

ORDINANCE NO. 01 - 2020

**AN URGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF EAST PALO ALTO**

ESTABLISHING A TEMPORARY MORATORIUM ON RESIDENTIAL EVICTIONS FOR NON-PAYMENT OF RENT BY TENANTS IMPACTED BY THE COVID-19 PANDEMIC

SECTION 1. FINDINGS

WHEREAS, on March 3, 2020, the San Mateo County Health Officer declared a local health emergency throughout San Mateo County and the County Manager, serving as the County Director of Emergency Services, proclaimed a local emergency throughout San Mateo County related to the novel coronavirus (“COVID-19”); and

WHEREAS, on March 10, 2020, the San Mateo County Board of Supervisors (the “County Board”) ratified and extended the declaration and proclamation and this state of emergency remains in effect; and

WHEREAS, on March 16, 2020, the Health Officer issued an order that directs all individuals currently living within San Mateo County to shelter in their place of residence (“Shelter-in-Place Order”), and authorizes individuals to leave their residences only for certain “Essential Activities,” Essential Governmental Functions,” or to operate “Essential Businesses,” as defined in the Shelter-in Place-Order; and

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-20, which grants cities, counties, and cities and counties authority to enact temporary moratoria on residential and commercial evictions based on a non-payment of rent caused by the COVID-19 pandemic or the federal, state and/or local response to the COVID-19 pandemic; and

WHEREAS, on March 17, 2020, the East Palo Alto City Council determined that the threat to public health from the introduction of COVID-19 in San Mateo County constitutes an emergency and proclaimed that a local emergency now exists in the City of East Palo Alto; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 which, among other things, directs all California residents to immediately heed current State public health directives, including the March 19, 2020 directive of the State Public Health Officer to all State residents to stay home or at their place of residence, subject to certain exceptions; and

WHEREAS, as of the date of this ordinance, State and County officials report that there are approximately 165 confirmed cases of COVID-19 within the County, over 2,102 confirmed cases in California, and 40 COVID-19 related deaths in California; and

WHEREAS, on March 24, 2020, the County Board adopted an Emergency Regulation for San Mateo County that established a moratorium for non-payment of rent by residential tenants directly impacted by the COVID-19 emergency and no-fault terminations of tenancy, unless the eviction is necessary for the health and safety of the tenant or the landlord; and

WHEREAS, the County eviction moratorium went into effect immediately and will remain in effect until the termination of the State of Emergency; and

WHEREAS, despite the national, state, and local responses to COVID-19, the measures to combat the virus may have severe impact of the residents of East Palo Alto, including business closures, layoffs, reduction in work hours, expenditures due to school closures, and health care expenditures, and other expenditures stemming from compliance with emergency orders; and

WHEREAS, tenants in the City of East Palo Alto who experience these impacts will be vulnerable to eviction; and

WHEREAS, displacing renters who are unable to pay rent due to COVID-19-related causes will worsen the present crisis by making it difficult for them to follow the County's Shelter-in-Place Order, which will put tenants and many others at risk; and

WHEREAS, during the State of Emergency, the public interest in preserving peace, health, and safety and preventing further transmission of COVID-19 will be served by avoiding unnecessary displacement and homelessness; and

WHEREAS, the City Council directed City staff to prepare and bring back for council consideration an urgency Ordinance to protect residential tenants from eviction for nonpayment of rent related to the economic impacts of the COVID-19; and

WHEREAS, the City Council finds that the foregoing recitals and administrative report presented with this Ordinance are true and correct and are incorporated into this Ordinance by this reference and adopted as findings of the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO DOES ORDAIN AS FOLLOWS:

SECTION 2. APPLICABILITY

This Ordinance applies to eviction notices based on non-payment of rent and no-fault termination of tenancy and unlawful detainer actions based on such notices, served, filed, or expiring on or after the date of adoption of this Ordinance through the Termination Date.

SECTION 3. DEFINITIONS

- (a) For purposes of this Ordinance, the following definitions shall apply:
- (1) "Delayed Payment" includes a payment made after the time set forth in the rental agreement between a Landlord and a Tenant or Tenants or as otherwise agreed between the parties ("Due Date") as a result of the following: (i) a Tenant lost household income as a result of being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (ii) a Tenant lost household income as a result of a lay-off, loss of hours, loss of business, or other income reduction resulting from COVID-19 or the federal, state or local government response to COVID-19; (iii) a Tenant lost household income due to compliance with the Shelter in Place Order or a recommendation from a government agency to stay home, self-quarantine, or avoid congregating with others during the State of Emergency; (iv) a Tenant lost household income as a result of caring for minor children affected by school, pre-school and/or childcare closures due to the State of Emergency; (v) a Tenant or a member of Tenant's household incurred substantial medical costs related to COVID-19; and (vi) a Tenant suffered any other substantial financial hardship caused directly by COVID-19 or the governmental response to the

COVID-19 pandemic. To qualify as a "Delayed Payment" under this Ordinance, a Tenant must notify the Landlord in writing of the Tenant's lost income and inability to pay full rent on the Due Date and provide documentation to support the claim on or before termination of the State of Emergency, or prior to the date of actual displacement of the Tenant by execution of an unlawful detainer judgment, whichever is later. For purposes of this section, "in writing" may include e-mail or text communications to a Landlord or the Landlord's representative with whom the Tenant has previously corresponded by email or text. Any medical or financial information provided to the Landlord shall be held in confidence, and only used for evaluating the Tenant's claim.

- (2) "No-fault termination of tenancy" as used in this Ordinance shall refer to any eviction for which the notice to terminate tenancy is not based on alleged fault by the Tenant, including but not limited to eviction notices served pursuant to California Civil Code Section 1946.2(b)(2) and Code of Civil Procedure Sections 1161(1) and 1161(5).
- (3) "Tenant" shall mean any renter, tenant, subtenant, lessee or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessee's, or sublessee's of any rental unit, or any other person entitled to the use or occupancy of such Residential Rental Unit, Mobilehome or Mobilehome Space.
- (4) "Landlord" shall mean an owner of record, lessor, sublessor or any other person, entity, or nonnatural person entitled to receive rent for the use or occupancy of any Residential Rental Unit, Mobilehome or Mobilehome Space, or an agent representative, affiliate, member, shareholder, trustee, or successor of any of the foregoing. If an owner of a Residential Rental Unit, Mobilehome, or Mobilehome Space, is other than a single natural person, then all entities, and persons that share ownership and/or control (direct or indirect) of the units shall be considered one and the same landlord.
- (5) "Mobilehome" shall mean those structures defined in California Civil Code Section 798, et seq., and other forms of vehicles designed or used for human habitation, including camping trailers, recreational vehicles, motorhomes, slide-in campers, or travel trailers, that occupy a site in a Mobilehome Park.
- (6) "Mobilehome Park" shall mean any mobilehome or manufactured home park, as defined in Civil Code Sections 798.4 and 798.6.
- (7) "Mobilehome Space" shall mean the site within a Mobilehome Park intended, designed, or used for the location or accommodation of a Mobilehome and any accessory structures or appurtenances attached thereto or used therewith.
- (8) "Mobilehome Tenant" shall mean any person entitled to occupy a Mobilehome pursuant to ownership thereof or a lease or rental arrangement with the owner thereof.
- (9) "Residential Rental Unit" shall mean any unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy, together with all housing services connected with the use or occupancy of such property such as common areas and recreational facilities available for use by the tenant.

SECTION 4. TEMPORARY PROHIBITION ON RESIDENTIAL EVICTIONS

- (a) Except as otherwise provided in this Ordinance, until May 31, 2020, unless further extended by the City before that date ("Termination Date"), no Landlord shall endeavor to evict a Tenant in either of the following situations: (1) for non-payment of rent if the Tenant demonstrates that inability to pay rent is due to the COVID-19 pandemic or the federal, state or local government response to the COVID19 pandemic, or (2) for a no-fault termination of tenancy as defined herein unless necessary for the health and safety of the Tenant, other residents of the building at which the Tenant resides, or the Landlord, or the Landlord's family. Endeavors to evict that are prohibited by this Ordinance include issuance of a three-day notice to pay rent or quit or a notice of no-fault termination of tenancy after the effective date of this Ordinance, or attempting to enforce a termination of tenancy through an unlawful detainer filing based on any notice issued but not yet expired prior to the effective date of this Ordinance.
- (b) Prior to taking any action, during the term of this Ordinance, to endeavor to evict a Tenant for non-payment of rent or under any circumstance that constitutes a no-fault termination of tenancy, the Landlord must first provide the affected Tenant or Tenants with written notice of this Ordinance using a form developed and approved by the City of East Palo Alto, which form shall include, at a minimum (i) the amount of rent to which the Landlord is legally entitled pursuant to any written or oral agreement and under the provisions of State or local law; (ii) that this rent is due unless the Tenant promptly establishes in writing to the Landlord that the amount of rent due qualifies as a Delayed Payment, as defined in this Ordinance; and (iii) that the notice from Tenant to the Landlord referenced in Section (4)(a)(1) regarding Delayed Payment must be provided to the Landlord as soon as reasonably practicable thereafter.
- (c) For purposes of this Ordinance, notice provided by a Tenant to the Tenant's Landlord within thirty (30) days of receipt from the Landlord of the written notice required pursuant to this Section 3(b) shall be presumed to have been provided within a reasonable timeframe, provided that notices provided on a timeframe greater than thirty (30) days may be deemed reasonable, depending on the totality of the circumstances.
- (d) Nothing in this Ordinance shall relieve the Tenant of the obligation to pay rent as it comes due after the termination of the State of Emergency or of the liability for the unpaid rent that is a Delayed Payment, payment of which the Landlord may seek after the termination of the State of Emergency. However, with respect to any Delayed Payment covered by this Ordinance, a Tenant shall not be deemed to be in default of rent payment obligations unless the Tenant fails to tender the full amount of the Delayed Payment within 180 days of termination of the State of Emergency. Further, a Landlord may not charge or collect a late fee for a Delayed Payment as defined in this Ordinance. Any three-day notices to pay or quit or no-fault eviction notices served prior the effective date of this Ordinance but not yet expired are automatically deemed served the day following the expiration of this Ordinance.
- (e) An action taken by a Landlord to evict a Tenant for a Delayed Payment shall not be considered a violation of this Ordinance where the action was taken before the Tenant provided the Landlord notice of the Tenant's lost income and inability to pay full rent on the Due Date and provided documentation to the Landlord in accordance with this section, provided that the Landlord ceases further endeavors to evict the Tenant on this basis upon receiving the notice and documentation from the Tenant required in this section.

SECTION 5. REMEDIES

- (a) This Ordinance provides an affirmative defense to eviction in the event that an unlawful detainer action is commenced in violation of this Ordinance.
- (b) In the event of a violation of this Ordinance, an aggrieved tenant may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages (including damages for mental or emotional distress as specified below), and any other relief the Court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled in the trier of fact finds that the Landlord acted in knowing violation of or in reckless disregard of this Ordinance. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to court order.
- (d) Violations of this Ordinance shall be punishable as set forth in Chapter 1.14 and Chapter 8.08 of the East Palo Alto Municipal Code. In addition, this Ordinance shall serve a defense in the event that an unlawful detainer action is commenced in violation of this Ordinance.
- (e) The remedies available under this section shall be in addition to any existing remedies which may be available to the tenant under local, state or federal law.

SECTION 6. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The adoption of the proposed Ordinance is not a project under the California Environmental Quality Act ("CEQA"), as it is general policy-making activity pursuant to Section 15378(b)(2) of the CEQA Guidelines.

SECTION 7. SEVERABILITY

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

SECTION 8. EFFECTIVE DATE

This Ordinance was introduced and adopted on March 26, 2020 and shall be effective immediately upon adoption. Furthermore, this Ordinance shall remain in effect until termination of the State of Emergency.

SECTION 9. PUBLICATION

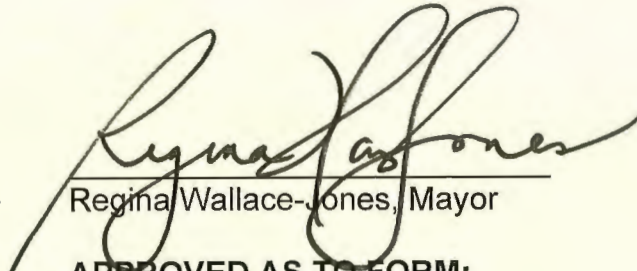
The City Clerk is hereby directed to cause publication of this Ordinance as required by law.

AYES: Abrica, Gauthier, Moody, Romero, Wallace-Jones

NOES:

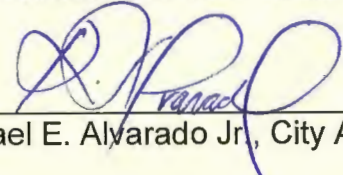
ABSENT:

ABSTAIN:



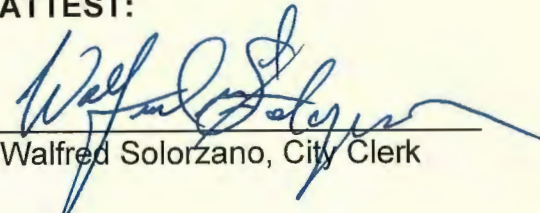
Regina Wallace-Jones, Mayor

APPROVED AS TO FORM:



Rafael E. Alvarado Jr., City Attorney

ATTEST:



Walfred Solorzano, City Clerk