



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

Agenda Item _____ June 2, 2020

Chris Bazar
Agency Director

May 28, 2020

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Hayward, California
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Honorable Board of Supervisors
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Dear Board Members:

**SUBJECT: ADOPT AN ORDINANCE AMENDING THE COUNTYWIDE
TEMPORARY MORATORIUM ON RESIDENTIAL EVICTIONS
DUE TO AND DURING THE COVID-19 EMERGENCY**

www.acgov.org/cda

RECOMMENDATION:

Adopt an ordinance amending Chapter 6.120 of the ordinance code to modify the temporary moratorium on residential evictions due to and during the COVID-19 emergency in the County of Alameda

SUMMARY/DISCUSSION:

Your Board has authorized both a countywide urgency ordinance (Ordinance No. 2020-14, adopted March 24, 2020, amended by Ordinance No. 2020-18, adopted March 31, 2020) and a regular ordinance creating a temporary moratorium on residential¹ evictions during the COVID-19 public health emergency (Ordinance No. 2020-23, adopted April 21, 2020). On May 12, your Board continued the first reading of the regular ordinance that would have amended Ordinance No. 2020-23 (Item 26)(codified as Chapter 6.120 of the County Ordinance Code) to allow the Community Development Agency (CDA)'s Housing and Community Development Department (HCD) time to discuss the proposed amendments with landlord-affiliated groups, as the ordinance provisions had previously been focused on requests made by legal entities who traditionally represent tenants and who had provided input regarding tenant protections at previous Board hearings.

As a result of those discussions, the proposed amendments to the regular ordinance (Chapter 6.120) before your Board today (Attachment A) includes the following potential changes to the version presented during your May 12 Board meeting (Attachment B). For the Board's consideration, staff has also provided potential alternative language in certain instances, which could be inserted as replacement language in Attachment A. This alternative language is summarized in this Board letter.

¹ On April 21, 2020 your Board adopted an urgency ordinance (No. 2020-23) establishing a temporary moratorium on commercial evictions in the unincorporated area of the County. That ordinance is not at issue in this Board action.

1. **Unlawful Detainer Actions after Repayment Period Ends (Attachment A, section 6.120.090):** The ordinance currently requires landlords to maintain a tenant's rights to occupy a unit even if the tenant has not paid the back rent by the end of a 12-month repayment period. This is a rolling 12-month period that begins when the rent was due. The prior draft (Attachment B, section 6.120.090D) would have converted back rent to consumer debt. Debt conversion has been removed from the proposed ordinance at the suggestion of landlord groups who requested the right to use all possible remedies to collect overdue rent at the end of that period, including unlawful detainer.

In the proposed ordinance (Attachment A, section 6.120.090), if a tenant does not pay the rent owed during the moratorium for more than the repayment period, landlords can evict them instead of taking the tenant to small claims court for a consumer debt. This meets the landlord objectives, but tenant advocates maintain that choosing this option requires that the repayment period remain at twelve months (current ordinance).

POTENTIAL ALTERNATIVE LANGUAGE: (Attachment B, section 6.120.090)

If a Tenant does not repay the rent that became due during the applicable effective periods of Sections 6.120.030.A. or D. or 6.120.040.A. or D. within twelve (12) months from the date the rent became due, a Landlord may collect the back rent as any other consumer debt. Such back rent may not be collected through the unlawful detainer process.

2. **Repayment Period (Attachment A, section 6.120.090):** The ordinance currently allows for a 12-month repayment period on a County-wide basis. Concerns have been expressed by the landlord advocates that this is too lengthy; however, tenant advocates have indicated that this extended period of time is necessary to allow tenants, especially low-income households, to regain their financial footing and repay their back rent.

The proposed amended ordinance retains the 12-month time frame for the unincorporated area. The 12-month period for incorporated cities is limited to the duration of the Local Health Emergency, which may be shorter than the full 12-months. If the unlawful detainer option is allowed as a remedy when overdue rent goes unpaid, tenant advocates maintain a shortening of the 12-month repayment period may result in a wave of evictions for those households most at risk and vulnerable.

POTENTIAL ALTERNATIVE LANGUAGE:

If the Board is interested in shortening the repayment period for either or both the incorporated and unincorporated areas, below are the lengths of time for repayment in nearby jurisdictions for consideration. In order to adjust the repayment period, the Board would need to move to amend Section 6.120.090 C in Attachment A (prior to first reading) by specifying the preferred duration and whether it applied to the unincorporated area or Countywide.

- Unlimited period (no end date) - Berkeley, Oakland
- 365 days (12 months) - Emeryville, Richmond, San Pablo

- 180 days (6 months) - Alameda, Albany, Antioch, El Cerrito, Fremont, Newark, Pittsburg
- 120 days (4 months) - Contra Costa County
- 90 days (3 months) - Concord, Hayward, Pinole, San Leandro, Union City

3. **Applicability to Cities (multiple portions of Attachment A, including Section 6.120.110):** The ordinance before your Board contains the “opt-out” provision approved by your Board at the April 21 meeting, with minor non-substantive edits, in Section 6.120.110. This provision allows cities to opt-out of the application to their residents of the County’s ordinance if they declare in writing that the cities’ ordinance is “stronger” (providing greater protections to tenants and homeowners than does the County ordinance). Several cities have objected to the County regulating within their jurisdiction. Other cities have questioned the County regulating within their jurisdiction after the local emergency expires.

POTENTIAL ALTERNATIVE LANGUAGE:

If your Board chooses to allow the cities unlimited ability to opt out of this Ordinance, regardless of the content of the cities’ ordinances, a motion to amend the Section 6.120.110 could be adopted to delete subdivisions B, C and D, make conforming edits throughout the ordinance, and substitute the following language for subdivision B:

“B. If the governing body of a city has enacted an ordinance that contains protections for Tenants during the COVID-19 emergency, the city may apply its ordinance in lieu of the County ordinance. The city must duly affirm or declare in writing its intent to opt out of the County ordinance. “

In addition to the key items above, the amended ordinance includes the following additional changes:

- A. **Documentation (upon Request) for all Eviction Protection (Attachment A, Section 6.120.060):** The ordinance currently requires tenants to produce documentation to qualify for the COVID-19 Moratorium protections and creates a “rebuttable presumption” that the tenant has suffered a qualifying loss, but does not require documentation for the General Moratorium protections of the ordinance. This disparate treatment places a higher burden on some tenants than others. At the request of the landlord advocates, the “rebuttable presumption” language has been removed from the proposed ordinance. Additionally, the allowable documentation includes an affidavit by the tenant that they are experiencing an impact that precludes their ability to pay rent, which landlord advocates perceive as difficult to rebut should a landlord initiate a court action against the tenant.

The proposed amended ordinance requires documentation upon landlord request for all tenants who wish to qualify for eviction protections due to nonpayment of rent under the General and COVID-19 Moratoria. Additionally, the proposed ordinance allows an affidavit to qualify for protections under the ordinance but, if a landlord attempts to evict a tenant after

the repayment period, documentation in addition to an affidavit would be required to protect the tenant at that time. These changes allow tenants the time needed to gather documentation listed in the ordinance.

B. Penalties for Inadvertent Violation (Section 6.120.100): The current ordinance fines landlords who file unlawful detainer actions during the moratorium at \$1,000 per day. While some neighboring jurisdictions (Albany, Fremont, and Hayward) provide for similar penalties, landlord groups expressed concerns that the penalties unfairly penalize landlords who inadvertently violate the ordinance. The proposed ordinance states that only willful violations are subject to a penalty, and that amount is reduced to \$1,000 per occurrence (rather than per day)

C. Clarity Regarding Moratorium Time Period and End Date (Section 6.120.030(A,D)): Currently, the end date of the moratorium is 90 days so long as the public health order was in effect. Both landlord and tenant groups expressed that they felt this was confusing in terms of calculating which rents were covered as well as the end date of the repayment period. The proposed ordinance provides a set end date of July 31, 2020, making it clear that August rents are due in August.

D. Expand Exceptions to Moratorium (Section 6.120.030(G)): Currently, the ordinance allows for three (3) exceptions: an action by a governmental agency, the unit being taken off the rental market, and imminent threat to health or safety. The proposed amended ordinance expands the exception for imminent threat to health or safety to allow evictions if a resident's conduct, if not corrected, impacts other residents' peaceful enjoyment of their units. While landlord advocates have asked that a fourth exception be allowed for "nuisance" to allow greater leeway for landlords to evict tenants that are "bad actors", allowing evictions for "nuisance" may be too expansive and include allowable evictions for minor issues.

E. Repayment period (Section 6.120.090) – Applicability to Cities vs. the Unincorporated County: The proposed amended ordinance retains the 12-month time frame for residents of the unincorporated county and provides for up to 12 months within the cities or to the end of the public health emergency, whichever is sooner. This approach aligns jurisdictional responsibilities should the public health emergency end before the 12-month repayment period is over.

FINANCING:

There will be no increase in net county cost as a result of this action.

VISION 2026 GOAL:

A moratorium on residential evictions will support the overarching vision of **Thriving and Resilient Population** and the 10X goal of **Eliminating Homelessness** by ensuring all residents'

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basic needs are met, including facilitating access to and retention of safe, stable housing while building resiliency and self-sufficiency among vulnerable populations.

Very truly yours,

DocuSigned by:



Chris Bazar, Director

Community Development Agency

Attachment A: Current Proposed Ordinance

Attachment B: May 12 Version of Ordinance

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-_____

AN ORDINANCE AMENDING CHAPTER 6.120 OF THE ALAMEDA COUNTY ORDINANCE CODE TO MODIFY THE TEMPORARY MORATORIUM ON RESIDENTIAL EVICTIONS DUE TO AND DURING THE COVID-19 EMERGENCY IN 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 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 beginning March 17 (“Shelter-in-Place Order”). The Shelter-in-Place Order also required 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. The Shelter-in-Place Order has been extended and modified by subsequent orders of the County Health Officer. Economic activity and as a result, some household incomes have been reduced 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 residents financially impacted due to COVID-19 may not be able to make timely rent or mortgage payments or be forced to choose between paying housing expenses and having sufficient funds for food, medical care or other necessities for themselves 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. On March 18, 2020, the federal government announced temporary suspensions of certain foreclosures and related evictions to promote housing stability during the COVID-19 pandemic; and
11. As of March 18, 2020, there were 31 confirmed cases of COVID-19 in the County; as of March 26, 2020, there were 135 confirmed cases and two deaths; as of April 14, 2020 there were 962 confirmed cases and 36 deaths; as of May 26, 2020, there were 3,049 confirmed cases and 93 deaths 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
12. 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
13. 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
14. Displacement through eviction destabilizes the living situation of tenants and homeowners and impacts the health of County residents by uprooting children from schools, disrupting the social ties and networks that are integral to citizens' welfare and the stability of communities. It also creates undue hardship for tenants and homeowners through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing; and

15. COVID-19 poses a unique threat to people experiencing homelessness, who lack resources for sanitation, stay in overcrowded shelters, encampments, vehicles and other places, and already have a high rate of poorly treated chronic illnesses. In 2019, the Alameda County Point in Time Count estimated 349 people are homeless in the unincorporated area, an increase of 59% since the last count in 2017. The countywide increase was 47%; and
16. Such displacement, destabilization and any increase in homelessness would increase the risk of transmission of COVID-19 throughout the County by rendering it difficult or impossible for individuals to shelter-in-place and to observe social distancing and hygiene practices that are recommended to reduce the transmission of COVID-19; and
17. Pursuant to existing state law, specified evictions during declared states of emergency are illegal, specifically, Penal Code section 396, subdivision (f) provides: “It is unlawful for a person, business, or other entity to evict any residential tenant of residential housing after the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any city, county, or city and county, and for a period of 30 days following that proclamation or declaration, or any period that the proclamation or declaration is extended by the applicable authority and rent or offer to rent to another person at a rental price greater than the evicted tenant could be charged under this section. It shall not be a violation of this subdivision for a person, business, or other entity to continue an eviction process that was lawfully begun prior to the proclamation or declaration of emergency”; and
18. Pursuant to Executive Order N-28-20 issued by the Governor of the State of California on March 16, 2020, the protections afforded by Penal Code section 396, subdivision (f) are in effect through May 31, 2020; accordingly, no new evictions of residential tenants meeting the conditions specified Penal Code section 396, subdivision (f) may be pursued until May 31, 2020 at the earliest; and
19. Pursuant to Executive Order N-28-20, 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 evictions due to specified financial burdens caused by COVID-19 are suspended until May 31, 2020 at the earliest; and
20. 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
21. 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
22. The County, pursuant to its police powers, has broad authority to maintain the public peace, health, safety and welfare for its residents; and

23. 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
24. The California Attorney General has opined that when a county has declared a local emergency within its jurisdictional boundaries in an area that includes both unincorporated and incorporated territory, the county may adopt emergency rules and regulations pursuant to Government Code section 8634 that will be effective in both unincorporated and incorporated areas (62 Ops. Cal. Atty. Gen. 701 (1979)); and
25. COVID-19 continues to spread rapidly throughout the County without regard to jurisdictional boundaries; and
26. Both the County's Emergency Declaration and Shelter-in-Place Order apply throughout the County, to both the unincorporated area of the County and within each incorporated city in the County; and
27. This ordinance is a temporary moratorium intended to promote the public peace, health, welfare and safety by reducing the public's exposure to the transmission of COVID-19 by enabling tenants and homeowners throughout the County to remain in their homes in accordance with the Shelter-in-Place Order; and
28. This ordinance's eviction protection for nonpayment of rent or mortgage is intended to assist residents who cannot pay their rent or mortgage during this period, and residents who can pay their rent or mortgage are encouraged to do so; and
29. This ordinance is also intended to promote stability within the residential market in the County, including both the unincorporated and incorporated areas, during the COVID-19 pandemic outbreak and to prevent avoidable homelessness, thereby promoting the public peace, health, welfare and safety by reducing the public's exposure to the transmission of COVID-19; and
30. During the COVID-19 pandemic outbreak, affected tenants and homeowners who have lost available income due to the impact on the economy or their out-of-pocket medical or child care expenses may be at risk of homelessness if they are evicted for non-payment as they will have little or no available income and may be unable to secure other housing if evicted; and
31. 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:

Chapter 6.120 of the Alameda County Ordinance Code is hereby amended to read in its entirety as follows:

Chapter 6.120 – Temporary Residential Eviction Moratorium for the Incorporated and Unincorporated Areas of the County Due to and During the COVID-19 Emergency.

6.120.010 - Purpose, Intent and Scope.

This ordinance is enacted to promote the public peace, health, welfare and safety. The purposes of this ordinance are to reduce the transmission of COVID-19, to promote housing stability during the COVID-19 pandemic and to prevent avoidable homelessness. This ordinance is necessary to promote the public peace, health, welfare and safety because the COVID-19 pandemic has the potential for destabilizing the residential market for the reasons described in the findings made by the Board of Supervisors in enacting this ordinance. This ordinance is intended to enable tenants, homeowners, and mobilehome owners in the County to shelter-in-place and avoid displacement during the COVID-19 pandemic. This ordinance is also intended to enable tenants, homeowners, and mobilehome owners in the County whose income, medical expenses, or child care needs have been affected by the COVID-19 pandemic to be temporarily protected from eviction for non-payment of rent or mortgage payments. This ordinance is intended to reduce the risk that these events will lead to illness, anxiety, stress and potential homelessness for the affected residents and their communities thereby serving the public peace, health, safety, and public welfare. The temporary moratorium on evictions established by this ordinance is created pursuant to the County's emergency authority in 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.

6.120.020 - Definitions.

- A. "Affected Resident" shall mean a Tenant, Homeowner or their Household, that has experienced a Qualifying Loss.
- B. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. Homeowner includes the owner of a Mobilehome.
- C. "Household" means all individuals residing in the Residential Unit with the Tenant(s) and/or Homeowner(s).
- D. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and/or occupancy of any Residential Unit by a Tenant and the agent, representative, or successor of any of the foregoing. Landlord includes a Mobilehome park owner leasing spaces to a Mobilehome owner.

- E. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more Residential Units, which person has the right to mortgage or similar payments from the Homeowner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.
- F. "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 on March 1 and March 5, 2020 and the Board of Supervisors on March 10, 2020. The Local Health Emergency is not the same directive as the "Order of the County Health Officer to Shelter in Place.
- G. "Mobilehome" means a structure transportable in one or more sections, designed and equipped to contain no more than one dwelling unit, to be used with or without a foundation system.
- H. "Notice of Termination" means the notice informing a Tenant or Homeowner of the termination of their right to occupy the Residential Unit in accordance with applicable California law, including but not limited to a 3- or 30-day notice to pay or quit.
- I. "Person" means an individual, firm, association, partnership, joint venture, corporation or any entity, public or private in nature.
- J. "Qualifying COVID-19 Loss" means substantial loss in income, substantial out-of-pocket medical expenses or extraordinary child care needs, resulting in a substantial hardship or inability to make rent or mortgage payments 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.
- K. "Qualifying Loss" means substantial loss in income, substantial out-of-pocket medical expenses or extraordinary childcare needs, resulting in a substantial hardship or inability to make rent or mortgage payments when due. Qualifying Loss includes a Qualifying COVID-19 Loss but also includes other bases for financial hardship.
- L. "Resident" shall mean a Tenant, Homeowner or their Household. This term includes but is not limited to Affected Residents.
- M. "Residential Unit" means a structure or Mobilehome or the portion thereof that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which person or household pays rent to a Landlord or mortgage payments to a Lender for the use and/or occupancy of the structure or Mobilehome, or the space where a Mobilehome is located, for periods of thirty (30) days or more whether or not the residential use is a conforming use permitted under the Alameda County Ordinance Code, applicable city's municipal code, or other applicable regulations.

- N. "Tenant" means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupancy of a Residential Unit.

6.120.030 - Moratorium on Evictions - General.

- A. Beginning on April 21, 2020 and continuing until July 31, 2020 (the "General Moratorium Period"), the County hereby places a moratorium on all evictions from Residential Units in the unincorporated and incorporated areas of the County, subject to the limitation and exceptions stated below.
- B. No Landlord or Lender may evict a Resident, or otherwise require a Resident to vacate a Residential Unit or retaliate against a Resident, while this section is in effect, subject to the limitation and exceptions stated below.
- C. Violation of this ordinance is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of a Residential Unit.
- D. It shall be an absolute defense to any unlawful detainer action against a Resident that the Notice of Termination was served or expired, or that the complaint was filed, during the General Moratorium Period, subject to the limitation and exceptions stated below. This defense may be raised at any time, including after July 31, 2020 and after the expiration of this ordinance, provided the notice or complaint at issue in the unlawful detainer action was filed or served during the period stated in this subsection.
- E. 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
- F. Limitation – Nonpayment-based Eviction. This section prohibits evictions based on nonpayment of rent or mortgage for Residents that have experienced a Qualifying Loss. A Resident's Qualifying Loss must be documented in accordance with Section 6.120.060, below.
- G. Exceptions. The Landlord or Lender claiming that their proposed eviction is not prohibited by this ordinance shall have the burden of proving that one or more of the exceptions applies. The provisions of this section shall not apply in the following circumstances, which must be stated in the Notice of Termination and the complaint as grounds for the eviction:
- 1) A Landlord is taking the Residential Unit off of the residential rental market in accordance with state law, including Government Code sections 7060, *et seq.* (Ellis Act) or Government Code § 65863.7 (closure or conversion of mobilehome park), and in compliance with any applicable local ordinances.
 - 2) The Residential Unit must be vacated to comply with an order issued by a government agency or court.

- 3) Continued occupancy by a Resident poses a significant impact to health or safety of the tenants, landlord or neighbors or, if the Resident's conduct is not corrected, would cause the Landlord to breach its' covenant of quiet enjoyment, if any. For the purposes of this ordinance, the basis for this exception cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

6.120.040 - Moratorium on Evictions Based on Nonpayment Caused by COVID-19.

- A. Beginning on March 24, 2020 for Residents of the unincorporated area of the County and beginning on April 21, 2020 for Residents of the incorporated areas of the County and continuing until May 31, 2020 or the expiration of Executive Order N-28-20 issued by the Governor of the State of California, whichever is later, (the "COVID-19 Moratorium Period") the County hereby places a moratorium on evictions from Residential Units in the unincorporated and incorporated areas of the County resulting from a substantial loss of income, substantial out-of-pocket medical expenses, or extraordinary child care needs, any of which are caused by COVID-19.
- B. No Landlord or Lender may evict an Affected Resident, or otherwise require an Affected Resident to vacate a Residential Unit or retaliate against an Affected Resident for nonpayment of rent or mortgage payments or for nonpayment of late fees, fines or interest based on nonpayment, during the COVID-19 Moratorium Period.
- C. Violation of this ordinance is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of a Residential Unit during the COVID-19 Moratorium Period and as provided in Section 6.120.090.
- D. It shall be an absolute defense to any unlawful detainer action against an Affected Resident based on a failure to timely make rent or mortgage payments that the Notice of Termination was served or expired, or that the complaint was filed, on or after March 24, 2020 and on or before May 31, 2020. This defense may be raised at any time, including during and after the COVID-19 Moratorium Period and after the expiration of this ordinance, provided the notice or complaint at issue in the unlawful detainer action was filed or served during the COVID-19 Moratorium Period.
- E. 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 COVID-19 Loss.

6.120.050 - Procedures.

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

"NOTICE: THE COUNTY OF ALAMEDA HAS ADOPTED A TEMPORARY MORATORIUM ON EVICTIONS DURING THE COVID-19 LOCAL HEALTH EMERGENCY INCLUDING EVICTIONS FOR NONPAYMENT OF RENT OR

MORTGAGE PAYMENTS DUE FROM AS EARLY AS MARCH 24, 2020 AND THROUGH MAY 31, 2020 OR POSSIBLY LATER. A COPY OF THE COUNTY ORDINANCE IS ATTACHED. YOU ARE STILL RESPONSIBLE FOR PAYMENT OF THIS RENT AND YOU ARE ENCOURAGED TO WORK WITH YOUR LANDLORD TO ESTABLISH A REASONABLE PAYMENT PLAN FOR ANY RENT YOU ARE NOT ABLE TO PAY DURING THIS TIME. UPDATED INFORMATION MAY BE AVAILABLE FROM THE COUNTY'S HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT AT WWW.ACGOV.ORG/CDA/HCD OR email jennifer.pearce@acgov.org or 510-670-6474.”

- B. If the Residential Unit is located within the jurisdictional limits of a city which also has an ordinance protecting residents from evictions due to COVID-19 or during the COVID-19 emergency, the Landlord or Lender must also provide a copy of the city's ordinance with the Notice of Termination.
- C. To the extent feasible, Affected Residents should make a reasonable effort to notify their Landlord or Lender on or before the rent or mortgage payment is due, or as soon as possible thereafter, of their potential inability to make a timely rent or mortgage payment due to a Qualifying Loss or Qualifying COVID-19 Loss.

6.120.060 - Documentation – Required for Nonpayment Based Eviction Protections.

- A. The provisions of this section apply only when an Affected Resident is seeking protection from eviction due to a substantial loss in income, substantial out-of-pocket medical expenses or extraordinary child care needs, resulting in a substantial hardship or inability to make rent or mortgage payments when due. Where the Affected Resident's substantial hardship or inability to pay is 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 they shall provide documentation of their Qualifying COVID-19 Loss in accordance with the provisions below.
- B. An Affected Resident's Qualifying Loss or Qualifying COVID-19 Loss must be documented.
- C. An Affected Resident shall retain such documentation until such time as any back rent owed due to the Qualifying Loss or Qualifying COVID-19 Loss is repaid or forgiven.
- D. An Affected Resident is not required to provide such documentation to the Landlord or Lender in advance to qualify for the protections of this ordinance. However, upon the request of a Landlord or Lender, an Affected Resident shall provide such documentation to the Landlord or Lender within forty-five (45) days after the request or within thirty (30) days after the County's shelter in place order is lifted (or modified to allow access to non-essential business and travel sufficient to facilitate obtaining required documentation), whichever is later.

- E. An Affected Resident producing the following documents shall have demonstrated that they have a Qualifying COVID-19 Loss that occurred during the General Moratorium Period:
- 1) Letter from employer or other source of income citing COVID-19 as a reason for reduced work hours, termination, or other substantial reduction in pay;
 - 2) Employer paycheck stubs showing a reduction in pay following the COVID-19 outbreak;
 - 3) Bank statements showing a reduction in income following the COVID-19 outbreak;
 - 4) Documentation showing payment of substantial out-of-pocket medical expenses caused by COVID-19; or
 - 5) Documentation showing the closure of a school or childcare facility where a child in the Affected Resident's care would otherwise be present during the Affected Resident's working hours.
- F. An Affected Resident producing the following documents shall have demonstrated that they have a Qualifying Loss that occurred during the COVID-19 Moratorium Period:
- 1) Letter from employer or other source of income citing reduced work hours, termination, or other substantial reduction in pay impacting ability to pay rent;
 - 2) Employer paycheck stubs showing a reduction in pay;
 - 3) Bank statements showing a reduction in income;
 - 4) Documentation showing payment of substantial out-of-pocket medical expenses; or
 - 5) Documentation showing the closure of a school or childcare facility where a child in the Affected Resident's care would otherwise be present during the Affected Resident's working hours.
- G. An Affected Resident may provide other documentation to demonstrate a Qualifying Loss or Qualifying COVID-19 Loss, including but not limited to an unemployment application.
- H. An Affected Resident that cannot provide any documentation described in Subsections E., F., or G. may provide a sworn statement by the Affected Resident attesting to the existence of their Qualifying Loss or Qualifying COVID-19 Loss, including facts sufficient to demonstrate the Qualifying Loss or Qualifying COVID-19 Loss, and attesting to their inability to gather the documentation described in E., F., or G.
- I. An Affected Resident shall use their best efforts to provide documentation requested by the Landlord or Lender to support the Landlord's or Lender's efforts to obtain financial relief associated with the Residential Unit (e.g., mortgage forbearance or reduction in utility costs).

- J. An Affected Resident may provide additional documentation demonstrating a substantial hardship or inability to make timely rent or mortgage payments as such documentation becomes available to the Affected Resident after initial submission of documentation.
- K. Any confidential medical information or other information protected by the Affected Resident's right to privacy shall be held confidential by the Landlord or Lender and shall not be reproduced or distributed unless otherwise authorized or required by law.

6.120.070 - Retaliation Prohibited.

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 or reducing services or amenities to which the Residents would otherwise be entitled.

6.120.080 - No Waiver.

The protections provided by this ordinance shall be available to all eligible Affected Residents, regardless of any agreement wherein an Affected Resident waives or purports to waive their rights under this ordinance.

6.120.085 – Resident Payment Obligation.

Nothing in this ordinance relieves an Affected Resident of liability for unpaid rent or mortgage payments.

6.120.090 - Repayment of Back Rent.

- A. A Landlord and Tenant may mutually agree to a payment plan for unpaid back rent that came due during the General Moratorium or COVID-19 Moratorium Periods. Such plans remain subject to the limitation on evictions based on back rent owed pursuant to Subsection D, below. At a minimum, a payment plan:
 - 1) May waive portions of the Tenant's rental obligation and may grant the Tenant additional time to pay beyond the minimum requirements of this ordinance.
 - 2) Should not require the Tenant's agreement to change lease terms as a condition of the payment plan.
 - 3) May allow partial rent payments or temporarily discounted rent, without affecting the maximum allowable base rent that the Landlord may charge at the close of the payment plan period.
 - 4) May not declare a Tenant's failure to comply with a payment plan a basis for eviction prior to the end of the repayment deferral period described in Subsection C.
- B. A Landlord shall not apply rent payments made by a Tenant to outstanding back rent that became due during the General Moratorium or COVID-19 Moratorium Periods unless

requested by the Tenant or in accordance with the terms of a payment plan. For example, if a Tenant did not pay rent for April, May, June or July 2020, a payment received on August 1, 2020 would apply to August 2020 rent. The Landlord may not apply the August rent payment to the back rent and claim that the August rent is unpaid. In any action to recover possession of a Residential Unit, it shall be an affirmative defense if the Landlord or Lender impeded the Affected Resident's effort to pay current rent by applying it to back rent as described in this section.

- 1) For Tenants of Residential Units within the unincorporated area of the County, this protection applies during and after the end of the Local Health Emergency.
 - 2) For Tenants of Residential Units within the incorporated cities, this protection applies only during the Local Health Emergency.
- C. If a Tenant does not pay all or any portion of the rent that became due during the General Moratorium or COVID-19 Moratorium Periods within twelve (12) months from the date the rent became due, a Landlord may pursue any available remedy to recover possession of a Residential Unit and collect the past due rent, including evicting the Tenant and collecting back rent through the unlawful detainer process. In any action available to the Landlord to recover possession of a Residential Unit from a Tenant based on nonpayment of rent, it shall be an affirmative defense that the rent became due during the General Moratorium or COVID-19 Moratorium Periods if the Notice of Termination or complaint was served prior to the expiration of the twelve-month (12-month) period.
- 1) For Tenants in Residential Units within the unincorporated area of the County, this defense applies during and after the end of the Local Health Emergency.
 - 2) For Tenants of Residential Units within the incorporated cities, this defense extends twelve (12) months from the date the back rent became due or the date the Local Health Emergency is no longer in effect, whichever is sooner. For Tenants of Residential Units within the incorporated cities, this defense may be raised only during the Local Health Emergency.
- D. In any action to recover possession of a Residential Unit, it shall be an affirmative defense if the Landlord or Lender impeded the Affected Resident's effort to pay rent, including current rent or back rent, by refusing to accept payments on behalf of the Affected Resident from a third party, or refusing to provide a W-9 form or other necessary documentation for the Affected Resident to receive financial assistance from a government agency, non-profit organization, or other third party.
- 1) For Tenants of Residential Units within the unincorporated area of the County, this this protection applies, and the defense may be raised during or after the end of the Local Health Emergency.

- 2) For Tenants of Residential Units within the incorporated cities, this protection applies during the effective period of the Local Health Emergency and this defense may be raised at any time during the effective period of the Local Health Emergency.

6.120.100 - Violation and Remedies.

- A. Affirmative Defense. Each Landlord or Lender that seeks to recover possession of a Residential Unit must comply with this ordinance. Non-compliance with any applicable provision of this ordinance shall constitute an affirmative defense for a Resident against any unlawful detainer action under California Code of Civil Procedure section 1161, termination of tenancy in a Mobilehome park under the Mobilehome Residency Law (see Civil Code sections 798.55, et. seq.), petition for writ of possession, or any other action to recover possession of the Residential Unit or to otherwise cause Residents to vacate the Residential Unit.
- B. Misdemeanor. Any person willfully violating any of the provisions of this ordinance is guilty of a misdemeanor. Each person is guilty of a separate offense per Residential Unit for each and every month during any portion of which any violation of any provision of this ordinance is committed, continued or allowed in conjunction with the Landlord's or Lender's activities with respect to the Residential Unit, Residents and Households and is punishable accordingly.
- C. Civil Remedies.
 1. Any Landlord or Lender that willfully fails to comply with this ordinance is subject to a fine of \$1000 per violation. Each person is liable for separate violation per Residential Unit for each and every month during any portion of which any violation of any provision of this ordinance is committed, continued or allowed in conjunction with the Landlord's or Lender's activities with respect to the Residential Unit, Residents, and Resident Households.
 2. Any Landlord or Lender that willfully fails to comply with this ordinance may be subject to civil proceedings for displacement of Residents initiated by the County or the Affected Residents.
 3. Any person found to have willfully violated this ordinance shall be subject to appropriate injunctive relief and shall be liable to the Resident 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 Resident or non-Resident third party for damage done to a Residential Unit. 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.

6.120.110 - Application within Cities.

- A. The regulations in this ordinance shall apply within each city located in the County of Alameda and to the unincorporated area of the County, subject to subsections B, C and D below.
- B. If the governing body of a city has enacted an ordinance that has stronger protections for Tenants during the COVID-19 emergency, the city may apply its ordinance in lieu of the County ordinance, to the extent the city ordinance is stronger. The city must duly affirm or declare in writing its intent to opt out of the County ordinance. The writing must enumerate the specific provisions of the County's ordinance from which the city intends to opt out and must include a finding that the city ordinance is stronger (i.e., it provides greater protections for Tenants or Homeowners).
- C. To the extent the city ordinance does not provide stronger protections for Tenants, the County ordinance shall apply despite contrary provisions or silence in the city ordinance.
- D. To the extent the city's ordinance provides stronger protections for Tenants but not for Homeowners, the provisions of the County ordinance protecting Homeowners shall apply despite contrary provisions or silence in a city's ordinance.

6.120.120 - 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

This ordinance shall be in force thirty (30) days after 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.

Passed and adopted by the Board of Supervisors of the County of Alameda, State of California, on the ____ day of June, 2020, by the following called vote:

AYES:

NOES:

EXCUSED:

RICHARD VALLE
President of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors,

By: _____
Deputy Clerk

APPROVED AS TO FORM:
DONNA R. ZIEGLER, COUNTY COUNSEL

DocuSigned by:
Andrea Weddle
By: _____
658D28A8033A493
Andrea L. Weddle
Chief Assistant County Counsel

ORDINANCE NO. O-2020-_____

AN ORDINANCE AMENDING CHAPTER 6.120 OF THE ALAMEDA COUNTY ORDINANCE CODE TO MODIFY THE TEMPORARY MORATORIUM ON RESIDENTIAL EVICTIONS DUE TO AND DURING THE COVID-19 EMERGENCY IN 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 residents financially impacted due to COVID-19 may not be able to make timely rent or mortgage payments or be forced to choose between paying housing expenses and having sufficient funds for food, medical care or other necessities for themselves 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. On March 18, 2020, the federal government announced temporary suspensions of certain foreclosures and related evictions to promote housing stability during the COVID-19 pandemic; and
11. As of March 18, 2020, there were 31 confirmed cases of COVID-19 in the County, as of March 26, 2020, there were 135 confirmed cases and two deaths, as of April 14, 2020 there were 962 confirmed cases and 36 deaths, 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
12. 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
13. 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
14. Displacement through eviction destabilizes the living situation of tenants and homeowners and impacts the health of County residents by uprooting children from schools, disrupting the social ties and networks that are integral to citizens' welfare and the stability of communities. It also creates undue hardship for tenants and homeowners through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing; and

15. COVID-19 poses a unique threat to people experiencing homelessness, who lack resources for sanitation, stay in overcrowded shelters, encampments, vehicles and other places, and already have a high rate of poorly treated chronic illnesses. In 2019, the Alameda County Point in Time Count estimated 349 people are homeless in the unincorporated area, an increase of 59% since the last count in 2017. The countywide increase was 47%; and
16. Such displacement, destabilization and any increase in homelessness would increase the risk of transmission of COVID-19 throughout the County by rendering it difficult or impossible for individuals to shelter-in-place and to observe social distancing and hygiene practices that are recommended to reduce the transmission of COVID-19; and
17. Pursuant to existing state law, specified evictions during declared states of emergency are illegal, specifically, Penal Code section 396, subdivision (f) provides: “It is unlawful for a person, business, or other entity to evict any residential tenant of residential housing after the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any city, county, or city and county, and for a period of 30 days following that proclamation or declaration, or any period that the proclamation or declaration is extended by the applicable authority and rent or offer to rent to another person at a rental price greater than the evicted tenant could be charged under this section. It shall not be a violation of this subdivision for a person, business, or other entity to continue an eviction process that was lawfully begun prior to the proclamation or declaration of emergency”; and
18. Pursuant to Executive Order N-28-20 issued by the Governor of the State of California on March 16, 2020, the protections afforded by Penal Code section 396, subdivision (f) are in effect through May 31, 2020; accordingly, no new evictions of residential tenants meeting the conditions specified may be pursued until May 31, 2020 at the earliest, as a matter of state law; and
19. Pursuant to Executive Order N-28-20, 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 evictions due to specified financial burdens caused by COVID-19 are suspended; and
20. 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
21. 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
22. The County, pursuant to its police powers, has broad authority to maintain the public peace, health, safety and welfare for its residents; and

23. 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
24. The California Attorney General has opined that when a county has declared a local emergency within its jurisdictional boundaries in an area that includes both unincorporated and incorporated territory, the county may adopt emergency rules and regulations pursuant to Government Code section 8634 that will be effective in both unincorporated and incorporated areas (62 Ops. Cal. Atty. Gen. 701 (1979)); and
25. COVID-19 continues to spread rapidly throughout the community without regard to jurisdictional boundaries; and
26. Both the County's Emergency Declaration and Shelter-in-Place Order apply throughout the County, to both the unincorporated area of the County and within each incorporated city in the County; and
27. This ordinance is a temporary moratorium intended to promote the public peace, health, welfare and safety by reducing the public's exposure to the transmission of COVID-19 by enabling tenants and homeowners throughout the County whose income, medical expenses or child care needs are affected due to COVID-19 to remain in their homes in accordance with the Shelter-in-Place Order; and
28. This ordinance is also intended to promote stability within the residential market in the County, including both the unincorporated and incorporated areas, during the COVID-19 pandemic outbreak and to prevent avoidable homelessness, thereby promoting the public peace, health, welfare and safety by reducing the public's exposure to the transmission of COVID-19; and
29. During the COVID-19 pandemic outbreak, affected tenants and homeowners who have lost available income due to the impact on the economy or their out-of-pocket medical or child care expenses may be at risk of homelessness if they are evicted for non-payment as they will have little or no available income and be unable to secure other housing if evicted; and
30. 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:

Chapter 6.120 of the Alameda County Ordinance Code is hereby amended to read in its entirety as follows:

Chapter 6.120 – Temporary Residential Eviction Moratorium for the Incorporated and Unincorporated Areas of the County Due to and During the COVID-19 Emergency.

6.120.010 - Purpose, Intent and Scope.

This ordinance is enacted to promote the public peace, health, welfare and safety. The purposes of this ordinance are to reduce the transmission of COVID-19, to promote housing stability during the COVID-19 pandemic and to prevent avoidable homelessness. This ordinance is necessary to promote the public peace, health, welfare and safety because the COVID-19 pandemic has the potential for destabilizing the residential market for the reasons described in the findings made by the Board of Supervisors in enacting this ordinance. This ordinance is intended to enable tenants, homeowners, and mobilehome owners in the County to shelter-in-place and avoid displacement during the COVID-19 pandemic. This ordinance is also intended to enable tenants, homeowners, and mobilehome owners in the County whose income, medical expenses, or child care needs have been affected by the COVID-19 pandemic to be temporarily protected from eviction for non-payment of rent or mortgage payments. This ordinance is intended to reduce the risk that these events will lead to anxiety, stress and potential homelessness for the affected residents and their communities thereby serving the public peace, health, safety, and public welfare. The temporary moratorium on evictions 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.

6.120.020 - Definitions.

- A. "Affected Resident" shall mean a Tenant, Homeowner or their Household, that has experienced a Qualifying Loss.
- B. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. Homeowner includes the owner of a Mobilehome.
- C. "Household" means all of the individuals residing in the Residential Unit with the Tenant(s) and/or Homeowner(s).
- D. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and/or occupancy of any Residential Unit by a Tenant and the agent,

representative, or successor of any of the foregoing. Landlord includes a Mobilehome park owner leasing spaces to a Mobilehome owner.

- E. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more Residential Units, which person has the right to mortgage or similar payments from the Homeowner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.
- F. "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.
- G. "Mobilehome" means a structure transportable in one or more sections, designed and equipped to contain not more than one dwelling unit, to be used with or without a foundation system.
- H. "Notice of Termination" means the notice informing a Tenant or Homeowner of the termination of their right to occupy the Residential Unit in accordance with applicable California law, including but not limited to a 3- or 30-day notice to pay or quit.
- I. "Person" means an individual, firm, association, partnership, joint venture, corporation or any entity, public or private in nature.
- J. "Qualifying Loss" means substantial loss in income, substantial out-of-pocket medical expenses or extraordinary child care needs, resulting in a substantial hardship or inability to make rent or mortgage payments 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.
- K. "Resident" shall mean a Tenant, Homeowner or their Household. This term includes but is not limited to Affected Residents.
- L. "Residential Unit" means a structure or Mobilehome or the portion thereof that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which person or household pays rent to a Landlord or mortgage payments to a Lender for the use and/or occupancy of the structure or Mobilehome, or the space where a Mobilehome is located, for periods of thirty (30) days or more whether or not the residential use is a conforming use permitted under the Alameda County Ordinance Code, applicable city's municipal code, or other applicable regulations.
- M. "Tenant" means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupancy of a Residential Unit.

6.120.030 - Moratorium on Evictions During Local Health Emergency.

- A. Beginning on the effective date of this ordinance and continuing until thirty (30) days after the Local Health Emergency is no longer in effect, the County hereby places a moratorium on all evictions from Residential Units in the unincorporated and incorporated areas of the County, subject to the exceptions stated below.
- B. No Landlord or Lender may evict a Resident, or otherwise require a Resident to vacate a Residential Unit, or retaliate against a Resident, while this section is in effect.
- C. Violation of this ordinance is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of a Residential Unit.
- D. It shall be an absolute defense to any unlawful detainer action against a Resident that the Notice of Termination was served or expired, or that the complaint was filed or served, on or after March 24, 2020 and on or before the thirtieth (30th) day after the Local Health Emergency is no longer in effect, subject to the exceptions stated below. This defense may be raised at any time, including after the end of the Local Health Emergency and after the expiration of this ordinance stated in Section III, provided the notice or complaint at issue in the unlawful detainer action was filed or served during the period stated in this subsection.
- E. 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.
- F. Exceptions. The Landlord or Lender claiming that their proposed eviction is not prohibited by this ordinance shall have the burden of proving that one or more of the exceptions applies. The provisions of this section shall not apply in the following circumstances, which must be stated by in the Notice of Termination and the complaint as the grounds for the eviction:
 - 1) A Landlord is taking the Residential Unit off of the residential rental market in accordance with Government Code sections 7060, *et seq.* (Ellis Act) and in compliance with any applicable local ordinances.
 - 2) The Residential Unit must be vacated to comply with an order issued by a government agency or court.
 - 3) Continued occupancy by the Resident poses an imminent threat to health or safety. For the purposes of this ordinance, the basis for this exception cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

6.120.040 - Moratorium on 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 Residential Units in the

unincorporated and incorporated areas of the County resulting from a substantial loss of income, substantial out-of-pocket medical expenses, or extraordinary child care needs, any of which are caused by COVID-19.

- B. No Landlord or Lender may evict an Affected Resident, or otherwise require an Affected Resident to vacate a Residential Unit or retaliate against an Affected Resident for nonpayment of rent or mortgage payments or for nonpayment of late fees, fines or interest based on nonpayment, while this ordinance is in effect.
- C. Violation of this ordinance is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of a Residential Unit.
- D. It shall be an absolute defense to any unlawful detainer action against an Affected Resident based on a failure to timely make rent or mortgage payments that the Notice of Termination was served or expired, or that the complaint was filed or served, on or after March 24, 2020 and on or before May 31, 2020. This defense may be raised at any time, including after the end of the Local Health Emergency and after the expiration of this ordinance stated in Section III, provided the notice or complaint at issue in the unlawful detainer action was filed or served during the period stated in this subsection.
- E. 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.
- F. 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 subsections A and D of this section shall be automatically extended to the expiration date of said Paragraph 2.

6.120.050 - Procedures.

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

“NOTICE: THE COUNTY OF ALAMEDA HAS ADOPTED A TEMPORARY MORATORIUM ON EVICTIONS DURING THE COVID-19 LOCAL HEALTH EMERGENCY INCLUDING EVICTIONS FOR NONPAYMENT OF RENT OR MORTGAGE PAYMENTS DUE TO COVID-19. A COPY OF THE COUNTY ORDINANCE IS ATTACHED. UPDATED INFORMATION MAY BE AVAILABLE FROM THE COUNTY’S HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT AT jennifer.pearce@acgov.org or 510-670-6474.”
- B. If the Residential Unit is located within the jurisdictional limits of a city which also has an ordinance protecting residents from evictions due to COVID-19 or during the COVID-19 emergency, the Landlord or Lender must also provide a copy of the city’s ordinance with the Notice of Termination.

- C. To the extent feasible, Affected Residents should make a reasonable effort to notify their Landlord or Lender on or before the day rent or mortgage payment is due, or as soon as possible thereafter, of their potential inability to make a timely rent or mortgage payment due to a Qualifying Loss.

6.120.060 - Documentation – Required Only for COVID-19 Based Eviction Protections.

- A. The provisions of this section apply only when an Affected Resident is seeking protection from eviction pursuant to Section 6.120.040 of this ordinance due to a substantial loss in income, substantial out-of-pocket medical expenses or extraordinary child care needs, resulting in a substantial hardship or inability to make rent or mortgage payments 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. Documentation is not required when a resident is seeking protection from eviction pursuant to Section 6.120.030 of this ordinance.
- B. An Affected Resident's Qualifying Loss must be documented.
- C. An Affected Resident shall retain such documentation until such time as any back rent owed due to the Qualifying Loss is repaid or forgiven.
- D. An Affected Resident is not required to provide such documentation to the Landlord or Lender in advance to qualify for the protections of this ordinance. However, upon the request of a Landlord or Lender, an Affected Resident shall provide such documentation to the Landlord or Lender within forty-five (45) days after the request or within thirty (30) days after the County's shelter in place order is lifted, whichever is later.
- E. The following documents shall create a rebuttable presumption that the Affected Resident has a Qualifying Loss:
 - 1) Letter from employer or other source of income citing COVID-19 as a reason for reduced work hours, termination, or other substantial reduction in pay;
 - 2) Employer paycheck stubs showing a reduction in pay following the COVID-19 outbreak;
 - 3) Bank statements showing a reduction in income following the COVID-19 outbreak;
 - 4) Documentation showing payment of substantial out-of-pocket medical expenses caused by COVID-19; or
 - 5) Documentation showing the closure of a school or child care facility where a child in the Affected Resident's care would otherwise be present during the Affected Resident's working hours; or

- 6) A sworn statement by the Affected Resident attesting to the existence of their Qualifying Loss, including facts sufficient to demonstrate the Qualifying Loss, and attesting to their inability to gather the documentation described in (1)-(5) above.
- F. An Affected Resident may provide other documentation to demonstrate a substantial hardship or inability to make timely rent or mortgage payments caused by COVID-19.
- G. Any confidential medical information or other information protected by the Affected Resident's rights to privacy shall be held confidential by the Landlord or Lender and shall not be reproduced or distributed unless otherwise authorized or required by law.

6.120.070 - Retaliation Prohibited.

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 or reducing services or amenities to which the Residents would otherwise be entitled.

6.120.080 - No Waiver.

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.

6.120.090 - Repayment of Back Rent.

- A. Nothing in this ordinance relieves an Affected Resident of liability for unpaid rent or mortgage payments that became due during the effective periods of Sections 6.120.030.A. or D. or 6.120.040.A. or D. of this ordinance.
- B. In any action to recover possession of a Residential Unit from a Tenant based on nonpayment of rent, it shall be an affirmative defense that the rent became due during the effective periods of Sections 6.120.030.A. or D. or 6.120.040.A. or D. of this ordinance. This defense may be raised at any time, including after the end of the Local Health Emergency and after the expiration of this ordinance stated in Section III.
- C. A Landlord and Tenant may mutually agree to a repayment plan. Such plans remain subject to the prohibition on evictions based on back rent owed pursuant to Subsection B, above.
- D. If a Tenant does not repay the rent that became due during the applicable effective periods of Sections 6.120.030.A. or D. or 6.120.040.A. or D. within twelve (12) months from the date the rent became due, a Landlord may collect the back rent as any other consumer debt. Such back rent may not be collected through the unlawful detainer process.
- E. In any action to recover possession of a Residential Unit, it shall be an affirmative defense if the Landlord or Lender impeded the Affected Resident's effort to pay by refusing to

accept payments on behalf of Affected Resident from a third party, or refusing to provide a W-9 form or other necessary documentation for the Affected Resident to receive financial assistance from a government agency, non-profit organization, or other third party. This defense may be raised at any time, including after the end of the Local Health Emergency and after the expiration of this ordinance stated in Section III.

6.120.100 - Violation and Remedies.

- A. Affirmative Defense. Each Landlord or Lender that seeks to recover possession of a Residential Unit must comply with this ordinance. Non-compliance with any applicable provision of this ordinance shall constitute an affirmative defense for a Resident against any unlawful detainer action under California Code of Civil Procedure section 1161, termination of tenancy in a Mobilehome park under the Mobilehome Residency Law (see Civil Code sections 798.55, et. seq.), petition for writ of possession, or any other action to recover possession of the Residential Unit or to otherwise cause Residents to vacate the Residential Unit.
- 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 or Lender's activities with respect to the Residential Unit, Residents and Households 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 or Lender 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 or Lender's activities with respect to the Residential Unit, Residents, and Resident Households. 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 or Lender that fails to comply with this ordinance may be subject to civil proceedings for displacement of Residents initiated by the County or the Affected Residents.
 - 3. Any person found to have violated this ordinance shall be subject to appropriate injunctive relief and shall be liable to the Resident 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 Resident or non-Resident third party for damage done to said Residential Unit. 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.

6.120.110 - Application to Cities.

A. The regulations in this ordinance shall apply to cities within the County of Alameda and to the unincorporated area of the County, subject to subsections B, C and D below.

B. If the governing body of a city has enacted an ordinance that has stronger protections for Tenants during the COVID-19 emergency, the city may apply its ordinance in lieu of the County ordinance, to the extent its ordinance is stronger, subject to the requirements of this section. The city must duly affirm or declare in writing its intent to opt out of the County ordinance. The writing must enumerate the specific provisions of the County's ordinance from which the city intends to opt out and must include a finding that the city ordinance is stronger.

C. To the extent the city ordinance is not stronger, the County ordinance protecting Tenants shall apply despite contrary provisions or silence on the subject in the city ordinance.

D. To the extent the city's ordinance is stronger for Tenants but not for Homeowners, the provisions of the County ordinance protecting Homeowners shall apply despite contrary provisions or silence on the subject in a city's ordinance.

6.120.120 - 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

This ordinance shall be in force thirty (30) days after 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 ____ day of May, 2020, by at least four-fifths vote, by the following called vote:

AYES:

NOES:

EXCUSED:

RICHARD VALLE
President of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors,

By: _____
Deputy Clerk

APPROVED AS TO FORM:
DONNA R. ZIEGLER, COUNTY COUNSEL

By: _____
Heather Littlejohn
Deputy County Counsel