



Office of the Mayor

ACTION CALENDAR
March 17, 2020

To: Honorable Members of the City Council
From: Mayor Jesse Arreguin, Councilmembers Rigel Robinson, Councilmember Kate Harrison,
Subject: Urgency Ordinance Adopting BMC Chapter 13.110, the COVID-19 Emergency Response Ordinance

RECOMMENDATION

Adopt an Urgency Ordinance adding Berkeley Municipal Code Chapter 13.110, the COVID-19 Emergency Response Ordinance, to provide protections to residential tenants, commercial tenants and individuals in default of mortgage payments, during the declared state of emergency, to preserve the health and safety of the Berkeley community.

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BACKGROUND

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. City of Berkeley Public Health Officer Dr. Lisa Hernandez has issued recommendations including but not limited to social distancing, staying home if sick, canceling or postponing large group events, working from home, and other precautions to protect public health and prevent transmission of COVID-19. As a result of the State of Emergency and the government-recommended precautions by federal, state and local officials, many tenants have experienced sudden income loss, and further income impacts are anticipated, leaving tenants vulnerable to eviction. In addition, tenants who contract COVID-19 are required to self-quarantine which will require time away from work. 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.

In the last week, jurisdictions around the country have introduced similar legislation including San Jose, Oakland, Los Angeles, San Francisco and Philadelphia.

In addition, Governor Newsom declared a State of Emergency and issued Executive Order N-25-20 to prepare for the COVID-19 pandemic. Governor Newsom's March 4, 2020 proclamation on the State of Emergency¹ makes additional resources available, formalizes emergency actions already underway across multiple state agencies and departments, and helps the state prepare for broader spread of COVID-19. On March 12, 2020 Governor Newsom issued Executive Order N-25-20, "Enhancing State and Local Government's Ability to Respond to COVID-19 Pandemic".² The Governor's order:

- Waives the one-week waiting period for people who are unemployed and/or disabled as a result of COVID-19;
- Delays the deadline for state tax filing by 60 days for individuals and businesses unable to file on time based on compliance with public health requirements related to COVID-19 filings;
- Directs residents to follow public health directives and guidance, including to cancel large non-essential gatherings that do not meet state criteria;
- Readies the state to commandeer property for temporary residences and medical facilities for quarantining, isolating or treating individuals;
- Allows local or state legislative bodies to hold meetings via teleconference and to make meetings accessible electronically; and
- Allows local and state emergency administrators to act quickly to protect public health

On March 16, 2020, Governor Newsom 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 substantial 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.

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

¹ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>

² <https://www.gov.ca.gov/2020/03/12/governor-newsom-issues-new-executive-order-further-enhancing-state-and-local-governments-ability-to-respond-to-covid-19-pandemic/>

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.

The Urgency Ordinance would prohibit evictions during the declared State of Emergency for non-payment of rent for residential and commercial tenants, and for those in default of mortgage payments. In addition, it would prohibit no-fault evictions, except for those necessary for public safety and permitted under the state Ellis Act, Government Code Section 7060 et seq. These evictions would be prohibited if the occupant demonstrates that the inability to pay is due to COVID-19, the State of Emergency regarding COVID-19, or following government-recommended coronavirus precautions. These circumstances are referred to as "Covered Reason for Delayed Payment". The ordinance allows the landlord to collect back rent due and also includes a waiver provision if the landlord can demonstrate hardship. The City Manager is permitted to develop implementing regulations and the City will develop standards for what might constitute grounds for a waiver or modification of the requirements of this Chapter.

Under the ordinance, "Covered Reason for Delayed Payment" means:
(1) the basis for the eviction is nonpayment of rent, or a foreclosure, arising out of a substantial decrease in household or business income (including, but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or a substantial decrease in business income caused by a reduction in opening hours or consumer demand), or substantial out-of-pocket medical expenses; and
(2) the decrease in household or business income or the out-of-pocket medical expenses described in subparagraph (i) was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented.

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FISCAL IMPACTS OF RECOMMENDATION

None

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts associated with this action.

CONTACT PERSON

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Attachments:

1: Urgency Ordinance