

May 2020

Bay Area Eviction Moratoriums

Since March 17th, a combined 30 Bay Area Counties and Cities passed Eviction Moratoriums of varying severity in response to the pandemic. The measures, progressively, contain increased tenant protections. Alameda County and Solano County passed ordinances this past week barring evictions for nonpayment of rent related to the pandemic. Several moratoriums impose criminal liability for non-compliance.

Burnham Brown surveyed all of the moratoriums enacted in the 9 Bay Area Counties – Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma. In each County, except for Napa, at least one moratorium was enacted. While each regulation has many facets, we focused on the following:

- Effective date and termination
- Deadline to notify the landlord of COVID-19 related hardship
- Due date for required documentation
- Repayment period
- Tenancies to which the measures apply
- Remedies and penalties for non-compliance.

The key elements of each Bay Area moratorium can be found in the spreadsheet found [here](#).

Needless to say, the moratoriums vary in degree and scope. Interpreting their application made more challenging when conflicts arise between City and County legislation within the same jurisdiction.

Application

What happens when a County moratorium differs with a City measure within its jurisdiction? It depends. Alameda, Santa Clara and Sonoma County measures trump City moratoriums that are less protective of tenants. The balance of County measures either defer to Cities, or are silent regarding which moratorium controls.

Alameda County's Ordinance permits Cities to opt out provided their measures meet specific criteria, and identify the specific provisions from which the City seeks to opt out. Alameda County's Ordinance applies to all residential evictions with few exceptions, while Oakland's Ordinance does not apply to tenancies exempt from their Rent Ordinance. To date, Oakland has not opted out of the

County Ordinance. As such, the County Ordinance currently controls the scope of residential evictions banned in Alameda County.

All of the Bay Area moratoriums apply to residential tenancies, eleven measures do not apply to commercial tenants. San Jose and Mountain View deserve mention because the Santa Clara County Ordinance applies to commercial tenancies, and by its language, supplements the City measures to include commercial tenancies.

Documentation

Once a tenant seeking protection under a moratorium provides written notice to the landlord, the deadline by which the tenant must provide documentation of lost income, and the documentation landlords may request varies. Under most moratoriums, pay stubs, bank statements, or letters from employers are sufficient. Solano County, however, requires no documentation. Santa Clara County has the most lenient deadline – documentation is due “any time prior to execution of a judgment for possession.”

Under San Mateo's Ordinance, based on the documentation provided, the tenant must pay some portion of the rent due if they are able.

Similarly, Contra Costa County's measure specifically provides that its implementation does not prevent a tenant who is able to pay all or some of the rent due, from paying that rent in a timely manner.

San Francisco's Ordinance requires the tenant to provide notice to the Landlord for each and every month they seek protection. Under the Ordinance, however, once the tenant provides initial supporting documentation, the tenant is not obligated to provide further documentation during the 6 month repayment despite a landlord's request.

Repayment and Rent Increases

San Francisco's Ordinance provides that if the tenant provides timely notice and documentation, the tenant automatically receives a 30 day extension to pay rent. If the rent is not paid, the landlord and tenant must meet and confer in good faith regarding a repayment plan not to exceed 6 months.

The deadline by which tenants must repay rent under other moratoriums range between the 60th day after expiration of the moratorium in Sonoma County and Benecia , to 1 year in Alameda County and Cities within its jurisdiction.

Moratoriums implemented by Contra Costa County and San Francisco ban rent increases through May 31st, and June 21st, respectively. Contra Costa carves out of the ban those rental units exempt from rent control under newly enacted statewide rent control law. Similarly some cities banning rent increases have carved out those units protected from local control by Costa-Hawkins. Even if exempted from a ban on increasing rents, there is an effective limit of 10% as California's anti price gouging statute, Penal Code Section 396, prohibits raising price of consumer goods or services, including housing, by more than 10% after a state of emergency has been declared.

Owner Remedies

Evictions for nonpayment of rent related to COVID-19 are not a remedy in Alameda and Solano Counties even after repayment period expires. Rather, an owner is limited to seeking a money judgment. Under Richmond's Ordinance, a landlord may not evict for rent delayed due to COVID-19. The balance of moratoriums do not limit a landlord's ability to recover unpaid rent through eviction and/or collection actions once the moratorium period ends.

Berkeley's ordinance, passed before Alameda County's Ordinance, provides that within 30 days of the date a landlord becomes aware that a tenant cannot pay, the landlord may apply for waiver or modification of the Ordinance. Berkeley however, has not yet opted out of Alameda County's Ordinance which has no waiver provision.

Penalties

The Bay Area moratoriums have teeth. Nearly half of the measures contain provisions for fines and/or civil suits for non-compliance including actual and exemplary damages, trebled with a showing of willful violation, and injunctive relief. Four moratoriums, Alameda County, East Palo Alto, San Mateo County and Suisun City make violation of their respective moratoriums a misdemeanor.

For further discussion of the [Alameda County](#) or [Solano County](#) Moratoriums, please see links.

We continue to monitor eviction moratoriums state-wide for application, modification and extension. If you have questions or seek consultation regarding eviction moratoriums, please contact us.

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