



Cheryl Davila
Councilmember
District 2

REVISED AGENDA MATERIAL

Meeting Date: September 15, 2020

Item: #35

Subject: Urgency Ordinance: Updates to the COVID-19 Emergency Response Ordinance; Resolution: Request UC Berkeley Voluntarily Comply with Local Ordinances Restricting Evictions, Delaying Rent Payments, and Empowering Tenants to Terminate their Leases Without Penalty

Submitted by: Councilmember Cheryl Davila

Revisions: Item Subject updated to: Referral to the 4x4 Committee: Updates to the COVID-19 Emergency Response Ordinance; Resolution: Request UC Berkeley Voluntarily Comply with Local Ordinances Restricting Evictions, Delaying Rent Payments, and Empowering Tenants to Terminate their Leases Without Penalty.

After this item was introduced in July 2020, [AB 3088](#) was signed into law on September 1, 2020 by California Governor Newsom as an urgency bill (i.e. one which takes immediate effect). AB 3088 provides that any new local rule in response to the COVID-19 pandemic to protect tenants from eviction will not have any effect until February 1, 2021. In response to the Governor's bill, this revision replaces amending the city's COVID-19 Emergency Response Ordinance by referring such revisions to the 4x4 Committee. The 4x4 Committee is directed to recommend to the City Council amendments that can be adopted as a non-urgency ordinance and be in effect by February 1, 2021 (i.e. have a first reading by the December 1 regular City Council meeting).

This revision: (1) Removes proposed amendments extending the repayment plan due to concerns that such amendments are in conflict with another (permanent) provision of AB 3088; (2) Corrects background section to reflect what was ultimately adopted by the Alameda County Board of Supervisors; (3) Updates background section to allow tenants to self-declare their inability to pay would bring the city ordinance in line with the federal eviction moratorium recently issued by the Centers for Disease Control and Prevention (CDC); (4) Amends the resolution regarding student-tenants at UC Berkeley with financial hardship to pay rent; (5) Removes instructions that a copy be sent to the UC President-Designate to reflect that Michael V. Drake has formally taken office as UC President.



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CONSENT CALENDAR
September 15, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: ~~Referral to the 4x4 Committee: Urgency Ordinance:~~ Updates to the COVID-19 Emergency Response Ordinance; Resolution: Request UC Berkeley Voluntarily Comply with Local Ordinances Restricting Evictions, Delaying Rent Payments, and Empowering Tenants to Terminate their Leases Without Penalty

RECOMMENDATION

1. ~~Refer to the 4x4 Committee 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 Alameda County laws, action in other jurisdictions, and consultation with community stakeholders [representing marginalized groups; and request the 4x4 Committee submit proposed amendments to the Council in time for a first reading by the December 1, 2020 City Council meeting.](#)
2. Adopt a resolution requesting the University of California at Berkeley voluntarily comply with local eviction moratoriums, and rent suspension ordinances, and ordinances empowering tenants to terminate their leases without penalty.

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. Again on May 26, 2020, the Council further amended the city's ordinance to enhance eviction protections for residential tenants and homeowners, including banning most residential evictions through the end of the local state of emergency. Subsequently, on June 30, 2020 the Council further amended the city's ordinance to clarify and enhance the ability of residential tenants to terminate a lease. Since the enactment of these protections, other jurisdictions in California, including neighboring jurisdictions and the Alameda County Board of Supervisors have enacted a number of additional protections that are either complementary 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 County 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 Alameda County Board of Supervisors extended protections to the entire County. Similar to our BMC 13.110, the ordinances applied a moratorium on evictions to tenants, homeowners or mobile homeowners 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 Alameda County Board of Supervisors 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.

~~On June 30, 2020, the Board considered and adopted additional amendments following unrelenting lobbying from the county's landlords. Unfortunately, these amendments weakened the county's ordinance, such as by reducing administrative penalties for violating the ordinance to such an extent that they are now just "the cost of doing business." Additionally, the language regarding city ordinances changed: Instead of stronger protections in a city ordinance automatically applying, now "the city must duly affirm or declare in writing its intent to opt out of the County ordinance. The writing must enumerate the specific provisions of the County's ordinance from which the city intends to opt out and must include a finding that the city ordinance is stronger."~~

The California Attorney General has opined that when a county has declared a local emergency within its jurisdictional boundaries in an area that includes both unincorporated and incorporated territory, the county may adopt emergency rules and regulations pursuant to Government Code section 8634 that will be effective in both unincorporated and incorporated areas (62 Ops. Cal. Atty. Gen. 701 (1979)). However, questions have been raised as to whether this power of counties always covers charter cities, such as Berkeley; for example, in early June, many members of the Council questioned whether the county-wide curfew issued by the county sheriff was legally valid within Berkeley city limits.

C. Assembly Bill 3088

On August 31, the Governor signed AB 3088, an urgency bill (i.e. one which takes immediate effect). The bill provides, among other things, that "Any ordinance, resolution, regulation, or administrative action adopted by a city, county, or city and county in response to the COVID-19 pandemic to protect tenants from eviction is subject to [the limitation that]... Any extension, expansion, renewal, reenactment, or new adoption of a measure, however delineated, that occurs between August 19, 2020, and January 31, 2021, shall have no effect before February 1, 2021" (Cal. Civ. Proc. Code §1179.05(a).

As a result, most if not all amendments made to Berkeley's ordinance in order to further protect tenants could likely not take effect until February 1, 2021 regardless of urgency. However, the city council can still adopt amendments before then so that they will come into effect on February 1, 2021.

DC. Updates to The Covid-19 Emergency Response Ordinance

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

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

Housing stability is a 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 Alameda County level, action in other jurisdictions, and consultation with community stakeholders, the item [refers to the 4x4 Committee proposes](#) the following additional [sample key](#) amendments to BMC 13.110:

1. *Expansion of Moratorium Scope:*

Consistent with numerous jurisdictions (including the Cities of Los Angeles, Santa Monica, and Inglewood) these amendments would prohibit Ellis Act evictions.² Additionally, minor amendments are made to the exception for health and safety threats to bring it in line with the language of the County ordinance; this is important to ensure there are no evictions prohibited by the County ordinance but ostensibly allowed under the City ordinance, thereby minimizing the risk of legal confusion.

2. *Extended Duration of Protections*

Currently, many protections under the Berkeley ordinance lapse either upon the expiration of the local state emergency or thirty days thereafter. This period is not as long as in other jurisdictions. For example, the City of Los Angeles's ordinance protects tenants from Ellis Act evictions for sixty (60) days after the expiration of the local state of emergency. These amendments would extend various protections to ninety (90) days after the expiration of the local state emergency. This would provide relief for many residents who will likely face difficulty finding sufficient employment for an extended period of time even following the expiration of the local state of emergency due to significantly depressed aggregate demand (i.e. a continuing economic recession or depression). By continuing to keep residents housed for a "buffer period," it would also reduce the risk of unintentionally causing an additional outbreak following the expiration of the state of emergency. These amendments would also allow the Council to extend this period by resolution (instead of an ordinance), allowing the Council to swiftly act by majority vote to protect public health and safety and keep residents housed if the local situation necessitates immediate action.

3. *Authorize Tenants To Self-Attest Financial Hardship*

Some tenants may have difficulty providing sufficient documentation that proves their COVID-related financial hardship. In order to ensure that no tenant is left behind, these amendments would authorize tenants to self-attest their COVID-related financial hardship. Given that landlords are ultimately allowed to recover back rent, there would ultimately be no barrier to their ability to ultimately be made financially "whole." [Furthermore, this would bring the city ordinance in line with the federal eviction moratorium recently issued by the Centers for Disease Control and Prevention \(CDC\), which allows tenants to self-declare their inability to pay.](#)

4. *Clarifies Covered Reasons for Delayed Payment*

Due to Berkeley's status as a "college town" and the transition of UC Berkeley (and other local institutions of higher education) to many online and/or hybrid-format classes in response to the ongoing COVID pandemic many segments of Berkeley's rental market have seen a significant drop in demand. While this reduced demand may benefit many tenants entering new rental agreements, continuing tenants are largely not receiving this benefit,

² aagla.org/wp-content/uploads/2020/07/7120-Updated-Temporary-Eviction-Moratorium-Chart-002.pdf

and ironically some may be in a worse position even if their own financial situation remains unchanged. Many tenants, especially those who live with students, may have had one or more roommates move-out, and planned to replace them with a new roommate(s) who would pay the same share of the rent. However, many landlords required their tenants to sign lease renewals before the severity of the COVID crisis became clear. As a result, those tenants were not in a position to bargain for a rent reduction, and with reduced demand for housing may be unable to find a replacement roommate willing and able to pay the same share of the rent as an outgoing roommate. The remaining tenants can be left with an unwinnable choice: Delaying taking on a new roommate(s) in the hope of finding someone who can pay the same share of the rent (while having to pay the full share of the rent until they find a replacement), or take on a higher share of the rent in order to immediately have a new roommate. While previous versions of the ordinance were clearly intended to cover this situation, the failure to explicitly mention them creates a perpetual risk that the courts will interpret them otherwise. These amendments make clear that such scenarios are covered reasons for nonpayment, eliminating the risk of judicial misinterpretation.

Additionally, the amendments also remove self-contradicting language referencing group living arrangements; this ensures that all tenants are properly covered by that potential reason for delaying payment.

5. *Extends Additional Protections to Homeowners and Penalties to Lenders*

The County Ordinance extends evictions protections afforded to tenants and related requirements to homeowners; similarly, the county ordinance makes explicit that lenders (e.g. a bank that holds the property's mortgage) and their agents have the same obligations (e.g. providing residents notice of their rights under the ordinance) and penalties for noncompliance as landlords. These amendments extend that tenant-homeowner parity to the City ordinance.

6. *Extends the Repayment Period for Back Rent*

~~Under the existing ordinance, tenants have twelve (12) months to repay back rent before landlords may sue. However, community stakeholders have raised significant concerns that this is much too short a period. For instance, if a tenant normally spends 50% or more of their income on rent (an obscene yet common scenario) and is unemployed due to COVID for 12 months, they would be mathematically unable to repay their back rent over 12 months even if they income immediately fully recovered (unlikely) and the the landlord waited until 12 months after the tenant re-gained employment (which is not required of the landlord).~~

~~Outside of the unlawful detainer process (which imposes a 12-month window), landlords have 48 months to collect back rent owed under a written agreement (Civ. Proc. §337.2) and 24 months to collect back rent owed under an oral agreement (Civ. Proc. §339.5). In recognition of these limits, these amendments extend the repayment period to forty-seven (47) months for written leases and twenty-three (23) months for oral rental agreements. This significantly increases the ability of a tenant to repay all their back rent, without conflicting with the legal right of landlords under state law to collect back rent.~~

6. *Provides Additional Examples of Prohibited Retaliation*

The ordinance prohibits retaliation against tenants for exercising their rights under it, and explicitly names shutting off utilities and reducing services as examples of prohibited retaliation. These amendments add additional examples of prohibited retaliation.

7. *Improves Civil Remedies for Violations*

These amendments make various changes that bring civil remedies (including authorizing administrative fines and offering protections for tenants who act in good faith but do not prevail in court) in line with the County ordinance. Additionally, it makes clear that the City

Attorney, [Rent Stabilization Board](#), or another person or entity may sue to enforce the ordinance.

8. *Extends Criminal Penalties to non-Commercial Violations*

Currently, the city ordinance only imposes criminal penalties for violations relating to commercial properties. These amendments extend criminal penalties to any violations by a landlord or lender, using verbatim language from the County ordinance. In addition to providing legal certainty that violations also covered by the County ordinance can be criminally prosecuted, these amendments are necessary to allow criminal prosecution for violating residential property provisions not covered by the County ordinance (e.g. conducting an ostensible Ellis Act eviction).

9. *Liberal Construction*

States that the ordinance should be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

Consistent with the actions of Alameda County, neighboring jurisdictions, and other jurisdictions throughout California, 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.

[The 4x4 Committee is directed to review the above potential amendments to the ordinance, as well as any other amendments it believes will protect tenants. The 4x4 Committee is also directed to submit its recommendations in time for the December 1 regular city council meeting in order to ensure there is enough time for any amendments to be in effect by February 1, 2021 without needing to pass an urgency ordinance.](#)

ED. Resolution Calling on UC Berkeley to Voluntarily Comply with Local Ordinances

As a state agency, UC Berkeley (and the entire University of California system) is most likely exempt from ordinances protecting tenants during the ongoing COVID-19 pandemic. However, UC Berkeley's failure to comply with this has created significant problems for many students, and community stakeholders have raised alarms about the situation. The attached resolution calls on UC Berkeley to voluntarily comply with all local ordinances restricting evictions, delaying rent payments, and/or allowing tenants to terminate a lease without a penalty, regardless of legal obligation for UC Berkeley to do so. [It also directs that copies of the resolution be sent to relevant persons in the University. Finally, it directs that copies of the resolution be sent to relevant student leaders \(and the Daily Californian\), which allow them to both know that the City is advocating for the students on this issue and keep it in their records for any future issues.](#)

FINANCIAL IMPLICATIONS

[This item will essentially not have any direct financial implications. However, preventing evictions - by amending city law effective February 1, 2021 and/or by successfully pressuring UC Berkeley to cease conducting evictions of students -](#) can result in significant savings to the City in the short, medium, and long-term, by reducing homeless, [COVID-19](#) infections, and social services spending. Additionally, bringing protections for tenants and other residents under Berkeley law to at least those of the County ordinance could result in savings from potential litigation by landlords or lenders seeking to nullify the County ordinance within Berkeley city limits (especially if such litigation names the City as a real party in interest). Preventing evictions will prevent the spread of COVID 19.

ENVIRONMENTAL SUSTAINABILITY

Protecting our communities during this climate and health crisis is an act of environmental sustainability.

CONTACT PERSONS

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ATTACHMENTS:

1. [Sample Amendments Urgency Ordinance](#)
2. Resolution

REFERENCES:

1. Link to AB 3088:
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB3088

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**
- 13.110.100 Liberal Construction**

13.110.010 Findings and Purposes

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. This Shelter in Place Order was subsequently extended again.

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. However, the Judicial Council could revoke this decision at essentially any time, thereby immediately placing tenants not covered by an eviction moratorium ordinance at immediate risk.

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. Even if the Alameda County ordinance did not have effect within the incorporated area of Berkeley, it would be ~~Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is~~ desirable to ensure that Berkeley residents have at least 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 businesses 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.

Multiple jurisdictions have banned Ellis Act evictions. In Los Angeles County alone, the cities of Los Angeles, Inglewood, and Santa Monica (and possibly others have banned) Ellis Act evictions. For example, Los Angeles's ordinance bans Ellis Act evictions through 60 days after the expiration of the local state of emergency.

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

13.110.020 Prohibited Conduct

A. During the Covered Period local State of Emergency, no landlord or lender other entity shall evict or attempt to evict an occupant of real property unless necessary to stop an imminent threat to for the health and safety of residents. 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.

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 or expired, or that the complaint was filed or served, during the Covered Period local State of Emergency.

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.

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, 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 (including due to difficulty finding new tenants and/or subtenants willing and able to

cover a sufficient share of the rent) which reduces the ability of the remaining tenants to pay the rent, a change in the tenants which reduces the ability of the collective tenants to pay the rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and
(2) The decrease in household, business, or other rental unit occupant's income or the 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.

B. "Covered Period" means the period of time beginning with the effective date of this Chapter and concluding 90 days after the expiration of the local state of emergency. However, the City Council may vote by resolution to extend the duration of the Covered Period.

C. 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.

D. G. "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.

E. D. "Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.

F. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more Units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.

G. E. "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 Covered Period 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.

B. Tenants shall have up to ~~forty-seven (47) twelve (12) months to pay rent that accrued during the Covered Period, except that in the case of an oral rental agreement this period shall be twenty-three (23) months, was delayed by a Covered Reason for Delayed Payment~~ unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement"). 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.

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the ~~delayed~~ repayment of rent ~~over the 12 months~~. 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; ~~the tenant may self-attest as a form of documentation~~. 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 nonpayment of rent in an unlawful detainer action.

D. 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.

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied 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, filed, or which expire ~~during the Covered Period 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, including where the City deems necessary to control the spread of COVID-19.

B. With respect to delayed payment ~~accrued during the Covered Period covered by this Ordinance~~, a landlord may seek such rent after the ~~Covered Period 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 ~~Covered Period local State of Emergency~~. In any action to evict based on alleged nonpayment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time ~~during the Covered Period. from the effective date of this Chapter the expiration of the local State of Emergency~~.

C. A Landlord ~~or Lender~~ shall not retaliate against a Tenant ~~or other resident~~ for exercising their rights under this Ordinance, including but not limited to shutting off any utilities, ~~or~~ reducing services or amenities, ~~refusing to make or delaying repairs~~ to which the Tenant ~~or other resident~~ would otherwise be entitled, ~~refusing to offer a new rental agreement upon expiration of a prior rental agreement where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, or taking actions or inaction which hurts the tenant's or other resident credit rating or causes other landlords to not offer them a rental agreement or to offer them a rental agreement on less favourable terms than they would otherwise offer~~.

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 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 and lenders to give a notice to Tenants and other residents informing them of this Chapter and the right to seek the benefits of this Chapter.

13.110.080 Remedies

~~A. In the event of a violation of this Ordinance by a landlord or lender, an aggrieved tenant or other resident, any person or entity who will fairly and adequately represent the interests of tenants, or the City~~ 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. ~~No proof of knowledge, intent, or other mental state is required to establish a violation. 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. A prevailing landlord or lender shall be entitled to an award of attorneys' fees only if it is determined by the Court the action was wholly without merit or frivolous. 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.

B. 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.

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

1. Violations of ~~this Chapter by a landlord or lender~~ 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 or lender violates this chapter demands rent in excess of the amount permitted pursuant to Section 13.110.020(C)~~ is a separate violation. Each and every day of violation includes each day on which a failure to comply with this ordinance continues. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.

2. ~~Any landlord or lender 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 Unit and is punishable accordingly. 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.~~ The City Attorney may refer those landlords and lenders in violation-violators of this Chapter-Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of this Chapter and/or Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to this Chapter and/or Business and Professions Code section 17200, et seq.

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

13.110.100 Liberal Construction

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

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Section 2. Vote Required, Immediately Effective

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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.

Section 2. Effective Date

This ordinance shall go into effect thirty days from the time of its final passage or February 1, 2021, whichever is later.

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY CALLING ON UC BERKELEY TO VOLUNTARILY COMPLY WITH ORDINANCES RESTRICTING EVICTIONS, DELAYING RENT PAYMENTS, AND/OR ALLOWING TENANTS TO TERMINATE A LEASE WITHOUT A PENALTY, REGARDLESS OF LEGAL OBLIGATION TO DO SO

WHEREAS, in the wake of the ongoing COVID-19 public health crisis and ensuing economic devastation, multiple jurisdictions; including the City of Berkeley, the City of Albany, and Alameda County; have passed ordinances restricting evictions and delaying rent payments; and

WHEREAS, in the wake of the ongoing COVID-19 public health crisis and ensuing economic devastation, the City of Berkeley has passed an ordinance empowering many tenants (including, de facto, all students) to terminate their leases without penalty with thirty (30) days' notice; and

WHEREAS, as a state agency, UC Berkeley (and the entire University of California system) is most likely exempt from such ordinances; and

WHEREAS, students in University housing still need such protections. For example, residents of the University Village family housing complex have been organizing due to UC Berkeley not giving them protections equivalent to that of tenants in private housing. Furthermore, UC Berkeley has allowed what little protections it did offer to expire prematurely; and

WHEREAS, this failure by UC Berkeley threatens to force students to drop out of school, disruption their children's education (in the case of student parents), become homeless, and more; and

WHEREAS, community stakeholders have raised alarms about this situation; and

WHEREAS, there is precedent for the University of California voluntarily complying (at least on paper) with local ordinances;³ and

WHEREAS, student-tenants, community stakeholders, the councilmembers sponsoring this resolution, and members of the Rent Board recently brought this situation to the attention the media, which forced UC Berkeley to partially back-down and state that students living in the University Village family housing complex in Albany will not be evicted or blocked from registering for classes for nonpayment of rent if they cannot pay while the state's shelter-in-place order remains in effect; and

WHEREAS, this still falls short of complying with local ordinances, given that a) local ordinances are tied to the local *state of emergency* declaration, which will likely extend beyond a statewide *shelter-in-place order*, and 2) The protections contained in the local ordinances do not end the moment the local state of emergency ends (e.g. the county ordinance would currently end 60 days thereafter); and

WHEREAS, the University has also not stated that it will make such a change in any other University housing, including its dorms located within the City of Berkeley, which would represent another egregious continued refusal to voluntarily comply with local ordinances;

³ University of California Policy PPSM-30: Compensation. policy.ucop.edu/doc/4010400/PPSM-30. "In consultation with the Office of the President, the Executive Officer will establish local salary ranges for salary grades and jobs without salary grades at their location at a level at least consistent with federal, state, and local minimum wage provisions in the communities where the Executive Officer is located."

NOW, THEREFORE, BE IT RESOLVED that the City Council for the City of Berkeley calls upon UC Berkeley to voluntarily and indefinitely comply with all local ordinances restricting evictions, delaying rent payments, and/or allowing tenants to terminate a lease without a penalty, regardless of legal obligation for UC Berkeley to do so; and

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Chancellor; Assistant Vice-Chancellor and Chief Operating Officer for the Division of Student Affairs; and the Executive Director, Housing, Events, & Facilities Services of UC Berkeley, the Regents of University of California (including and the Regents-Designate), and the President ~~and President-Designate~~ of the University of California; and

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the President, and External Affairs Vice President, and Housing Commission of the Associated Students of the University of California; the President, External Affairs Vice President, and Basic Needs Project Director of the UC Berkeley Graduate Assembly; the UC Berkeley Village Residents Association; the UC Berkeley Residence Hall Assembly; and the Daily Californian.



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
September 15, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Referral to the 4x4 Committee: Updates to the COVID-19 Emergency Response Ordinance; Resolution: Request UC Berkeley Voluntarily Comply with Local Ordinances Restricting Evictions, Delaying Rent Payments, and Empowering Tenants to Terminate their Leases Without Penalty

RECOMMENDATION

1. Refer to the 4x4 Committee amending Berkeley Municipal Code 13.110, Title 13, "The COVID-19 Emergency Response Ordinance," to enhance emergency tenant protections consistent with recently adopted Alameda County laws, action in other jurisdictions, and consultation with community stakeholders representing marginalized groups; and request the 4x4 Committee submit proposed amendments to the Council in time for a first reading by the December 1, 2020 City Council meeting.
2. Adopt a resolution requesting the University of California at Berkeley voluntarily comply with local eviction moratoriums, and rent suspension ordinances, and ordinances empowering tenants to terminate their leases without penalty.

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. Again on May 26, 2020, the Council further amended the city's ordinance to enhance eviction protections for residential tenants and homeowners, including banning most residential evictions through the end of the local state of emergency. Subsequently, on June 30, 2020 the Council further amended the city's ordinance to clarify and enhance the ability of residential tenants to terminate a lease. Since the enactment of these protections, other jurisdictions in California, including 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 County 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 Alameda County Board of Supervisors extended protections to the entire County. Similar to our BMC 13.110, the ordinances applied a moratorium on evictions to tenants, homeowners or mobile homeowners 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 Alameda County Board of Supervisors considered and adopted additional amendments,⁴ 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.

The California Attorney General has opined that when a county has declared a local emergency within its jurisdictional boundaries in an area that includes both unincorporated and incorporated territory, the county may adopt emergency rules and regulations pursuant to Government Code section 8634 that will be effective in both unincorporated and incorporated areas (62 Ops. Cal. Atty. Gen. 701 (1979)). However, questions have been raised as to whether this power of counties always covers charter cities, such as Berkeley; for example, in early June, many members of the Council questioned whether the county-wide curfew issued by the county sheriff was legally valid within Berkeley city limits.

C. [Assembly Bill 3088](#)

On August 31, the Governor signed AB 3088, an urgency bill (i.e. one which takes immediate effect). The bill provides, among other things, that “Any ordinance, resolution, regulation, or administrative action adopted by a city, county, or city and county in response to the COVID-19 pandemic to protect tenants from eviction is subject to [the limitation that]... Any extension, expansion, renewal, reenactment, or new adoption of a measure, however delineated, that occurs between August 19, 2020, and January 31, 2021, shall have no effect before February 1, 2021” (Cal. Civ. Proc. Code §1179.05(a)).

As a result, most if not all amendments made to Berkeley’s ordinance in order to further protect tenants could likely not take effect until February 1, 2021 regardless of urgency. However, the city council can still adopt amendments before then so that they will come into effect on February 1, 2021.

D. 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 a 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.

⁴ 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

In recognition of developments at the Alameda County level, action in other jurisdictions, and consultation with community stakeholders, the item refers to the 4x4 Committee the following additional sample amendments to BMC 13.110:

1. *Expansion of Moratorium Scope:*

Consistent with numerous jurisdictions (including the Cities of Los Angeles, Santa Monica, and Inglewood) these amendments would prohibit Ellis Act evictions.⁵ Additionally, minor amendments are made to the exception for health and safety threats to bring it in line with the language of the County ordinance; this is important to ensure there are no evictions prohibited by the County ordinance but ostensibly allowed under the City ordinance, thereby minimizing the risk of legal confusion.

2. *Extended Duration of Protections*

Currently, many protections under the Berkeley ordinance lapse either upon the expiration of the local state emergency or thirty days thereafter. This period is not as long as in other jurisdictions. For example, the City of Los Angeles's ordinance protects tenants from Ellis Act evictions for sixty (60) days after the expiration of the local state of emergency. These amendments would extend various protections to ninety (90) days after the expiration of the local state emergency. This would provide relief for many residents who will likely face difficulty finding sufficient employment for an extended period of time even following the expiration of the local state of emergency due to significantly depressed aggregate demand (i.e. a continuing economic recession or depression). By continuing to keep residents housed for a "buffer period," it would also reduce the risk of unintentionally causing an additional outbreak following the expiration of the state of emergency. These amendments would also allow the Council to extend this period by resolution (instead of an ordinance), allowing the Council to swiftly act by majority vote to protect public health and safety and keep residents housed if the local situation necessitates immediate action.

3. *Authorize Tenants To Self-Attest Financial Hardship*

Some tenants may have difficulty providing sufficient documentation that proves their COVID-related financial hardship. In order to ensure that no tenant is left behind, these amendments would authorize tenants to self-attest their COVID-related financial hardship. Given that landlords are ultimately allowed to recover back rent, there would ultimately be no barrier to their ability to ultimately be made financially "whole." Furthermore, this would bring the city ordinance in line with the federal eviction moratorium recently issued by the Centers for Disease Control and Prevention (CDC), which allows tenants to self-declare their inability to pay.

4. *Clarifies Covered Reasons for Delayed Payment*

Due to Berkeley's status as a "college town" and the transition of UC Berkeley (and other local institutions of higher education) to many online and/or hybrid-format classes in response to the ongoing COVID pandemic many segments of Berkeley's rental market have seen a significant drop in demand. While this reduced demand may benefit many tenants entering new rental agreements, continuing tenants are largely not receiving this benefit, and ironically some may be in a worse position even if their own financial situation remains unchanged. Many tenants, especially those who live with students, may have had one or more roommates move-out, and planned to replace them with a new roommate(s) who would pay the same share of the rent. However, many landlords required their tenants to sign lease renewals before the severity of the COVID crisis became clear. As a result, those tenants were not in a position to bargain for a rent reduction, and with reduced demand for housing may be unable to find a replacement roommate willing and able to pay the same share of the rent as an outgoing roommate. The remaining tenants can be left with an

⁵ aagla.org/wp-content/uploads/2020/07/7120-Updated-Temporary-Eviction-Moratorium-Chart-002.pdf

unwinnable choice: Delaying taking on a new roommate(s) in the hope of finding someone who can pay the same share of the rent (while having to pay the full share of the rent until they find a replacement), or take on a higher share of the rent in order to immediately have a new roommate. While previous versions of the ordinance were clearly intended to cover this situation, the failure to explicitly mention them creates a perpetual risk that the courts will interpret them otherwise. These amendments make clear that such scenarios are covered reasons for nonpayment, eliminating the risk of judicial misinterpretation.

Additionally, the amendments also remove self-contradicting language referencing group living arrangements; this ensures that all tenants are properly covered by that potential reason for delaying payment.

5. *Extends Additional Protections to Homeowners and Penalties to Lenders*

The County Ordinance extends evictions protections afforded to tenants and related requirements to homeowners; similarly, the county ordinance makes explicit that lenders (e.g. a bank that holds the property's mortgage) and their agents have the same obligations (e.g. providing residents notice of their rights under the ordinance) and penalties for noncompliance as landlords. These amendments extend that tenant-homeowner parity to the City ordinance. *Provides Additional Examples of Prohibited Retaliation*

The ordinance prohibits retaliation against tenants for exercising their rights under it, and explicitly names shutting off utilities and reducing services as examples of prohibited retaliation. These amendments add additional examples of prohibited retaliation.

6. *Improves Civil Remedies for Violations*

These amendments make various changes that bring civil remedies (including authorizing administrative fines and offering protections for tenants who act in good faith but do not prevail in court) in line with the County ordinance. Additionally, it makes clear that the City Attorney or another person or entity may sue to enforce the ordinance.

7. *Extends Criminal Penalties to non-Commercial Violations*

Currently, the city ordinance only imposes criminal penalties for violations relating to commercial properties. These amendments extend criminal penalties to any violations by a landlord or lender, using verbatim language from the County ordinance. In addition to providing legal certainty that violations also covered by the County ordinance can be criminally prosecuted, these amendments are necessary to allow criminal prosecution for violating residential property provisions not covered by the County ordinance (e.g. conducting an ostensible Ellis Act eviction).

8. *Liberal Construction*

States that the ordinance should be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

Consistent with the actions of Alameda County, neighboring jurisdictions, and other jurisdictions throughout California, 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.

The 4x4 Committee is directed to review the above potential amendments to the ordinance, as well as any other amendments it believes will protect tenants. The 4x4 Committee is also directed to submit its recommendations in time for the December 1 regular city council meeting in order to ensure there is enough time for any amendments to be in effect by February 1, 2021 without needing to pass an urgency ordinance.

E. Resolution Calling on UC Berkeley to Voluntarily Comply with Local Ordinances

As a state agency, UC Berkeley (and the entire University of California system) is most likely exempt from ordinances protecting tenants during the ongoing COVID-19 pandemic. However, UC Berkeley's failure to comply with this has created significant problems for many students, and community stakeholders have raised alarms about the situation. The attached resolution calls on UC Berkeley to voluntarily comply with all local ordinances restricting evictions, delaying rent payments, and/or allowing tenants to terminate a lease without a penalty, regardless of legal obligation for UC Berkeley to do so. It also directs that copies of the resolution be sent to relevant persons in the University. Finally, it directs that copies of the resolution be sent to relevant student leaders (and the Daily Californian), which allow them to both know that the City is advocating for the students on this issue and keep it in their records for any future issues.

FINANCIAL IMPLICATIONS

This item will essentially not have any direct financial implications. However, preventing evictions - by amending city law effective February 1, 2021 and/or by successfully pressuring UC Berkeley to cease conducting evictions of students - can result in significant savings to the City in the short, medium, and long-term, by reducing homeless, COVID-19 infections, and social services spending. Additionally, bringing protections for tenants and other residents under Berkeley law to at least those of the County ordinance could result in savings from potential litigation by landlords or lenders seeking to nullify the County ordinance within Berkeley city limits (especially if such litigation names the City as a real party in interest). Preventing evictions will prevent the spread of COVID 19.

ENVIRONMENTAL SUSTAINABILITY

Protecting our communities during this climate and health crisis is an act of environmental sustainability.

CONTACT PERSONS

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Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS:

1. Sample Amendments
2. Resolution

REFERENCES:

1. Link to AB 3088:
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB3088

ORDINANCE NO. -N.S.

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 |
| <u>13.110.100</u> | <u>Liberal Construction</u> |

13.110.010 Findings and Purposes

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. This Shelter in Place Order was subsequently extended again.

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. However, the Judicial Council could revoke this decision at essentially any time, thereby immediately placing tenants not covered by an eviction moratorium ordinance at immediate risk.

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. Even if the Alameda County ordinance did not have effect within the incorporated area of Berkeley, it would be ~~Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is~~ desirable to ensure that Berkeley residents have at least 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 businesses 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.

Multiple jurisdictions have banned Ellis Act evictions. In Los Angeles County alone, the cities of Los Angeles, Inglewood, and Santa Monica (and possibly others have banned) Ellis Act evictions. For example, Los Angeles's ordinance bans Ellis Act evictions through 60 days after the expiration of the local state of emergency.

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

13.110.020 Prohibited Conduct

A. During the Covered Period local State of Emergency, no landlord or lender other entity shall evict or attempt to evict an occupant of real property unless necessary to stop an imminent threat to for the health and safety of residents. 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.

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 or expired, or that the complaint was filed or served, during the Covered Period local State of Emergency.

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.

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, business, or other rental unit occupant(s)'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 (including due to difficulty finding new tenants and/or subtenants willing and able to

cover a sufficient share of the rent) which reduces the ability of the remaining tenants to pay the rent, a change in the tenants which reduces the ability of the collective tenants to pay the rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and (2) the decrease in household, business, or other rental unit occupant's income or the 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.

B. "Covered Period" means the period of time beginning with the effective date of this Chapter and concluding 90 days after the expiration of the local state of emergency. However, the City Council may vote by resolution to extend the duration of the Covered Period.

C. 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.

D. G. "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:

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

E. D. "Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.

F. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more Units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.

G. E. "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 Covered Period 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.

B. Tenants shall have up to 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"). 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.

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the delayed repayment of rent ~~over the 12 months~~. 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; ~~the tenant may self-attest as a form of documentation.~~ 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 nonpayment of rent in an unlawful detainer action.

D. 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.

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied 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, filed, or which expire ~~during the Covered Period 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, including where the City deems necessary to control the spread of COVID-19.

B. With respect to delayed payment ~~accrued during the Covered Period covered by this Ordinance,~~ a landlord may seek such rent after the ~~Covered Period 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 ~~Covered Period local State of Emergency.~~ In any action to evict based on alleged nonpayment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time ~~during the Covered Period. from the effective date of this Chapter the expiration of the local State of Emergency.~~

C. A Landlord ~~or Lender~~ shall not retaliate against a Tenant ~~or other resident~~ for exercising their rights under this Ordinance, including but not limited to shutting off any utilities, ~~or~~ reducing services or amenities, refusing to make or delaying repairs to which the Tenant ~~or other resident~~ would otherwise be entitled, ~~refusing to offer a new rental agreement upon expiration of a prior rental agreement where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, or taking actions or inaction which hurts the tenant's or other resident credit rating or causes other landlords to not offer them a rental agreement or to offer them a rental agreement on less favourable terms than they would otherwise offer.~~

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 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 ~~and lenders~~ to give a notice to

Tenants and other residents informing them of this Chapter and the right to seek the benefits of this Chapter.

13.110.080 Remedies

~~A. In the event of a violation of this Ordinance by a landlord or lender, an aggrieved tenant or other resident, any person or entity who will fairly and adequately represent the interests of tenants, or the City 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. No proof of knowledge, intent, or other mental state is required to establish a violation. 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. A prevailing landlord or lender shall be entitled to an award of attorneys' fees only if it is determined by the Court the action was wholly without merit or frivolous. 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.

B. 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.

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

1. Violations of ~~this Chapter by a landlord or lender~~ 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 or lender violates this chapter demands rent in excess of the amount permitted pursuant to Section 13.110.020(C)~~ is a separate violation. Each and every day of violation includes each day on which a failure to comply with this ordinance continues. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.

2. ~~Any landlord or lender 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 Unit and is punishable accordingly. 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.~~ The City Attorney may refer those ~~landlords and lenders in violation~~ violators of ~~this Chapter~~ Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of ~~this Chapter and/or~~ Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to ~~this Chapter and/or~~ Business and Professions Code section 17200, et seq.

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

13.110.100 Liberal Construction

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

Section 2. Effective Date

This ordinance shall go into effect thirty days from the time of its final passage or February 1, 2021, whichever is later.

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY CALLING ON UC BERKELEY TO VOLUNTARILY COMPLY WITH ORDINANCES RESTRICTING EVICTIONS, DELAYING RENT PAYMENTS, AND/OR ALLOWING TENANTS TO TERMINATE A LEASE WITHOUT A PENALTY, REGARDLESS OF LEGAL OBLIGATION TO DO SO

WHEREAS, in the wake of the ongoing COVID-19 public health crisis and ensuing economic devastation, multiple jurisdictions; including the City of Berkeley, the City of Albany, and Alameda County; have passed ordinances restricting evictions and delaying rent payments; and

WHEREAS, in the wake of the ongoing COVID-19 public health crisis and ensuing economic devastation, the City of Berkeley has passed an ordinance empowering many tenants (including, de facto, all students) to terminate their leases without penalty with thirty (30) days' notice; and

WHEREAS, as a state agency, UC Berkeley (and the entire University of California system) is most likely exempt from such ordinances; and

WHEREAS, students in University housing still need such protections. For example, residents of the University Village family housing complex have been organizing due to UC Berkeley not giving them protections equivalent to that of tenants in private housing. Furthermore, UC Berkeley has allowed what little protections it did offer to expire prematurely; and

WHEREAS, this failure by UC Berkeley threatens to force students to drop out of school, disruption their children's education (in the case of student parents), become homeless, and more; and

WHEREAS, community stakeholders have raised alarms about this situation; and

WHEREAS, there is precedent for the University of California voluntarily complying (at least on paper) with local ordinances;⁶ and

WHEREAS, student-tenants, community stakeholders, the councilmembers sponsoring this resolution, and members of the Rent Board recently brought this situation to the attention the media, which forced UC Berkeley to partially back-down and state that students living in the University Village family housing complex in Albany will not be evicted or blocked from registering for classes for nonpayment of rent if they cannot pay while the state's shelter-in-place order remains in effect; and

WHEREAS, this still falls short of complying with local ordinances, given that a) local ordinances are tied to the local *state of emergency* declaration, which will likely extend beyond a statewide *shelter-in-place order*, and 2) The protections contained in the local ordinances do not end the moment the local state of emergency ends (e.g. the county ordinance would currently end 60 days thereafter); and

WHEREAS, the University has also not stated that it will make such a change in any other University housing, including its dorms located within the City of Berkeley, which would represent another egregious continued refusal to voluntarily comply with local ordinances;

⁶ University of California Policy PPSM-30: Compensation. policy.ucop.edu/doc/4010400/PPSM-30. "In consultation with the Office of the President, the Executive Officer will establish local salary ranges for salary grades and jobs without salary grades at their location at a level at least consistent with federal, state, and local minimum wage provisions in the communities where the Executive Officer is located."

NOW, THEREFORE, BE IT RESOLVED that the City Council for the City of Berkeley calls upon UC Berkeley to voluntarily and indefinitely comply with all local ordinances restricting evictions, delaying rent payments, and/or allowing tenants to terminate a lease without a penalty, regardless of legal obligation for UC Berkeley to do so; and

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Chancellor; Assistant Vice-Chancellor and Chief Operating Officer for the Division of Student Affairs; and the Executive Director, Housing, Events, & Facilities Services of UC Berkeley, the Regents of University of California (including and the Regents-Designate), and the President of the University of California; and

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the President, and External Affairs Vice President, and Housing Commission of the Associated Students of the University of California; the President, External Affairs Vice President, and Basic Needs Project Director of the UC Berkeley Graduate Assembly; the UC Berkeley Village Residents Association; the UC Berkeley Residence Hall Assembly; and the Daily Californian.