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Page 1 of 4

CITY OF BERKELEY ADMINISTRATIVE REGULATIONS

SUBJECT: BMC CHAPTER 13.110 – COVID-19 EMERGENCY RESPONSE

PURPOSE

The purpose of this regulation is to set forth guidelines implementing Berkeley Municipal Code (BMC) Chapter 13.110 (“Chapter”) and to provide for a procedure to allow owners of either residential or commercial property (“Landlords”) to apply for a waiver or modification of the requirements of the Chapter, which prohibits certain commercial and residential evictions for the duration of the local State of Emergency declared by the City Manager on March 3, 2020.

POLICY

BMC Chapter 13.110 prohibits Landlords from evicting tenants of either commercial or residential property (“Tenants”) due to nonpayment of rent arising out of a material decrease in household or business income or material out-of-pocket medical expenses caused by the impacts of COVID-19 pandemic or by any government response to COVID-19. BMC Chapter 13.110 also prohibits no-fault evictions of a Tenant of a residential property, unless necessary for health and safety. The provisions remain effective for the duration of the State of Emergency declared by the City Manager on March 3, 2020 in response to the global COVID-19 pandemic.

BMC section 13.110.070.A provides that Landlords may request that the requirements of Chapter 13.110 be waived or modified by the City Manager or City Manager’s Designee, based on a showing that applying the requirements of the Chapter would constitute a hardship, an unconstitutional taking of property, or otherwise have an unconstitutional application.

This regulation establishes the City’s policy for determining when the prohibition on evictions in Chapter 13.110 may be waived or modified by the City Manager or City Manager’s Designee and establishes payment guidelines for delayed rent payments subject to the requirements of the Chapter.

LANDLORD OBLIGATION TO NOTIFY TENANT

Pursuant to BMC Chapter 13.110, prior to contesting the applicability of the Chapter and pursuing an eviction, a Landlord is required and must demonstrate that a Tenant has been informed of the prohibition against evictions in either of the following situations:

1. For nonpayment of rent by a Tenant, if the Tenant demonstrates that the inability to pay rent is due to a Covered Reason for Delayed Payment as defined in BMC Chapter 13.110.030.A.
2. For a No-Fault Eviction of a Tenant of a residential property, unless necessary for the health and safety of tenants, neighbors, or the Landlord.

PROCEDURE TO CONTEST APPLICABILITY OF CHAPTER

Within thirty (30) days of the date that the Landlord becomes aware that a Tenant cannot pay all or some of the rent, a Landlord may apply in writing to waive or modify the limitations on evictions imposed under BMC Chapter 13.110. Any such request for consideration shall be submitted to the City Manager via electronic mail to cmo@cityofberkeley.info.

The request shall include a statement setting forth the factual and legal basis for the claim of exemption or non-applicability, and shall include supporting documentation to support the claim, which may be considered without regard to the rules for admissibility of evidence in a court of law. The applicant shall notify affected Tenant(s) of the basis for the application, and shall state the manner in which such notice was provided to the Tenant(s) in the request submitted to the City.

The City Manager or City Manager's Designee may in their sole discretion grant a request for an exemption or modification from the requirements of Chapter 13.110 based on the following:

1. A finding that enforcement of the Chapter would impose a hardship based on:
 - a. Inability to pay the mortgage, taxes, utilities, or other costs of operating the rental property that, in the absence of the ability to evict a tenant, would result in foreclosure or living conditions that would threaten public health and safety;
 - b. Need to collect rental income to pay for medical costs or other basic necessities;
 - c. Evidence of serious adverse impacts on other tenants caused by the inability to initiate or prosecute eviction proceedings; or
 - d. Other evidence of a significant hardship that would result from the inability to

initiate or prosecute eviction proceedings.

or

2. A finding that applying the requirements of the Chapter to the Landlord would constitute an unconstitutional taking of property or otherwise have an unconstitutional application to the subject property.

or

3. A finding that applying the requirements of the Chapter would violate a state law applicable to charter cities or a federal law.

or

4. A finding that a Tenant's claim of a covered reason for delayed payment is false or that the Tenant is otherwise ineligible for coverage by the Chapter.

The Landlord shall have the burden of presenting evidence to support the request for exemption or modification.

The City Manager or City Manager's Designee in their sole discretion may request or consider additional information in reviewing the request for exemption or modification, and/or hold a hearing electronically or telephonically. Such additional information may include, but not be limited to, information pertaining to the Tenant's ability to access any relief or grant funds that would result in any or all owed rent being paid as well as the amount of rent that is unpaid, The City Manager or City Manager's Designee shall issue their decision in writing no later than thirty (30) days after receipt of the application for exemption or modification or after the receipt of additional information, whichever is later.

The decision of the City Manager or City Manager's Designee shall be final.

REPAYMENT GUIDELINES

Within six (6) months of the expiration of the local State of Emergency, a Tenant must pay any rent delayed for a covered reason ("Delayed Rent"). A Landlord may not charge or collect late fees or interest on Delayed Rent. After the expiration of the local State of Emergency, a Landlord may not credit future rent payments against Delayed Rent, and instead must treat Delayed Rent as a separate obligation wholly distinct from the ongoing obligation to pay rent as it comes due. The right of a Landlord to recover Delayed Rent is limited to monetary damages in the amount of the Delayed Rent. A Landlord shall not have the right to recover possession of a rental unit for failure to pay Delayed Rent.

Landlords and Tenants are encouraged to enter into payment agreements. By entering into a Delayed Rent Payment Agreement, Tenants do not waive any rights under this Chapter.

RESPONSIBLE DEPARTMENT:

The City Manager's Office shall be the lead Department responsible for coordinating the implementation BMC Chapter 13.110. The City Manager's Office shall coordinate implementation activities with the City Attorney's Office, Rent Board, and Health, Housing and Community Services Department.

TO BE REVISED:

This Administrative Regulation shall terminate one (1) year after the expiration of the local State of Emergency.

Approved By:

City Manager

ORDINANCE NO. -N.S.

URGENCY ORDINANCE ADDING A NEW CHAPTER 13.110 TO THE BERKELEY
MUNICIPAL CODE TITLE 13, 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 added 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**
- 13.110.050 Application**
- 13. 110.060 Implementing Regulations**
- 13.110.070 Waiver**
- 13.110.080 Remedies**
- 13.110.090 Severability**

13.110.010 Findings and Purpose

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

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

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 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 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. Accordingly, the City of Berkeley is adopting the following.

13.110.020 Prohibited Conduct

A. During the State of Emergency, no landlord or other entity shall evict or attempt to evict an occupant of real property in either of the following situations:

1. For nonpayment of rent by a commercial or residential tenant or default in the payment of a mortgage, 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 (collectively referred to and defined below as Covered Reasons for Delayed Payment), or

2. For a No-Fault Eviction of a residential tenant, unless necessary for the health and safety of tenants, neighbors, or the landlord.

B. A landlord who becomes aware that a tenant cannot pay some or all of the rent temporarily due to a Covered Reason for Delayed Payment, shall not serve a notice pursuant to Code of Civil Procedure section 1161(2), file or prosecute an unlawful detainer action based on a three-day pay or quit notice, or otherwise seek to evict the tenant for nonpayment of rent. A landlord becomes aware of the tenant's inability to pay rent within the meaning of this Chapter if the tenant notifies the landlord in writing of their lost income and inability to pay their rent or any portion thereof, and provides documentation to support the existence of a Covered Reason for Delayed Payment. For purposes of this section, "in writing" includes email or text communications to a landlord or the landlord's representative with whom the tenant has previously corresponded by

email or text. 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.

13.110.030 Definitions

A. “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.

B. “No-Fault Eviction” refers to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant, including but not limited to eviction notices served pursuant to Code of Civil Procedure sections 1161(1), 1161(5), or 1161c. “No-Fault Eviction” does not include withdrawal of accommodations from the rental market as provided in Government Code 7060 et seq.(Ellis Act).

13.110.040 Collection of Back Rent

Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek after expiration of the State of Emergency. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Chapter.

13.110.050 Application

This Chapter applies to eviction notices and unlawful detainer actions based on notices served or filed on or after the effective date of this Chapter through the end of the State of Emergency. With respect to delayed payment covered by this Ordinance, a landlord may seek such rent after the expiration of the State of Emergency, but may not file an action pursuant to Code of Civil Procedure sections 1161(1) *et seq.* based on the failure to pay rent during the term of the State of Emergency for a Covered Reason for Delayed Payment.

13.110.060 Implementing Regulations

The City Manager may promulgate implementing regulations to effectuate this Ordinance.

13.110.070 Waiver.

A. A landlord may request that the requirements of this Chapter be waived or modified based on a showing that applying the requirements would constitute a hardship to the landlord or other tenants, or would constitute an unconstitutional taking of property or otherwise have an unconstitutional application to the landlord's property.

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

13.110.080 Remedies

In the event of a violation of this Ordinance, an aggrieved tenant may institute a civil proceeding for injunctive relief, and money damages as specified below, and whatever other relief the court deems appropriate. Money damages shall only be awarded if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of this Ordinance. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the tenant under local, state or federal law. In addition, this Ordinance grants a defense to eviction in the event that an unlawful detainer action is commenced in violation of this Ordinance.

13.110.090 Severability

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

Section 2. Vote Required, Immediately Effective

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