



# ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

Agenda Item \_\_\_\_\_ April 21, 2020

Chris Bazar  
Agency Director

April 16, 2020

224 West Winton Ave  
Room 110  
Hayward, California  
94544-1215

Honorable Board of Supervisors  
Administration Building  
1221 Oak Street, Suite 536  
Oakland, California 94612

phone  
510.670.5333  
fax  
510.670.6374

Dear Board Members:

**SUBJECT: APPROVE A TEMPORARY MORATORIUM ON  
COMMERCIAL EVICTIONS IN UNINCORPORATED  
ALAMEDA COUNTY DUE TO BUSINESS INCOME LOSSES  
RESULTING FROM COVID-19**

[www.acgov.org/cda](http://www.acgov.org/cda)

## **RECOMMENDATIONS**

Adopt an urgency ordinance enacting a temporary moratorium on commercial evictions in the unincorporated area of the County of Alameda due to business income losses resulting from COVID-19.

## **SUMMARY/DISCUSSION:**

On March 10, 2020, the County declared a public health emergency as a result of the novel coronavirus that emerged in 2019 (COVID-19). On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic.

On March 12, 2020 the County Public Health Department recommended that all non-essential gatherings of more than 250 people should be canceled, or postponed, and smaller gatherings should be canceled or postponed if held in spaces that do not allow social distancing of six feet per person.

On March 16, 2020, the County of Alameda joined Contra Costa, Marin, San Francisco, San Mateo, Santa Clara counties with the City of Berkeley on a legal order directing their respective residents to shelter at home for three weeks beginning March 17 (“Shelter-in-Place Order”). The Shelter-in-Place Order also requires all businesses, except essential businesses as described in the Order, to cease all activities at facilities located within the County except for minimum basic operations. It also prohibits all public and private gatherings of any number of people except for limited purposes, as well as for all non-essential travel. These restrictions are reducing economic activity and, as a result, severely reducing household and most business incomes during this time.

Businesses throughout the unincorporated area, including Castro Valley, San Lorenzo, Cherryland, Ashland, Fairview, and East County, are already suffering enormous losses in revenue caused by the need for the Shelter-in Place order.

These losses will continue to mount. Despite the fact that “essential businesses” such as grocery stores and pharmacies remain open, and restaurants are allowed to serve take-out customers, non-essential businesses are experiencing a near collapse in sales and have been forced to lay off workers or severely reduce their hours. Even essential businesses are reporting difficulties securing supplies needed to operate, from a bakery reporting flour shortages to a cleaning service unable to find disinfectants. Although most businesses have lost their sources of income, their fixed costs remain; rent is still due, businesses that own their properties still owe mortgages payments, and business-related taxes still need to be paid.

Commercial tenants face the same challenges as residents to pay rent or make mortgage payments, yet they are not fully protected from evictions. This emergency ordinance is designed to protect commercial tenants from that threat while still allowing landlords and tenants to voluntarily negotiate payment agreements. Nothing in this ordinance would relieve tenants from the obligation to pay past due rent, but by protecting commercial tenants from evictions, this ordinance will serve the public peace, health, safety, and public welfare.

Key provisions of the moratorium are:

1. Expiration Date: The moratorium would expire 90 days from the date the Board adopts the ordinance or when the emergency declaration is lifted, whichever is sooner.
2. Noticing Requirements: Tenants would be required to notify landlords of inability to pay rent within 15 days after the rent is due. Tenants must also provide documentation to their landlords that support claims of inability to pay due to the COVID-19 pandemic. Examples of documentation include, without limitation: a statement signed under penalty of perjury that the inability to pay is due to a Covered Reason for Delayed Payment as defined herein; documents showing reduced business income; and correspondence by a business owner citing COVID-19 as a basis for reduced business hours or business closure. Any financial information provided to the landlord shall be held in confidence, and only used for evaluating a tenant’s claim.
3. Repayment Period: Tenants would have a minimum of 90 days from the date the moratorium expires to pay rent that has not been paid. It also specifies that landlords cannot charge late fees or assess other penalties for unpaid rent.

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Finally, this ordinance provides that no landlord or lender may evict a commercial tenant in the unincorporated area of the County, require a commercial tenant to vacate their premises, or retaliate against a commercial tenant for nonpayment of their rent. Violation of this ordinance is an absolute defense to any unlawful detainer action or other proceeding to recover possession of the residence. Violation of this ordinance is considered a misdemeanor. Landlords or lenders that fail to comply are subject to a fine of \$1000 per violation and may be subject to civil proceedings.

The key features of this proposed moratorium reflect feedback received by staff from unincorporated landlords, tenants, real estate professionals, and the Castro Valley / Eden Area Chamber of Commerce.

If approved by your Board, this ordinance takes immediate effect and would cease to be in effect ninety (90) days from its date of adoption or the lifting of the emergency declaration, whichever is sooner; or by an action of the Board to extend the moratorium

**FINANCING:**

There will be no change to net county cost.

**VISION 2026 GOAL:**

A commercial eviction moratorium for the unincorporated areas of the County meets the 10X goal pathway of **Employment for All** in support of our shared vision of a **Prosperous and Vibrant Community**.

Very truly yours,

DocuSigned by:



002C10B338294FA  
Chris Bazar, Director

Community Development Agency

cc: Each member, Board of Supervisors  
Susan S. Muranishi, County Administrator  
Melissa Wilk, Auditor-Controller  
Donna R. Ziegler, County Counsel  
Heather Littlejohn, Office of the County Counsel  
Jennifer Schulz, County Administrator's Office  
Sandra Rivera, Community Development Agency

**ORDINANCE NO. O-2020- 22**

**AN URGENCY ORDINANCE ESTABLISHING A TEMPORARY MORATORIUM ON COMMERCIAL EVICTIONS RESULTING FROM LOSS OF BUSINESS INCOME DUE TO COVID-19 IN THE UNINCORPORATED AREA OF THE COUNTY OF ALAMEDA**

**SECTION I**

In enacting this ordinance, the Board of Supervisors of the County of Alameda, State of California makes the following findings:

1. On March 4, 2020, the Governor of the State of California issued a Proclamation of a State of Emergency in the State of California related to the novel coronavirus that emerged in 2019 ("COVID-19"); and
2. On March 10, 2020, the County of Alameda ("County") ratified the County Health Officer's declaration of a local health emergency ("Emergency Declaration") as a result of COVID-19; and
3. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic; and
4. As of March 15, 2020, all eighteen (18) school districts within the County have suspended in-class instruction or closed all schools and as a result, parents and guardians are missing work to care for these children; and
5. On March 16, 2020, the Alameda County Sheriff's Office announced it would temporarily suspend evictions due to the COVID-19 health emergency; and
6. On March 16, 2020, the County of Alameda joined Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara counties and the City of Berkeley on an order directing their respective residents to shelter at home for three weeks beginning March 17 ("Shelter-in-Place Order"). The Shelter-in-Place Order also requires all businesses except essential businesses as described in the order to cease all activities at facilities located within the County except minimum basic operations and prohibits all public and private gatherings of any number of people except for limited purposes as well as all non-essential travel. These restrictions will reduce economic activity and as a result, household incomes during this time; and
7. Because of these impacts, many employers have laid off or will need to lay off employees, working County residents with children may be compelled not to work in order to provide care for their child(ren), and many County 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

8. Those businesses financially impacted due to COVID-19 may not be able to make timely rent payments or be forced to choose between making rent payments and having sufficient funds for food, medical care or other necessities for business operators and their families; and
9. On March 14, 2020, the Alameda County Superior Court declared that all unlawful detainer mandatory settlement conferences for jury trials and jury trials currently set between Monday, March 16, and Friday, April 3, 2020 will be continued on a rolling basis for 3 weeks from the currently scheduled trial date, and, on March 16, ordered the stay of all evictions pending between Tuesday, March 17, 2020, up to and through Wednesday, April 8, 2020, the anticipated reopening of the Court, among other significant reductions in court operations; and
10. As of April 14, 2020, there were 962 confirmed cases of COVID-19 and 36 deaths in the County, and the number of documented cases is likely to increase as more effective, accessible, and proactive testing methods are introduced and community spread continues; and
11. As the response to the public health emergency has escalated, many County residents have been economically impacted from COVID-19, including, but not limited to lost business through the hospitality, retail, entertainment, and gig economies. Both large and smaller events across the Bay Area are being cancelled or postponed due to the Shelter-in-Place Order and recommendations at all levels of government to cancel large gatherings amid concerns over spread of the COVID-19. These cancellations and postponements cause loss in revenue for the event, as well as surrounding local businesses that rely on such events to bring in patrons to their businesses; and
12. After the World Health Organization officially declared the spread of COVID-19 a pandemic on March 11, 2020, stocks entered a bear market and fell more than 20%, and in the week ending March 14, 2020, workers filed 281,000 unemployment claims, an increase of 70,000 from the previous week; and
13. Pursuant to Executive Order N-28-20 issued by the Governor of the State of California on March 16, 2020, any provision of state law that would preempt or otherwise restrict a local government's exercise of its police power to impose substantive limitations on residential or commercial evictions due to specified financial burdens caused by COVID-19 are suspended; and
14. On March 19, 2020, the Governor issued Executive Order N-33-20 directing all residents in the State of California to stay at home except for essential activities during the COVID-19 emergency; and
15. On April 6, 2020, the Judicial Council of California issued emergency rules suspending court proceedings for unlawful detainer and judicial foreclosures until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted; and

16. The loss of income caused by the effects of COVID-19 and the public health orders have, and will, impact commercial tenants' ability to pay rent when due, leaving them vulnerable to eviction; and
17. Promoting stability amongst commercial tenancies is also conducive to public health in that it allows commercial establishments to decide whether and how to remain open based on public health concerns rather than economic pressures; and
18. As a result of the Emergency Declaration and the prohibitions on large gatherings resulting from the County and statewide shelter-in-place orders, there have been abrupt and severe negative impacts on the local economy and abrupt and severe negative financial impacts to local businesses, including, but not limited to, reductions in income due to lower customer demand, forced closures, reductions in available workforce, and increased expenses; and
19. These abrupt and severe negative impacts have directly affected, and will continue to affect, many businesses' ability to make rent payments; and
20. These abrupt and severe negative impacts, left unaddressed, will irreparably harm many local businesses, the communities that they serve, and the residents they employ, and will jeopardize the public peace, health, safety, comfort, convenience, prosperity, and welfare; and
21. A number of local businesses that provide essential items (such as, for example, food and medical supplies) and services to County residents are deemed "essential businesses" under the County and statewide shelter-in-place orders, and it is in the public interest to have them continue to operate during the local emergency and after the restrictions in the shelter-in-place orders are lifted; and
22. To the extent that local businesses are not currently operating due to the County and statewide shelter-in-place orders, it is in the public interest to have them resume operations as soon as the orders are lifted because the ongoing existence of such businesses are essential to the protection of the public peace and the health, safety, life, property, and general welfare of County residents; and
23. It is in the public interest to take immediate steps to mitigate the economic impacts of COVID-19 by ensuring that local businesses, including small businesses, which are essential to the health and vibrancy of our local communities, survive this current pandemic; and
24. Providing commercial tenants with short-term protection from eviction due to the inability to pay rent will help avoid further business closures and job losses; and
25. Eviction of commercial tenants disrupts the social ties and networks that are integral to the community's welfare and the stability of communities within the unincorporated area of the County; and

26. Eviction of commercial tenants creates undue hardship for business owners through additional relocation costs, stress and anxiety, and the threat of losing housing due to lack of business income; and
27. During this state of emergency, the public interest in preserving peace, health, and safety and preventing further transmission of COVID-19, would be served by avoiding unnecessary business displacement; and
28. A temporary moratorium on commercial evictions is necessary to protect public health and safety, where inability to pay is due to a substantial decrease in business income (including but not limited to, a substantial decrease in business income caused by a reduction in opening hours or consumer demand), or by any local, state, or federal government response to the COVID-19 pandemic; and
29. The County, pursuant to its police powers, has broad authority to maintain the public peace, health, safety and welfare for its residents; and
30. Pursuant to Government Code section 8634, during a local emergency, the Board of Supervisors may promulgate orders and regulations necessary to provide for the protection of life and property; and
31. COVID-19 continues to spread rapidly throughout the community without regard to jurisdictional boundaries; and
32. This ordinance is intended to promote stability within the commercial real estate rental market in the unincorporated areas of the County during the COVID-19 pandemic outbreak and to prevent avoidable homelessness, thereby immediately preserving the public peace, health, and safety by reducing the public's exposure to the transmission of COVID-19; and
33. This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) (because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment) and pursuant to Section 15378, which defines a "project" under CEQA (the ordinance is not a "project" because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment).

## **SECTION II**

NOW, THEREFORE, the Board of Supervisors of the County of Alameda ordains as follows:

The uncodified Alameda County Ordinance Code is hereby amended to add the following urgency ordinance:

**TEMPORARY MORATORIUM ON COMMERCIAL EVICTIONS  
RESULTING FROM LOSS OF BUSINESS INCOME DUE TO COVID-19  
IN THE UNINCORPORATED AREA OF THE COUNTY OF ALAMEDA**

**1. Purpose, Intent and Scope.**

This ordinance is enacted for the immediate preservation of the public peace, health, and safety. The purposes of this ordinance are to promote economic stability during the COVID-19 pandemic and to prevent avoidable disruption of business viability, and to maintain stability while seeking state and federal emergency assistance resources.

This ordinance is necessary for the immediate preservation of the public peace, health, and safety because the COVID-19 pandemic has the potential for destabilizing the commercial real estate rental market for the reasons described in the findings made by the Board of Supervisors in enacting this ordinance. This ordinance is intended to enable businesses to avoid displacement during the COVID-19 pandemic. This ordinance is also intended to enable tenants to be temporarily protected from eviction for non-payment of rent. This ordinance is intended to reduce the risk that these events will lead to anxiety, stress and potential homelessness for the affected business operators and their communities thereby serving the public peace, health, safety, and public welfare. The temporary moratorium on evictions provided by this ordinance is created pursuant to the County's emergency authority pursuant to Government Code section 8634 and its general police powers to protect the health, safety, and welfare of its residents, in addition to any rights and obligations under state and federal law.

The regulations in this ordinance shall apply within the unincorporated area of the County of Alameda.

**2. Definitions.**

- A. "Affected Business" shall mean a Tenant that has experienced a Qualifying Loss.
- B. "Commercial Space" means a structure or portion thereof that is used for commercial, industrial, office or similar uses, by one or more persons who maintain a business or similar operation, and which person pays rent to a Landlord for the use and/or occupancy of the structure or space.
- C. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and/or occupancy of any Commercial Space by a Tenant and the agent, representative, or successor of any of the foregoing.
- D. "Local Health Emergency" means the state of emergency declared by the County of Alameda or its authorized officers related to COVID-19 including but not limited to declarations by the Public Health Officer or the Board of Supervisors.



- E. "Notice of Termination" means the notice informing a Tenant of the termination of their right to occupy the Commercial Space in accordance with applicable California law, including but not limited to a 3- or 30-day notice to pay or quit.
- F. "Person" means an individual, firm, association, partnership, joint venture, corporation or any entity, public or private in nature.
- G. "Qualifying Loss" means substantial loss in business income, resulting in a substantial hardship or inability to pay rent when due, as a result of the COVID-19 pandemic, including but not limited to any COVID-19 related declaration of the County Public Health Officer, or other local, state or federal authority.
- H. "Tenant" means a tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupancy of a Commercial Space.

**3. Moratorium on Commercial Evictions Based on Nonpayment Caused by COVID-19.**

- A. Beginning on the effective date of this ordinance and continuing until May 31, 2020, the County hereby places a moratorium on evictions from Commercial Space in the unincorporated areas of the County resulting from a substantial loss of business income, which is caused by COVID-19. No Landlord may evict an Affected Business, or otherwise require an Affected Business to vacate a Commercial Space, or retaliate against an Affected Business for nonpayment of rent or for nonpayment of late fees, fines or interest based on nonpayment, during this time period.
- B. Notwithstanding any lease provision to the contrary, no late fees, fines or interest may be imposed for rent that became due during the effective period for this section, if the rent was late due to a Qualifying Loss.
- C. Violation of this ordinance is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of a Commercial Space.
- D. It shall be an absolute defense to any unlawful detainer action against an Affected Business based on a failure to timely pay rent that the Notice of Termination was served or expired, or that the complaint was filed or served, on or after April 21, 2020 and before May 31, 2020.
- E. If the Governor of the State of California extends the protections of Executive Order N-28-20, Paragraph 2, beyond May 31, 2020, the May 31, 2020 dates in in subsections A and D of this section shall be automatically extended to the expiration date of said Paragraph 2.

#### **4. Procedures.**

- A. A Landlord must provide a copy of this ordinance and the following notice in at least 12-point font to an Affected Business when serving Affected Business with a Notice of Termination:

“NOTICE: THE COUNTY OF ALAMEDA HAS ADOPTED A TEMPORARY MORATORIUM ON COMMERCIAL EVICTIONS FOR NONPAYMENT OF RENT DUE TO COVID-19. A COPY OF THE COUNTY ORDINANCE IS ATTACHED. UPDATED INFORMATION MAY BE AVAILABLE FROM THE COUNTY’S ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT AT 510-670-5335.”

- B. To qualify for the protections of this ordinance, upon receipt of a Notice of Termination, Affected Businesses must notify Landlord, as applicable, that they have experienced a Qualifying Loss and must provide Landlord with the documentation described below within fifteen (15) days after the date rent became due. To the extent feasible, Affected Businesses should make a reasonable effort to notify their Landlord on or before the day rent payment is due that the Affected Business has a potential inability to make a timely rent payment due to a Qualifying Loss.

#### **5. Documentation.**

- A. Affected Business’ Qualifying Loss must be documented.
- B. Affected Business must provide documentation to their Landlord that supports the claims of a Qualifying Loss. Examples of documentation include, without limitation:
- 1) A statement signed under penalty of perjury that the inability to pay is due to a Qualifying Loss;
  - 2) Documentation showing reduced business income; or
  - 3) Correspondence from a business owner citing COVID-19 as a basis for reduced business hour or business closure.
- C. An Affected Business may provide other documentation to demonstrate a substantial hardship or inability to make timely rent caused by COVID-19.
- D. Any medical or financial information provided to the Landlord shall be held in confidence, and only used for evaluating the Affected Business’ claim.

#### **6. Retaliation Prohibited.**

A Landlord shall not retaliate against an Affected Business for exercising their rights under this ordinance, including but not limited to shutting off any utilities or reducing services or amenities to which the Affected Businesses would otherwise be entitled.

## **7. Repayment.**

- A. Nothing in this ordinance relieves an Affected Business of liability for unpaid rent that became due during the effective period in Sections 3.A. and D. of this ordinance.
- B. Affected Tenants shall have a minimum of ninety (90) days from the date this ordinance expires or ninety (90) days from the date the Local Health Emergency is no longer in effect, whichever is sooner, to pay rent that has not been paid during effective period in Sections 3.A. and D.
- C. It shall be an affirmative defense to any unlawful detainer action against an Affected Business based on a failure to timely pay rent that the Notice of Termination was served or expired, or that the complaint was filed or served, during the ninety-day (90-day) repayment window provided in subsection B of this section.

## **8. Violation and Remedies.**

- A. Affirmative Defense. Each Landlord that seeks to recover possession of Commercial Space must comply with this ordinance. Non-compliance with any applicable provision of this ordinance shall constitute an affirmative defense for an Affected Business against any unlawful detainer action under California Code of Civil Procedure section 1161, petition for writ of possession, or any other action to recover possession of the Commercial Space or to otherwise cause Affected Business to vacate the Commercial Space.
- B. Misdemeanor. Any person violating any of the provisions of this ordinance is guilty of a misdemeanor. Each person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of this ordinance is committed, continued or allowed in conjunction with the Landlord's activities with respect to the Commercial Space and Tenants and is punishable accordingly. For purposes of this section, each and every day of violation includes each day on which a failure to comply with this ordinance continues. No proof of knowledge, intent, or other mental state is required to establish a violation.
- C. Civil Remedies.
  - 1. Any Landlord that fails to comply with this ordinance is subject to a fine of \$1000 per violation. Each person is liable for separate violation for each and every day during any portion of which any violation of any provision of this ordinance is committed, continued or allowed in conjunction with the Landlord's activities with respect to the Commercial Space and Tenants. For purposes of this section, each and every day of the violation includes each day on which a failure to comply with this ordinance continues. No proof of knowledge, intent, or other mental state is required to establish a violation.
  - 2. Any Landlord that fails to comply with this ordinance may be subject to civil proceedings for displacement of Affected Business initiated by the Affected Business.

3. Any person found to have violated this ordinance shall be subject to appropriate injunctive relief and shall be liable to the Affected Business for damages, costs, and reasonable attorneys' fees.
4. Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a third party for damage done to said Commercial Space. Nothing herein is intended to limit the damages recoverable by any party through a private action.

D. Cumulative Remedies. The remedies provided by this ordinance are cumulative and in addition to any other remedies available at law or in equity.

**9. Severability.**

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

**SECTION III**

Pursuant to Government Code Section 25123, subdivision (d), this measure is declared to be an urgency ordinance, to take effect and be in force immediately upon its passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for an against the same in the Inter-City Express, a newspaper published in the County of Alameda.

This ordinance shall be of no further force or effect ninety (90) days from its date of adoption, unless otherwise extended by the Board of Supervisors. This ordinance shall be in effect only during the time that an emergency declaration by local, state or federal authorities pertaining to COVID-19 is in effect and applicable to the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the 21st day of April, 2020, by at least four-fifths vote, by the following called vote:

- AYES: Supervisors Carson, Chan, Haggerty, Miley, & President Valle - 5  
 NOES: NONE  
 EXCUSED: NONE

RICHARD VALLE  
 President of the Board of Supervisors

ATTEST:  
 Clerk of the Board of Supervisors,

By: Melissa Johnson  
 Deputy Clerk

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

DocuSigned by:

*Heather Littlejohn*

By: \_\_\_\_\_  
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Heather Littlejohn  
Deputy County Counsel