



Agenda Item _____ March 24, 2020

Chris Bazar
Agency Director

March 19, 2020

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Room 110
Hayward, California
94544-1215

Honorable Board of Supervisors
Administration Building
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Oakland, California 94612

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Dear Board Members:

www.acgov.org/cda

SUBJECT: APPROVE A TEMPORARY MORATORIUM ON EVICTIONS IN UNINCORPORATED ALAMEDA COUNTY DUE TO INCOME LOSS, INCREASED MEDICAL EXPENSES OR CHILD CARE NEEDS RESULTING FROM COVID-19

RECOMMENDATIONS:

- A. Adopt an urgency ordinance enacting a temporary moratorium on evictions in the unincorporated area of the County of Alameda due to income loss, increased medical expenses or childcare needs resulting from COVID-19; and
- B. Adopt an ordinance enacting a temporary moratorium on evictions in the unincorporated area of the County of Alameda due to income loss, increased medical expenses or childcare needs 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. This guidance could cause the cancellation of such gatherings through no fault or responsibility of the parties involved, resulting in economic impacts to people affiliated with such events.

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 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.

As of March 15, 2020, all eighteen school districts in Alameda 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.

As of March 18, 2020, there were 31 confirmed cases of COVID-19 in the County. The number of documented cases is likely to increase as more effective, accessible and pro-active testing methods are introduced and community spread worsens.

Because of these impacts, many employers have laid off or will need to lay off employees, working Alameda County residents with children may be compelled not to work in order to provide care for their child(ren), and many Alameda 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. Those residents financially impacted due to COVID-19 may not be able to pay their rent or mortgage or be forced to choose between paying their rent or mortgage and having sufficient funds for food, medical care or other necessities for themselves and their families.

As the response to the public health emergency escalates, many County residents will be 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 canceled 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 COVID-19. These cancelations 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.

Further, COVID-19 poses a unique threat to the homeless population, 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. This rate is even higher than the Alameda County-wide increase of 47%. Such displacement, destabilization and any increase in homelessness would increase the risk of transmission of COVID-19 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.

On March 17, 2020, as a result of these current or anticipated impacts, your Board directed staff to draft an emergency ordinance establishing a moratorium on evictions for tenants affected by the ongoing public health crisis.

The ordinance being considered by your Board today is a temporary moratorium intended to promote stability within the residential market in the unincorporated areas of the County during the COVID-19 pandemic outbreak. The ordinance is also intended 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. The ordinance will enable residents of the unincorporated area of the County whose income, medical expenses or childcare needs are affected due to COVID-19 to remain in their homes in accordance with the Shelter-in-Place Order.

The ordinance will temporarily exempt these tenants or homeowners from eviction for non-payment of their rent or mortgage, and 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 ordinance provides that no landlord or lender may evict a resident in the unincorporated area of the County, require a resident to vacate their residence, or retaliate against a resident for nonpayment of their rent or mortgage. Violation of this ordinance is an absolute defense to any unlawful detainer action or other proceeding to recover possession of the residence.

To qualify for the protections of this ordinance, upon receipt of an eviction notice accompanied by a notice of this moratorium, tenants and homeowners must notify their landlord or lender that they have substantial loss of income, significant out-of-pocket medical expenses, or extraordinary childcare needs caused by COVID-19 and must documentation of such impact. Acceptable documentation includes but is not limited to:

1. a letter from employer or other source of income citing COVID-19 as a reason for reduced work hours, termination, or other significant 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 resident's care would otherwise be present during the resident's working hours.

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.

If approved by your Board, this ordinance takes immediate effect and would cease to be in effect thirty (30) days from its date of adoption unless otherwise extended by your Board. The ordinance shall be in effect only while an emergency declaration pertaining to COVID-19 is in effect and applicable to the County.

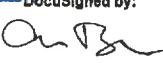
FINANCING:

There will be no increase in net county cost.

VISION 2026 GOAL:

Support for a moratorium on evictions for COVID-19 affected renters and homeowners will support the overarching vision of **Thriving and Resilient Population** and the 10X goal of **Eliminating Homelessness** by ensuring all residents' 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:

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. 2020 –

**AN URGENCY ORDINANCE ADOPTING A TEMPORARY MORATORIUM ON EVICTIONS
RESULTING FROM LOSS OF INCOME, INCREASED MEDICAL EXPENSES OR CHILD CARE NEEDS
RELATED 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 10, 2020, the County of Alameda (“County”) declared a public health emergency as a result of the novel coronavirus that emerged in 2019 (“COVID-19”); and
2. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic; and
3. On March 12, 2020 the County Public Health Department recommended that all non-essential gatherings of more than 250 people should be cancelled or postponed, and smaller gatherings should be cancelled or postponed if held in spaces that do not allow social distancing of six feet per person. This guidance could cause the cancellation of such gatherings through no fault or responsibility of the parties involved, resulting in economic impacts to people affiliated with such events; 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, 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 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 of 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 and the number of documented cases is likely to increase as more effective, accessible, and proactive testing methods are introduced and community spread worsens; and
12. As the response to the public health emergency escalates, many County residents will be 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. This rate is even higher than the Alameda County-wide increase of 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 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 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 policy power to impose substantive limitations on evictions due to specified financial burdens caused by COVID-19 are suspended; and

20. This ordinance is a temporary moratorium intended to promote stability within the residential market in the unincorporated area 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 to enable tenants and homeowners in the unincorporated area of 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
21. During the COVID-19 pandemic outbreak, affected tenants and homeowners who have lost available income due to 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 thus be unable to secure other housing if evicted.

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:

1. Purpose and Intent

This ordinance is enacted for the immediate preservation of the public peace, health, and safety. The purposes of this Ordinance are to promote housing stability during the COVID-19 pandemic and to prevent avoidable homelessness. 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 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 unincorporated area of 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 and 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 for non-payment imposed by this ordinance is created pursuant to the County's general police powers to protect the health, safety, and welfare of its residents and exists in addition to any rights and obligations under state and federal law.

2. Definitions

- A. "Affected Resident" shall mean a Tenant, Homeowner or their Household that has suffered a substantial loss in income, substantial out-of-pocket medical expenses or extraordinary child care needs, resulting in a substantial hardship or inability to pay 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.
- 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. "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.
- G. "Notice of Termination" shall mean 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.
- H. "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.

- I. "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.

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

Beginning on the effective date of this ordinance and continuing for the duration of this ordinance and any extensions thereto, the County hereby places a moratorium on evictions from Residential Units in the unincorporated areas of the County resulting from a significant loss of income, significant out-of-pocket medical expenses, or extraordinary child care needs, any of which are caused by COVID-19. No Landlord or Lender may evict an Affected Resident, otherwise require an Affected Resident to vacate a Residential Unit, or retaliate against an Affected Resident for nonpayment of rent or mortgage payments, while this ordinance is in effect. Violation of this ordinance is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of a Residential Unit. As used in this ordinance, "caused by COVID-19" shall be interpreted broadly and includes the direct and indirect impacts of the COVID-19 pandemic, including but not limited to, any COVID-19 related illness, closures and limitations on business, schools and child care facilities, and any COVID-19 related declaration of the County Public Health Officer, or other local, state or federal authority.

4. Procedures

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

"NOTICE: THE COUNTY OF ALAMEDA HAS ADOPTED A TEMPORARY MORATORIUM ON 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. To qualify for the protections of this ordinance, upon receipt of a Notice of Termination, Affected Residents must notify Landlord or Lender, as applicable, that they have substantial loss of income, significant out-of-pocket medical expenses, or extraordinary child care needs caused by COVID-19 and must provide Landlord or Lender with the documentation described below within fifteen (15) days of Landlord's or Lender's request for such documentation. To

the extent feasible, Affected Residents should notify their Landlord or Lender on or before the day rent or mortgage payment is due of their potential inability to pay the rent or mortgage because of COVID-19.

- C. A Landlord or Lender shall not cause an eviction to be executed 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. A Landlord's or Lender's violation of this ordinance is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of or cause an Affected Resident to vacate a Residential Unit.

5. Documentation

- A. To qualify for the protections of this ordinance, Affected Residents must demonstrate, through documentation or other objectively verifiable means, a substantial hardship or inability to pay rent or mortgage payments when due caused by COVID-19. Affected Residents must show a substantial decrease in income, significant out-of-pocket medical expenses, or extraordinary child care needs.
- B. The following documents shall create a rebuttable presumption that the Affected Resident has a substantial hardship or inability to pay rent or mortgage payments when due caused by COVID-19:
 - 1. Letter from employer or other source of income citing COVID-19 as a reason for reduced work hours, termination, or other significant 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;
 - 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.
- C. An Affected Resident may provide other documentation to demonstrate a substantial hardship or inability to pay rent or mortgage payments when due caused by COVID-19.

6. Retaliation Prohibited

A Landlord or Lender shall not retaliate against an Affected Resident for nonpayment of rent or mortgage caused by COVID-19 or for exercising their rights under this ordinance, including but not limited to, by shutting off any utilities or reducing services or amenities to which the Affected Residents would otherwise be entitled.

7. Violation and Remedies

A. Affirmative Defense. Each Landlord or Lender that seeks to recover possession of Residential Unit must comply with this ordinance. Non-compliance with any applicable provision of this ordinance shall constitute an affirmative defense for an Affected 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 Affected 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 fail(s) 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 fail(s) to comply with this ordinance may be subject to civil proceedings for displacement of Affected Residents initiated by the County or the Affected Residents.
3. Whoever is found to have violated this Ordinance shall be subject to appropriate injunctive relief and shall be liable to the Affected 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 Residents or non-Resident third party for the 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.

8. 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 thirty (30) 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 24th day of March, 2020, by at least four-fifths vote, by the following called vote:

AYES:

NOES:

EXCUSED:

RICHARD VALLE

President of the Board of Supervisors

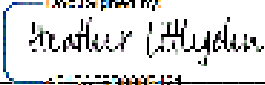
ATTEST:

Clerk of the Board of Supervisors,

By: _____
Deputy Clerk

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By:  _____
Heather Littlejohn
Deputy County Counsel

ORDINANCE NO. 2020 –

**AN ORDINANCE ADDING CHAPTER 6.120 TO THE ALAMEDA COUNTY ORDINANCE CODE
ADOPTING A TEMPORARY MORATORIUM ON EVICTIONS RESULTING FROM LOSS OF INCOME,
INCREASED MEDICAL EXPENSES OR CHILD CARE NEEDS RELATED 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 10, 2020, the County of Alameda (“County”) declared a public health emergency as a result of the novel coronavirus that emerged in 2019 (“COVID-19”); and
2. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic; and
3. On March 12, 2020 the County Public Health Department recommended that all non-essential gatherings of more than 250 people should be cancelled or postponed, and smaller gatherings should be cancelled or postponed if held in spaces that do not allow social distancing of six feet per person. This guidance could cause the cancellation of such gatherings through no fault or responsibility of the parties involved, resulting in economic impacts to people affiliated with such events; 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, 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 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 of 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 and the number of documented cases is likely to increase as more effective, accessible, and proactive testing methods are introduced and community spread worsens; and
12. As the response to the public health emergency escalates, many County residents will be 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. This rate is even higher than the Alameda County-wide increase of 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 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 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 policy power to impose substantive limitations on evictions due to specified financial burdens caused by COVID-19 are suspended; and

20. This ordinance is a temporary moratorium intended to promote stability within the residential market in the unincorporated area of the County during the COVID-19 pandemic outbreak and to prevent avoidable homelessness, thereby promoting the public health, welfare, peace, and safety by reducing the public's exposure to the transmission of COVID-19 and to enable tenants and homeowners in the unincorporated area of 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

21. During the COVID-19 pandemic outbreak, affected tenants and homeowners who have lost available income due to 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 thus be unable to secure other housing if evicted.

SECTION II

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

The Alameda County Ordinance Code is hereby amended to add the following as Chapter 6.120:

6.120.010 Purpose and Intent

This ordinance is enacted to promote the public health, welfare, peace, and safety. The purposes of this Ordinance are to promote housing stability during the COVID-19 pandemic and to prevent avoidable homelessness. This ordinance is necessary for the promotion of the public health, welfare, peace, 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 unincorporated area of 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 and 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 health, welfare, peace, and safety. The temporary moratorium on evictions for non-payment imposed by this ordinance is created pursuant to the County's general police powers to protect the health, safety, and welfare of its residents and exists 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 suffered a substantial loss in income, substantial out-of-pocket medical expenses or extraordinary child care needs, resulting in a substantial hardship or inability to pay 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.
- 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. "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.
- G. "Notice of Termination" shall mean 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.
- H. "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.

- I. "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 Based on Nonpayment Caused by COVID-19

Beginning on the effective date of this ordinance and continuing for the duration of this ordinance and any extensions thereto, the County hereby places a moratorium on evictions from Residential Units in the unincorporated areas of the County resulting from a significant loss of income, significant out-of-pocket medical expenses, or extraordinary child care needs, any of which are caused by COVID-19. No Landlord or Lender may evict an Affected Resident, otherwise require an Affected Resident to vacate a Residential Unit, or retaliate against an Affected Resident for nonpayment of rent or mortgage payments, while this ordinance is in effect. Violation of this ordinance is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of a Residential Unit. As used in this ordinance, "caused by COVID-19" shall be interpreted broadly and includes the direct and indirect impacts of the COVID-19 pandemic, including but not limited to, any COVID-19 related illness, closures and limitations on business, schools and child care facilities, and any COVID-19 related declaration of the County Public Health Officer, or other local, state or federal authority.

6.120.040 Procedures

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

"NOTICE: THE COUNTY OF ALAMEDA HAS ADOPTED A TEMPORARY MORATORIUM ON 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. To qualify for the protections of this ordinance, upon receipt of a Notice of Termination, Affected Residents must notify Landlord or Lender, as applicable, that they have substantial loss of income, significant out-of-pocket medical expenses, or extraordinary child care needs caused by COVID-19 and must provide Landlord or Lender with the documentation described below within fifteen (15) days of Landlord's or Lender's request for such documentation. To the extent feasible, Affected Residents should notify their Landlord or Lender on or before the day rent or mortgage payment is due of their potential inability to pay the rent or mortgage because of COVID-19.

- C. A Landlord or Lender shall not cause an eviction to be executed 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. A Landlord's or Lender's violation of this ordinance is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of or cause an Affected Resident to vacate a Residential Unit.

6.120.050 Documentation

- A. To qualify for the protections of this ordinance, Affected Residents must demonstrate, through documentation or other objectively verifiable means, a substantial hardship or inability to pay rent or mortgage payments when due caused by COVID-19. Affected Residents must show a substantial decrease in income, significant out-of-pocket medical expenses, or extraordinary child care needs.
- B. The following documents shall create a rebuttable presumption that the Affected Resident has a substantial hardship or inability to pay rent or mortgage payments when due caused by COVID-19:
 - 1. Letter from employer or other source of income citing COVID-19 as a reason for reduced work hours, termination, or other significant 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;
 - 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.
- C. An Affected Resident may provide other documentation to demonstrate a substantial hardship or inability to pay rent or mortgage payments when due caused by COVID-19.

6.120.060 Retaliation Prohibited

A Landlord or Lender shall not retaliate against an Affected Resident for nonpayment of rent or mortgage caused by COVID-19 or for exercising their rights under this ordinance, including but

not limited to, by shutting off any utilities or reducing services or amenities to which the Affected Residents would otherwise be entitled.

6.120.070 Violation and Remedies

A. Affirmative Defense. Each Landlord or Lender that seeks to recover possession of Residential Unit must comply with this ordinance. Non-compliance with any applicable provision of this ordinance shall constitute an affirmative defense for an Affected 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 Affected 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 fail(s) 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 fail(s) to comply with this ordinance may be subject to civil proceedings for displacement of Affected Residents initiated by the County or the Affected Residents.

3. Whoever is found to have violated this Ordinance shall be subject to appropriate injunctive relief and shall be liable to the Affected 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 Residents or non-Resident third party for the 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.

6.120.080 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 thirty (30) 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 _____, 2020, by the following called vote:

AYES:

NOES:

EXCUSED:

RICHARD VALLE
President of the Board of Supervisors

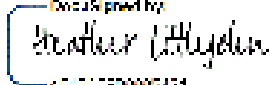
ATTEST:

Clerk of the Board of Supervisors,

By: _____
Deputy Clerk

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By:  _____
Heather Littlejohn
Deputy County Counsel