



Kate Harrison
Councilmember District 4

ACTION CALENDAR
May 26, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmembers Harrison (Author), Davila (Co-Sponsor) and Bartlett (Co-Sponsor)
Subject: Urgency Ordinance: Updates to the COVID-19 Emergency Response Ordinance

RECOMMENDATION

1. Adopt an urgency ordinance amending Berkeley Municipal Code 13.110, Title 13, “The COVID-19 Emergency Response Ordinance,” to enhance emergency tenant protections consistent with recently adopted County laws, action in other jurisdictions, and consultation with community stakeholders.

BACKGROUND

A. Berkeley’s COVID-19 Emergency Response Ordinance

On March 17, 2020, the Berkeley City Council adopted an emergency ordinance prohibiting evictions of residential and commercial tenants unable to pay their rent due to COVID-19. Subsequently, on April 21, 2020, the Council further amended the City’s ordinance to enhance eviction protections for commercial tenants, namely a prohibition on unreasonable rent increases for impacted businesses and nonprofits. Since the enactment of these protections, neighboring jurisdictions and the Alameda County Board of Supervisors have enacted a number of additional protections that are either complimentary to, or more stringent than, Berkeley’s ordinance. The item updates BMC 13.110 to include best practices and to align with newly adopted countywide protections.

B. Alameda County’s Urgency Ordinances

On March 24, 2020, the Alameda Board of Supervisors passed an urgency ordinance creating a temporary moratorium on evictions for renters and homeowners in the

Unincorporated County (Ordinance No. 2020-14). On March 31, 2020, the Board extended protections to the entire County. Similar to our BMC 13.110, the ordinances applied a moratorium on evictions to tenants, homeowners or mobile home owners who can provide documentation that they cannot pay their rent or mortgage due to a substantial loss of income, substantial out-of-pocket medical expenses, or extraordinary childcare needs caused by COVID-19.

On April 21, 2020, the Board considered and adopted additional amendments,¹ after finding that the pandemic and shelter in place orders created severe new and exacerbated existing socioeconomic impacts. Accordingly, the County deemed any eviction, regardless of cause, a public health threat.

Giving cities this option provides baseline protections for residents of cities without moratoria, but allows cities to make determinations in the best interest of their residents. Replicating these provisions in Berkeley's local ordinance underscores our authorities as a Charter City.

The April 21 amendments and those incorporated into the proposed changes to the City ordinance include the following:

1. *Expands to Include all Evictions:* The Ordinance institutes a moratorium on all evictions during the local health emergency regardless of cause, with limited exceptions. The exceptions to this moratorium include an imminent health or safety risk; however, infection or a heightened risk of infection with COVID-19 is not an allowable risk. The burden is on a landlord pursuing an eviction to prove an exception applies.
2. *Repayment Provisions:* Tenants shall have twelve (12) months to repay overdue rent, unless the tenant and landlord can come to a mutual repayment agreement. This is a change from the requirement that tenants must repay all past due rent six months after the declaration of local emergency has ended. The repayment period will ensure residents have a reasonable amount of time to become current on past rent. The amended moratorium will also create a permanent ban on evictions for this overdue rent, instead making the overdue rent a consumer debt. Without this provision, the County's (and City's) eviction moratorium only delays a wave of evictions that will likely result from this crisis. By declaring that rent that

¹ Amend Countywide Temporary Moratorium on Residential Evictions, Alameda County Community Development Agency, April 21, 2020, https://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_04_21_20/GENERAL%20ADMINISTRATION/Regular%20Calendar/CDA_294956.pdf, Amendments were crafted and presented by the Alameda County's Community Development Agency and the Housing and Community Development Department (HCD), in coordination with County Counsel, Public Health, all cities countywide, Resources for Community Development, and legal agencies including Bay Area Legal Aid, Centro Legal de la Raza, East Bay Community Law Center, and Housing and Economic Rights Advocates.

becomes overdue during the public health crisis can never be used to evict a resident, landlords retain the ability to pursue the overdue rent as debt via small claims court, a payment plan or garnishing of wages.

3. *Documentation Requirement:* The proposed amendments allow residents claiming COVID-19 impacts more time to provide documentation of impacts upon request by a landlord: within 45 days of the landlord's request or 30 days of the expiration of the shelter in place order, whichever is later. The proposed amended ordinance also allows a sworn statement attesting to the existence of a COVID-19 impact as acceptable documentation. These additions make it easier for residents to claim the protections granted under this ordinance, especially residents who do not have immediate access to the required documentation or the ability to submit it.
4. *Outlaw of Waiver:* Tenants are not allowed to waive their rights granted by this ordinance. This modification was included after legal agencies gave feedback that some tenants had been approached by their landlords with incentives if they signed away their rights. This provision is to ensure all residents who qualify receive these protections.

C. Updates to The Covid-19 Emergency Response Ordinance

Unreasonable evictions are directly at odds with local, state and federal measures to recover from the pandemic.

Housing stability is prerequisite for flattening the COVID-19 infection curve. Loss of housing presents significant health risks for those directly affected and the population at large, through disruption of shelter in place orders, social distancing measures and increased homelessness. Testing, quarantine, and physical distancing measures are bolstered by housing security.

In recognition of developments at the County level, action in other jurisdictions, and consultation with community stakeholders, the item proposes the following additional key amendments to BMC 13.110:

1. *Restrictions Pursuant to Rent Stabilization and Eviction for Good Cause Ordinance:*
 - a. Adds moratorium on rent increases exceeding the Consumer Price Index Rent Adjustment in rent-controlled units regulated by Berkeley Municipal Code Section 13.76.010 et seq. to insure that significant rent increases do not force relocation of tenants during the local emergency.

2. *Definition of Landlord and Tenant and Delayed Rent Payment Agreement:*

Expands definition of “tenant” to include a tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property. Adds definition of “Delayed Rent Payment Agreement” and clarifies “Landlord” to include lessors and sublessors.

3. *Fines, Fees and Interest:*

Clarifies that restrictions on late fees, fines, or interest supersede contrary lease provisions.

4. *Payment Plans:*

Prior to executing any repayment agreement, a landlord must provide documentation to the tenant demonstrating they applied for federal, state and local direct payments and were denied or approved and the amounts and months for which the landlord received any direct payments. Direct relief in the form of federal, state and local or private direct payments to a landlord whose tenant has suffered COVID-19-related decreases in income, or increased family expenses, shall be passed through to, and credited towards, satisfaction of the tenant’s rental obligations.

5. *Retaliation:*

Prohibits landlord from retaliating against a tenant for exercising their rights under this Ordinance, including but not limited to shutting off any utilities or reducing services or amenities to which the Tenant would otherwise be entitled.

6. *Obliges Landlords to Accept Rent from Third Parties and Provide a W-9:*

Clarifies that it shall be an eviction defense if the landlord impedes the tenant’s effort to pay rent via a third party, or refuses to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Clarifies that third-party payments shall not create a tenancy between the landlord and the third party as long as either the landlord or the tenant provide written notice that no new tenancy is intended.

7. *Expansion of Covered Reason for Delayed Payment to Include Reduction in Number of Tenants in Group Living Arrangements*

Expands the definition of “Covered Reason for Delayed Payment” to include when one or more tenants have moved out of a group living arrangement, leaving the remaining tenants to pay their share of the rent.

Consistent with the recent Alameda County and neighboring jurisdiction actions, and the ongoing shelter-in-place order and associated emergency activities in response to the global pandemic, it is in the public interest to clarify and amend the COVID-19 Emergency Response Ordinance.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts associated with this action.

FISCAL IMPACTS OF RECOMMENDATION

None

CONTACT PERSON

Councilmember Kate Harrison
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ORDINANCE NO. -N.S.

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

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

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

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

Sections:

- 13.110.010 Findings and Purpose**
- 13.110.020 Prohibited Conduct**
- 13.110.030 Definitions**
- 13.110.040 Collection of Back Rent and Late Fees**
- 13.110.050 Application**
- 13. 110.060 Implementing Regulations**
- 13.110.070 Waiver**
- 13.110.080 Remedies**
- 13.110.090 Severability**

13.110.010 Findings and Purpose

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." And the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the State of Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, the council ratified an extension of the local state of emergency through June 21, 2020. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

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

On March 31, this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

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

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

On April 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.

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

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

At the same time, the Governor, as well as, the Berkeley Health Officer, and those of other jurisdictions ordered the closure of businesses, except those deemed essential. Many businesses, such as restaurants, are open only for take-out or pick up services and face a critical loss of business.

The City Council is aware that some landlords of commercial properties are seeking significant rent increases during the period when many commercial tenants are closed or are experiencing substantial and catastrophic reductions in their business and income. Such rent increases force tenants who are closed or have substantially reduced revenues face the choice of accepting a significant rent increase, moving at a time when it is virtually impossible, or closing altogether. Accepting a rent increase while closed or

in a reduced state of operations means that the commercial tenants face even more debt to the landlord when the emergency is over, and may face a substantially increased rent when the tenant returns to normal operations, if ever.

Landlords of commercial property that unreasonably increases rents on tenants of commercial property during the COVID-19 emergency significantly impacts vulnerable small businesses, nonprofits, and artists who form a large part of the backbone of Berkeley's economy, revenue sources, and employment opportunities. These rent increases are coming at a time when the commercial rents are likely falling due to business closures and potential loss of businesses at the end of the emergency. Thus, these rent increases appear as a way of evading the Governor's and Berkeley's commercial tenant eviction moratorium by forcing tenants to agree to rent increases or leave. Such conduct constitutes constructive evictions in contravention of the eviction moratorium. Furthermore, such rent increases may affect businesses providing goods and essential services, resulting in increases in those costs of essential goods and services contravening the intent of anti-price gouging laws.

On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter 13.110.

13.110.020 Prohibited Conduct

A. During the local State of Emergency, no landlord or other entity shall evict or attempt to evict an occupant of real property unless necessary for the health and safety of residentstentants neighbors, or the landlord. For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.in either of the following situations:

~~1. For nonpayment of rent by a tenant of a commercial property or residential property, if the tenant demonstrates that the inability to pay is due to a Covered Reason for Delayed Payment as defined in Section 13.110.030(A), or~~

~~2. A Landlord may not terminate the tenancy of a commercial Tenant for failure to pay rent if the tenant demonstrates that the inability to pay is due to a Covered Reason for Delayed Payment as defined in Section 13.110.030(A), tenant of a residential property, unless necessary for the health and safety of tenants, neighbors, or the landlord.~~

~~B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served during the local State of Emergency. A who landlord becomes aware of the tenant's inability to pay rent within the meaning of this Chapter if the tenant notifies the landlord in writing of their lost income and inability to pay their rent or any portion thereof, and provides documentation to support the existence of a Covered Reason for Delayed Payment. For purposes of this section, "in writing" includes email or text communications to a landlord or the landlord's representative with whom the tenant has previously corresponded by email or text. If the tenant has not notified the landlord in advance of being delinquent in the payment of rent, the landlord must serve the tenant with a pre-notice of the rent delinquency and its amount and give the tenant at least three days, excluding weekends and holidays to provide the landlord with a notice and documentation of a basis for an inability to pay rent under this Chapter, if the tenant has such basis, prior serving a notice pursuant to Code of Civil Procedure section 1161(2). A Tenant is not required to provide such documentation to the Landlord in advance to qualify for the protections of this ordinance. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within forty-five (45) days after the request or within thirty (30) days after the local State of Emergency is ended, whichever is later. In the case of nonpayment of rent, the failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure section 1161(2) does not waive the Tenant's right to claim this Chapter as a complete defense to non-payment of rent in an unlawful detainer action.~~

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

C. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local state of emergency declared by the Director of Emergency Services. For purposes of this section, rent means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section 13.110.020 C. shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section

shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.

D. Moratorium on Rent Increases Exceeding Annual General Adjustment in Rent Controlled Units. For rental units regulated by Berkeley Municipal Code Section 13.76.010 et seq, any notice of rent increase in excess of the Annual General Adjustment for the current year, as defined in Berkeley Municipal Code section 13.76.110, shall be void and unenforceable if the notice is served or has an effective date during the local State of Emergency, unless authorized by the decision of a Rent Stabilization Board hearing examiner.

13.110.030 Definitions

A. _____ "Covered Reason for Delayed Payment" means:

- (1) the basis for the eviction is nonpayment of rent, arising out of a material decrease in household, ~~or business, or other rental unit occupant's~~ income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or, in a group living arrangement wherein all tenants are collectively responsible for payment of the rent to the landlord, a reduction in the number of tenants living in the unit which reduces the ability of the remaining tenants to pay the rent; and
- (2) the decrease in household, ~~or business, or other rental unit occupant's~~ income or the ~~out-of-pocket medical~~ expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, ~~and is documented.~~

~~B. "No-Fault Eviction" refers 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 Code of Civil Procedure sections 1161(1), 1161(5), or 1161b. "No-Fault Eviction" does not include withdrawal of accommodations from the rental market as provided in Government Code 7060 et seq. (Ellis Act).~~

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

C. "Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:

1. whose operation has been shut down due to the COVID-19 emergency, or
2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
3. who suffered a material loss of income.

DB. ————"Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property.

EG. ————"Tenant" includes a tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement to use or occupancy ~~a renter~~ of either residential or commercial property.

13.110.040 Collection of Back Rent and Late Fees

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek after expiration of the local State of Emergency. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment. The City will develop standards or guidelines for tenants to repay unpaid rent accrued during the course of the local State of Emergency. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.

Tenants shall have twelve (12) months to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

Any direct relief in the form of federal, state and local or private direct payments that result in a reduction in the Landlord's mortgage or tax obligations related to the subject property, shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be implied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement.

13.110.050 Application

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served or filed on or after the effective date of this Chapter through the end of the local State of Emergency. It does not apply to withdrawal of accommodations from the rental market pursuant to Government Code 7060 et seq. ("Ellis Act") or to units ordered by the City to be vacated for the preservation of public health.

B. With respect to delayed payment covered by this Ordinance, a landlord may seek such rent after the expiration of the local State of Emergency, pursuant to Section 13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) *et seq.* or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued during the term of the local State of Emergency ~~for a Covered Reason for Delayed Payment~~. In any action to evict based on alleged non-payment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time from the effective date of this Chapter the expiration of the local State of Emergency.

C. A Landlord shall not retaliate against a Tenant for exercising their rights under this Ordinance, including but not limited to shutting off any utilities or reducing services or amenities to which the Tenant would otherwise be entitled.

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

13.110.060 Implementing Regulations

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

13.110.070 Waiver

A. A landlord may request that the requirements of this Chapter be waived or modified, by the City Manager or their designee, based on a showing that applying the requirements would constitute ~~a hardship to the landlord or other tenants, or would constitute~~ an unconstitutional taking of property or otherwise have an unconstitutional application to the landlord's property. The tenant shall be provided notice of the application to the City Manager or their designee and may submit materials in opposition to the application.

B. The landlord shall bear the burden of presenting evidence to support the request for a waiver or modification of the requirements of this Chapter and shall set forth in detail the factual and legal basis for the claim, including all supporting documentation.

C. The City will develop standards for what might constitute grounds for a waiver or modification of the requirements of this Chapter on the part of the landlord.

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

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

13.110.080 Remedies

In the event of a violation of this Ordinance, an aggrieved tenant may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate. Money damages shall only be awarded if 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 order of the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the tenant under local, state or federal law. In addition, this Ordinance grants a defense to eviction in the event that an unlawful detainer action is commenced in violation of this Ordinance.

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

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

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

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

13.110.090 Severability

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

Section 2. Vote Required, Immediately Effective

Based on the findings and evidence in Section 13.110.010 of this Urgency Ordinance, the Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article XIV Section 93 of the

Charter of the City of Berkeley and must therefore go into effect immediately. This Ordinance shall go into effect immediately upon a seven-ninths vote of the City Council, in satisfaction of the Charter of the City of Berkeley.



Kate Harrison
Councilmember District 4

ACTION CALENDAR
May 26, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Harrison
Subject: Urgency Ordinance: Updates to the Covid-19 Emergency Response Ordinance

RECOMMENDATION

1. Adopt an urgency ordinance amending Berkeley Municipal Code 13.110, Title 13, "The COVID-19 Emergency Response Ordinance," to enhance emergency tenant protections consistent with recently adopted County laws, action in other jurisdictions, and consultation with community stakeholders.

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A. Berkeley's COVID-19 Emergency Response Ordinance

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B. Alameda County's Urgency Ordinances

On March 24, 2020, the Alameda Board of Supervisors passed an urgency ordinance creating a temporary moratorium on evictions for renters and homeowners in the Unincorporated County (Ordinance No. 2020-14). On March 31, 2020, the Board extended protections to the entire County. Similar to BMC 13.110, the ordinances applied a moratorium on evictions to tenants, homeowners or mobile home owners who

can provide documentation that they cannot pay their rent or mortgage due to a substantial loss of income, substantial out-of-pocket medical expenses, or extraordinary childcare needs caused by COVID-19.

On April 21, 2020, the Board considered and adopted additional amendments crafted and presented by the Alameda County's Community Development Agency and the Housing and Community Development Department (HCD), in coordination with County Counsel, Public Health, all cities countywide, Resources for Community Development, and multiple legal agencies including Bay Area Legal Aid, Centro Legal de la Raza, East Bay Community Law Center, and Housing and Economic Rights Advocates.¹

County agency directors wrote that the pandemic and shelter in place orders created severe new socioeconomic impacts and exacerbated those already in existence. Accordingly, the County deemed any eviction, regardless of cause, a public health threat.

The April 21 amendments included the following key changes:

1. *Expands to Include all Evictions:* The Ordinance institutes a moratorium on all evictions during the local health emergency regardless of cause, with limited exceptions. The exceptions to this moratorium include an imminent health or safety risk; however, infection or a heightened risk of infection with COVID-19 is not an allowable risk. It is the burden of a landlord claiming their eviction action is not prohibited to prove an exception applies.
2. *Repayment Provisions:* Tenants shall have twelve (12) months to repay overdue rent, unless the tenant and landlord can come to a mutual repayment agreement. The repayment period will ensure residents have a reasonable amount of time to become current on past rent. The amended moratorium will also create a permanent ban on evictions for this overdue rent, instead making the overdue rent a consumer debt. Without this provision, the County's eviction moratorium only delays a wave of evictions that will likely result from this crisis. By declaring that rent that becomes overdue during the public health crisis can never be used to evict a resident, landlords retain the ability to pursue the overdue rent as debt via small claims court, a payment plan or garnishing of wages.
3. *Documentation Requirement:* The proposed amended ordinance allows residents claiming COVID-19 impacts an extended period of time in which to provide documentation of those impacts upon request by a landlord: within 45 days of the landlord's request or 30 days of the expiration of the shelter in place order, whichever is later. The proposed amended ordinance also allows a sworn

¹ Amend Countywide Temporary Moratorium on Residential Evictions, Alameda County Community Development Agency, April 21, 2020, https://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_04_21_20/GENERAL%20ADMINISTRATION/Regular%20Calendar/CDA_294956.pdf

statement attesting to the existence of a COVID-19 impact as acceptable documentation. These additions make it easier for residents to claim the protections granted under this ordinance, especially residents who do not have immediate access to the required documentation or the ability to submit them.

4. *Outlaw of Waiver*: Tenants are not allowed to waive rights granted by this ordinance. This modification was included after legal agencies gave feedback that some tenants had been approached by their landlords with incentives if they were to sign away their rights granted by similar ordinances. It is the intention of the County to ensure all residents who qualify receive these protections.
5. *Co-existence with City Eviction Ordinances*: Cities that have passed eviction moratoriums may “opt out” of provisions of the County moratorium. Giving cities this option provides baseline protections for residents of cities without moratoria, but allows cities to make determinations in the best interest of their residents.

C. Updates to The Covid-19 Emergency Response Ordinance

Unreasonable evictions are directly at odds with local, state and federal measures to recover from the pandemic.

Housing stability is prerequisite for flattening the COVID-19 infection curve. Loss of housing presents significant health risks for those directly affected and the population at large, through disruption of shelter in place orders, social distancing measures and increased homelessness. Testing, quarantine, and physical distancing measures are bolstered by housing security.

In recognition of developments at the County level, action in other jurisdictions, and consultation with community stakeholders, the item proposes the following key amendments to BMC 13.110:

1. *Reference to Status of Statewide Court Proceedings*:

Updates the findings section to acknowledge the Judicial Council of California’s emergency rules suspending court proceedings for unlawful detainer and judicial foreclosures until 90 days after the Governor suspends the state of emergency.

2. *Expansion of Moratorium Scope*:

Consistent with County ordinances: extends the effective period of the ordinance 30 days beyond the local State of Emergency and limits residential and commercial evictions to instances necessary to preserve health and safety (non-COVID-19 related).

3. *Noticing Rules:*

Clarifies that tenants can qualify for protections provided by the ordinance as long as upon the request of a Landlord, the tenant notifies them that they will be delinquent in the payment of rent within forty-five day after the request or within thirty days after the County's shelter in place order is lifted, whichever is later.

4. *Restrictions Pursuant to Rent Stabilization and Eviction for Good Cause Ordinance:*

a. Adds moratorium on rent increases exceeding the Consumer Price Index Rent Adjustment in rent controlled units regulated by Berkeley Municipal Code Section 13.76.010 et seq.

b. Clarifies that rent increases at odds with this section shall be void and unenforceable.

5. *Definition of Tenant:*

Expands definition of tenant to include a tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property.

6. *Fines, Fees and Interest:*

Clarifies that restrictions on late fees, fines, or interest supersede contrary lease provisions.

7. *Payment Plans:*

a. Clarifies that tenants shall have twelve months to repay overdue rent unless the landlord and tenant can come to a mutual repayment agreement. Prior to executing any repayment agreement the Landlord must provide documentation to the tenant demonstrating they applied for federal, state and local direct payments and were denied or approved and the amounts and months for which the landlord received any direct payments.

b. Clarifies that any direct relief in the form of federal, state and local or private direct payments that result in a reduction in the landlord's mortgage obligation obtained by a landlord whose tenant has suffered COVID-19-related decreases in income, or increased family expenses, shall be passed through to, and credited towards, satisfaction of the tenant's rental obligations.

8. *Retaliation:*

Prohibits landlord from retaliating against a tenant for exercising their rights under this Ordinance, including but not limited to shutting off any utilities or reducing services or amenities to which the Tenant would otherwise be entitled.

9. *Obligation to Accept Rent from Third Parties and Provide a W-9:*

Clarifies that it shall be a complete eviction defense if the landlord impeded the tenant's effort to pay rent via a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Clarifies that third party payments shall not create a tenancy between the landlord and the third party as long as either the landlord or the tenant provide written notice that no new tenancy is intended.

Consistent with the recent Alameda County and neighboring jurisdiction actions, and the ongoing shelter-in-place order and associated emergency activities in response to the global pandemic, it is in the public interest to clarify and amend the COVID-19 Emergency Response Ordinance.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts associated with this action.

FISCAL IMPACTS OF RECOMMENDATION

None

CONTACT PERSON

Councilmember Kate Harrison
510-981-7140

ORDINANCE NO. -N.S.

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

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

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

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

Sections:

- 13.110.010 Findings and Purpose**
- 13.110.020 Prohibited Conduct**
- 13.110.030 Definitions**
- 13.110.040 Collection of Back Rent and Late Fees**
- 13.110.050 Application**
- 13. 110.060 Implementing Regulations**
- 13.110.070 Waiver**
- 13.110.080 Remedies**
- 13.110.090 Severability**

13.110.010 Findings and Purpose

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." And the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the State of Emergency"), which the City Council subsequently ratified on March 10, 2020. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

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

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

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

On April 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.

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

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

At the same time, the Governor, as well as, the Berkeley Health Officer, and those of other jurisdictions ordered the closure of businesses, except those deemed essential. Many businesses, such as restaurants, are open only for take-out or pick up services and face a critical loss of business.

The City Council is aware that some landlords of commercial properties are seeking significant rent increases during the period when many commercial tenants are closed or are experiencing substantial and catastrophic reductions in their business and income. Such rent increases force tenants who are closed or have substantially reduced revenues face the choice of accepting a significant rent increase, moving at a time when it is virtually impossible, or closing altogether. Accepting a rent increase while closed or in a reduced state of operations means that the commercial tenants face even more

debt to the landlord when the emergency is over, and may face a substantially increased rent when the tenant returns to normal operations, if ever.

Landlords of commercial property that unreasonably increases rents on tenants of commercial property during the COVID-19 emergency significantly impacts vulnerable small businesses, nonprofits, and artists who form a large part of the backbone of Berkeley's economy, revenue sources, and employment opportunities. These rent increases are coming at a time when the commercial rents are likely falling due to business closures and potential loss of businesses at the end of the emergency. Thus, these rent increases appear as a way of evading the Governor's and Berkeley's commercial tenant eviction moratorium by forcing tenants to agree to rent increases or leave. Such conduct constitutes constructive evictions in contravention of the eviction moratorium. Furthermore, such rent increases may affect businesses providing goods and essential services, resulting in increases in those costs of essential goods and services contravening the intent of anti-price gouging laws.

On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter 13.110.

13.110.020 Prohibited Conduct

A. During the local State of Emergency, no landlord or other entity shall evict or attempt to evict an occupant of real property unless necessary for the health and safety of tenants, neighbors, or the landlord. For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected. ~~in either of the following situations:~~

~~1. _____ For nonpayment of rent by a tenant of a commercial property or residential property, if the tenant demonstrates that the inability to pay is due to a Covered Reason for Delayed Payment as defined in Section 13.110.030(A), or~~

~~2. A Landlord may not terminate the tenancy of a commercial Tenant for failure to pay rent if the tenant demonstrates that the inability to pay is due to a Covered Reason for Delayed Payment as defined in Section 13.110.030(A). tenant of a residential property, unless necessary for the health and safety of tenants, neighbors, or the landlord.~~

B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served during the local State of Emergency. ~~A who landlord becomes aware of the tenant's inability to pay rent within the meaning of this Chapter if the tenant notifies the landlord in writing of their lost income and inability to pay their rent or any portion thereof, and provides documentation to support the existence of a Covered Reason for Delayed Payment. For purposes of this section, "in writing" includes email or text communications to a landlord or the landlord's representative with whom the tenant has previously corresponded by email or text. If the tenant has not notified the landlord in advance of being delinquent in the payment of rent, the landlord must serve the tenant with a pre-notice of the rent delinquency and its amount and give the tenant at least three days, excluding weekends and holidays to provide the landlord with a notice and documentation of a basis for an inability to pay rent under this Chapter, if the tenant has such basis, prior serving a notice pursuant to Code of Civil Procedure section 1161(2). In the case of nonpayment of rent, t~~The failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure section 1161(2) does not waive the Tenant's right to claim this Chapter as a complete defense to non-payment of rent in an unlawful detainer action. A Tenant is not required to provide such documentation to the Landlord in advance to qualify for the protections of this ordinance. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within forty-five (45) days after the request or within thirty (30) days after the County's local State of Emergency is ended, whichever is later.

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

C. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local state of emergency declared by the Director of Emergency Services. For purposes of this section, rent means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section 13.110.020 C. shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section

shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.

D. Moratorium on Rent Increases Exceeding Annual General Adjustment in Rent Controlled Units. For rental units regulated by Berkeley Municipal Code Section 13.76.010 et seq, any notice of rent increase in excess of the Annual General Adjustment for the current year, as defined in Berkeley Municipal Code section 13.76.110, shall be void and unenforceable if the notice is served or has an effective date during the local State of Emergency, unless authorized by the decision of a Rent Stabilization Board hearing examiner.

13.110.030 Definitions

A. "Covered Reason for Delayed Payment" means:

- (1) the basis for the eviction is nonpayment of rent, arising out of a material decrease in household, ~~or business,~~ or other rental unit occupant's income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses; and
- (2) the decrease in household, ~~or business,~~ or other rental unit occupant's income or the ~~out-of-pocket medical~~ expenses described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, ~~and is documented.~~

~~B. "No-Fault Eviction" refers 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 Code of Civil Procedure sections 1161(1), 1161(5), or 1161b. "No-Fault Eviction" does not include withdrawal of accommodations from the rental market as provided in Government Code 7060 et seq. (Ellis Act).~~

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

C. "Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:

1. whose operation has been shut down due to the COVID-19 emergency, or
2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
3. who suffered a material loss of income.

DB. "Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property.

EG. "Tenant" includes a tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement to use or occupancy a renter of either residential or commercial property.

13.110.040 Collection of Back Rent and Late Fees

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek after expiration of the local State of Emergency. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed for by a Covered Reason for Delayed Payment, the reasons stated in this Chapter. The City will develop standards or guidelines for tenants to repay unpaid rent accrued during the course of the local State of Emergency. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.

Tenants shall have twelve (12) months to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant can come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

Any direct relief in the form of federal, state and local or private direct payments that result in a reduction in the Landlord's mortgage or tax obligations related to the subject property, shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be implied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement.

13.110.050 Application

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served or filed on or after the effective date of this Chapter through 30 days after the end of the local State of Emergency. It does not apply to withdrawal of accommodations from the rental market pursuant to Government Code 7060 et seq. ("Ellis Act") or to units ordered by the City to be vacated for the preservation of public health.

B. With respect to delayed payment covered by this Ordinance, a landlord may seek such rent after the expiration of the local State of Emergency, pursuant to Section 13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) *et seq.* or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued during the term of the local State of Emergency for a Covered Reason for Delayed Payment. In any action to evict based on alleged non-payment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time from the effective date of this Chapter through thirty (30) days after the expiration of the local State of Emergency.

C. A Landlord shall not retaliate against a Tenant for exercising their rights under this Ordinance, including but not limited to shutting off any utilities or reducing services or amenities to which the Tenant would otherwise be entitled.

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

13.110.060 Implementing Regulations

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

13.110.070 Waiver

A. A landlord may request that the requirements of this Chapter be waived or modified, by the City Manager or their designee, based on a showing that applying the requirements would constitute ~~a hardship to the landlord or other tenants, or would constitute~~ an unconstitutional taking of property or otherwise have an unconstitutional application to the landlord's property. The tenant shall be provided notice of the application to the City Manager or their designee and may submit materials in opposition to the application.

B. The landlord shall bear the burden of presenting evidence to support the request for a waiver or modification of the requirements of this Chapter and shall set forth in detail the factual and legal basis for the claim, including all supporting documentation.

C. The City will develop standards for what might constitute grounds for a waiver or modification of the requirements of this Chapter on the part of the landlord.

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

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

13.110.080 Remedies

In the event of a violation of this Ordinance, an aggrieved tenant may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate. Money damages shall only be awarded if 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 order of the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the tenant under local, state or federal law. In addition, this Ordinance grants a defense to eviction in the event that an unlawful detainer action is commenced in violation of this Ordinance.

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

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

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

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

13.110.090 Severability

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

Section 2. Vote Required, Immediately Effective

Based on the findings and evidence in Section 13.110.010 of this Urgency Ordinance, the Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article XIV Section 93 of the Charter of the City of Berkeley and must therefore go into effect immediately. This

Ordinance shall go into effect immediately upon a seven-ninths vote of the City Council, in satisfaction of the Charter of the City of Berkeley.