVID-19, including a reduction in the rates of hospitalization and death, as well as a citywide vaccination rate of at least ninety-four percent (94%).

Governor Gavin Newsom has ~~also announced that~~ended the statewide COVID-19 State of Emergency ~~will end~~ on February 28, 2023. President Joe Biden has ~~announced that~~ended the nationwide COVID-19 State of Emergency ~~will end~~ on May 11, 2023.

Based on the current conditions in the City of Berkeley related to COVID-19, and to stay consistent with state actions, the City Manager has recommended that the City Council terminate the local emergency.

The effect of this chapter suspending the statutory basis for eviction due to nonpayment of rent remains in effect throughout the Covered Period, which concludes on the expiration of the local emergency. BMC Section 13.110.030.A allows the City Council to extend the duration of the Covered Period by resolution.

This ordinance makes further amendments to Chapter 13.110 to permit lawful owner-move in evictions pursuant to BMC Section 13.76.130.A.9 and to establish a Transition Period until August 31, 2023, during which time specified evictions would be allowed to take place.

13.110.020 Prohibited Conduct

A. During the Covered Period, no Landlord or Lender shall evict or attempt to evict a Resident of residential real property, or otherwise require a residential Tenant to vacate, unless necessary to stop an imminent threat to the health and safety of other occupants. For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served, during the Covered Period, except that a Landlord may serve a lawful notice pursuant to Section 13.76.130.A.9. after March 1, 2023, and such notice may form the basis of an unlawful detainer complaint beginning May 1, 2023.

C. During the Transition Period, no Landlord or Lender shall evict or attempt to evict a Resident of residential real property, or otherwise require a residential Tenant to vacate unless at least one of the following conditions is met:

1. Recovery of possession of real property is necessary to stop an imminent threat to the health and safety of other occupants; or

2. Owner Move-in Eviction. The Landlord seeks to recover possession of a residential unit for their own use and occupancy as their principal residence and the Landlord fully complies with all "Owner Move-in Eviction" requirements set forth in Berkeley Municipal Code section 13.76.130.A.9. However, a Landlord may not recover possession of any residential unit in this manner unless the Landlord owns only one residential property in the City of Berkeley. Notice for this exclusive reason may be served beginning March 1, 2023 and may be the basis for an unlawful detainer complaint beginning May 1, 2023.; or

3. The Landlord or Lender seeks to recover possession of real property following the tenant's default in payment of rent that came due after the expiration of the Covered Period and for which tenant did not provide to the Landlord or Lender documentation establishing a Covered Reason for Delayed Payment as set forth in Berkeley Municipal Code section 13.110.040.C. Any notice to terminate tenancy served pursuant to this

section must inform the tenant of their rights to submit documentation establishing a Covered Reason for Delayed Payment as set forth in Berkeley Municipal Code section 13.110.040.C. ~~Notwithstanding any other notice requirements identified in Berkeley Municipal Code section 13.110.040.C, a~~ A tenant who asserts a Covered Reason for Delayed Payment during the Transition Period shall provide landlord all required documentation ~~prior to the expiration of the notice to terminate tenancy as set forth in Berkeley Municipal Code section 13.110.040.C.~~

D. For the duration of the Covered Period, if a residential tenant has a Covered Reason for Delayed Payment, the tenant may terminate a lease or rental agreement with 30 day notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic.

13.110.030 Definitions

A. "Covered Period" means the period of time beginning with March 17, 2020 and concluding at the end of April 30, 2023.

B. "Transition Period" means the period of time beginning with May 1, 2023 and ending on August 31, 2023.

C. "Covered Reason for Delayed Payment" means:

(1) The basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupant(s)'s income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or a reduction in the number of tenants living in the unit (including due to difficulty finding new tenants and/or subtenants willing and able to cover a sufficient share of rent) which reduces the ability of the remaining tenants to pay rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and

(2) The decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

D. "Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.

E. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. "Homeowner" is limited to owners who reside in the unit and includes the individuals residing in the unit with the homeowner.

F. "Landlord" includes owners, lessors, or sublessors of either residential rental property, and the agent, representative, or successor of any of the foregoing.

G. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.

H. "Resident" means a Tenant, Homeowner, or their household.

I. "Tenant" includes a tenant, subtenant, lessee, sublessee, lodger or any other person entitled by written or oral rental agreement to use or occupancy of residential property. "Tenant" includes a former trustor or homeowner who has lost title the real property in which they reside after a Trustee's sale.

13.110.040 Collection of Back Rent and Late Fees

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek after expiration of the Covered Period, or after the Transition Period if the tenant establishes a Covered Reason for Delayed Payment. ~~Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.~~

B.

1. For rent accrued through January 31, 2021, Tenants shall have until March 31, 2022, or the date adopted by state law, as applicable, to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

2. For rent accrued beginning February 1, 2021, Tenants shall have until July 31, 2023, to pay rent that was delayed by a Covered Reason for Delayed Payment, or the period of time adopted by state law, as applicable, unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

3. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment.

C. ~~It is recommended, but~~ ~~A Tenant~~ is not required ~~for a Tenant~~ to provide documentation to the Landlord in advance to qualify for the delayed repayment of rent. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord on or before the earlier of (1) within forty-five (45) days after the request was made or (2) the fifth day before the date set for trial of any Unlawful Detainer action for possession of the subject rental unit ~~prior to the expiration of a lawfully drafted and served notice of~~

~~termination of tenancy, whichever is sooner.~~ This provision shall not be construed to waive any obligation to respond to lawful discovery requests or to waive any right to seek additional time permitted by the California Code of Civil Procedure. A declaration sworn under penalty of perjury shall constitute documentation for the purpose of this requirement.

D. Any medical or financial information provided to the landlord shall be held in confidence, and shall not be disclosed to other entities unless such disclosure is permitted or required by the law, or unless the tenant explicitly authorizes the disclosure of the information in writing.

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement.

13.110.050 Application

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served, filed, or which expire during the Covered Period and Transition Period. It does not apply to commercial leases where the term has expired and the City has issued a permit for the demolition or substantial alteration of the commercial unit, or to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

B. Except where expressly required by state law (such as Assembly Bill 3088 or any subsequent statewide COVID-19 relief legislation), a landlord may seek rent accrued during both the Covered Period and the Transition Period as set forth in Section 13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) et seq. or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued either (1) during the Covered Period or ~~that accrued (2)~~ during the Transition Period where the tenant establishes a Covered Reason for Delayed Payment. In any action to evict based on alleged nonpayment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time during the Covered Period, or if the rent in dispute accrued during the Transition Period ~~where~~ and the tenant establishes a Covered Reason for Delayed Payment, or if the action otherwise demands any fees or amounts contrary to the provisions of this Chapter. A landlord shall not apply any rent payment towards rent that is delayed by a Covered Reason for Delayed Payment before applying it towards any other Rent owed without the explicit written permission of the Tenant.

C. A Landlord or Lender shall not retaliate against a Resident for exercising their rights under this Ordinance, including but not limited to shutting off any utilities reducing services or amenities, refusing to make or delaying repairs to which the Resident would otherwise be entitled, or taking actions which hurt the Resident's credit rating based on (1) nonpayment of rent during the Covered Period; or (2) nonpayment of rent during the

Transition Period where the tenant establishes a Covered Reason for Delayed Payment as allowed under this ordinance.

D. In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section 13.76.130(A)(1), it shall be a complete defense that the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party.

13.110.060 Implementing Regulations

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring Landlords and Lenders to give a notice to Residents informing them of this Chapter and the right to seek the benefits of this Chapter.

13.110.070 Waiver-

A. By entering into a Delayed Rent Payment Agreement, Tenants do not waive any rights under this Chapter.

B. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy.

13.110.080 Remedies

A. In the event of a violation of this Ordinance, any person or entity aggrieved by the violation may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate.

1. An award of actual damages may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court outside of the presence, and without the knowledge of, the jury, if any, if a defendant acted in knowing violation of, or in reckless disregard for, the provisions of this Chapter.

2. A defendant shall be liable for additional civil penalties of up to five thousand dollars for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926, et seq., or aged sixty-five or over.

3. In addition to the above awards of damages in a civil action under this Chapter, a prevailing plaintiff shall be entitled to an award of reasonable attorney's fees. A prevailing defendant in a civil action under this Chapter shall only be entitled to an award of attorney's fees if it is determined by the Court the action was wholly without merit or frivolous.

4. In addition, this Chapter grants a complete defense to eviction in the event that an eviction notice or unlawful detainer action is commenced, filed, or served in violation of this Chapter.

B. The protections provided by this ordinance shall be available to all Residents, regardless of any agreement wherein a Resident waives or purports to waive their rights under this Ordinance, with any such agreement deemed void as contrary to public policy.

C. A. Violations of Section 13.110.020(C) - (Commercial rent restrictions).

1. Violations of Section 13.110.020(C) may be enforced by an administrative fine of up to \$1,000 pursuant to Chapter 1.28. Each day a commercial property landlord demands rent in excess of the amount permitted pursuant to Section 13.110.020(C) is a separate violation. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.

2. The City Attorney may refer those violators of Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to Business and Professions Code section 17200, et seq.

D. Nonexclusive Remedies and Penalties. The remedies provided in this subdivision are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

13.110.090 Severability-

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

13.110.100 Liberal Construction

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

