

ORDINANCE NO. 20-06

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAYWARD ESTABLISHING A TEMPORARY MORATORIUM ON EVICTIONS IN THE CITY OF HAYWARD FOR NON-PAYMENT OF RENT CAUSED BY THE CORONAVIRUS (COVID-19) PANDEMIC, OR FOR A NO-FAULT REASON UNLESS THE EVICTION IS NECESSARY FOR THE IMMINENT HEALTH AND SAFETY OF THE TENANT OR LANDLORD

THE CITY COUNCIL OF THE CITY OF HAYWARD hereby ordains as follows:

SECTION 1. Findings and Statement of Urgency.

- A. Pursuant to Article XI, Sections 5 and 7 of the California Constitution, Government Code Sections 36934 and 36937, and section 617 of the Charter of the City of Hayward, the City may make and enforce all regulations and ordinances using its police powers to regulate municipal affairs and may enact emergency ordinances for the immediate preservation of the public peace, health, or safety.
- B. In late December 2019, several cases of unusual pneumonia began to emerge in the Hubei province of China. On January 7, 2020, a novel coronavirus now known as COVID-19 was identified as the likely source of the illness.
- C. On January 30, 2020, the World Health Organization ("WHO") declared COVID-19 a Public Health Emergency of International Concern. On January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency.
- D. On March 4, 2020 the Governor of California declared a State of Emergency due to the COVID-19 pandemic.
- E. On March 11, 2020, the City Manager declared a Local Emergency in the City of Hayward due to the COVID-19 pandemic, which was affirmed by resolution of the Hayward City Council on March 17, 2020.
- F. On March 13, 2020, the President of the United States declared a National Emergency due to the COVID-19 pandemic.
- G. On March 16, 2020, the health officers of seven jurisdictions in the San Francisco Bay Area, including the County of Alameda, issued an Order to all residents of the respective jurisdictions to shelter in their homes in an effort to slow the progression of the COVID-19 pandemic. As of 5:00 p.m. on March 15, 2020, 15 cases of COVID-19 were known to exist in Alameda County, as well as at least 258 confirmed cases and at least three deaths in the seven Bay Area jurisdictions jointly issuing the Order, including a significant and increasing number of suspected cases of community transmission and likely further increases in transmission.

- H. The City of Hayward has one of the least affordable housing markets in California and the United States. Renters occupy about 49 percent of the City's housing stock and 57 percent of renters spend more than 30 percent of their income on housing.
- I. During the COVID-19 pandemic outbreak, as a result of the State of Emergency declarations and the Shelter in Place Order, many tenants have experienced sudden income loss and further income impacts are anticipated, leaving tenants vulnerable to eviction.
- J. Affected tenants who have lost income due to impact on the economy or their employment as a result of the State of Emergency declarations and the Shelter in Place Order are at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted.
- K. Displacement through eviction destabilizes the living situation of tenants and impacts the health of Hayward's residents by uprooting children from schools, disrupting the social ties and networks that are integral to the community's welfare and the stability of communities within the City.
- L. Displacement through eviction creates undue hardship for tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing.
- M. The City Council finds and determines that during this state of emergency the public interest in preserving peace, health, and safety and preventing further transmission of COVID-19, would be served by avoiding unnecessary displacement and homelessness.
- N. The City Council further finds and determines that a temporary moratorium on evictions where inability to pay is due to 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 caused by the COVID-19 pandemic, or by any local, state, or federal government response to the COVID-19 pandemic, or evictions for a no-fault reason unless the eviction is necessary for the imminent health and safety of the tenant and landlord or is necessary to protect public health and safety.

- O. Based upon the above-described facts and circumstances, and for these same reasons, the City Council finds that this ordinance is necessary as an emergency measure for preserving the public peace, health and safety, and therefore it may be introduced and adopted at one and the same meeting, and shall become effective immediately upon its adoption by five (5) or more affirmative votes of the Hayward City Council but shall be of no further force or effect 90 days from its date of adoption unless otherwise extended by the City Council.

SECTION 2. Definitions.

- A. **Covered Reason for Delayed Payment.** A tenant's inability to pay rent which arises from 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 was unable to work because their children were out of school, 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 the decrease in household or business income or the out-of-pocket medical expenses were caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented.
- B. **Housing Service.** A service provided by the Landlord related to the use or occupancy of a Rental Unit, including but not limited to, insurance, repairs, replacement, maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.
- C. **Landlord.** Any owner, lessor, or sublessor of real Property who receives or is entitled to receive Rent for the use or occupancy of any Rental Unit or portion thereof in the City of Hayward, and the designated representative, agent, or successor of such owner, lessor, or sublessor.
- D. **Moratorium Period.** The period from the effective date of this Ordinance and continuing for ninety (90) days thereafter unless extended by the City Council.
- E. **No-Fault Eviction.** 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 the circumstances described in Hayward Municipal Code section 12-1.13(b)(7) – (10).
- F. **Rent.** All periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed or services rendered to or for the benefit of the Landlord for use or occupancy of a Rental Unit and Housing Services under a Rental Housing Agreement.

- G. Rental Housing Agreement. An oral, written, or implied agreement between a Landlord and a Tenant for use or occupancy of a Rental Unit and Housing Services.
- H. Residential Rental Unit. Any building, structure, or part thereof, or appurtenant thereto, or any other rental Property Rented or offered for Rent for living or dwelling purposes, including houses, apartments, rooming or boarding house units, and other real properties used for living or dwelling purposes, together with all Housing Services connected with the use or occupancy of such Property. For purposes of this ordinance a Residential Rental Unit shall also include a mobile home or mobile home space.
- I. Tenant. A Tenant, subtenant, lessee, sublessee, or a person entitled under the terms of a Rental Housing Agreement to the use or occupancy of a Residential Rental Unit.

SECTION 3. Imposition of Temporary Moratorium on Certain Non-Payment and No-Fault Evictions

- A. During the Moratorium Period, no Landlord shall evict a tenant under either of the following circumstances: (1) for nonpayment of rent if the tenant demonstrates that inability to pay rent arises 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 was unable to work because their children were out of school, 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 the decrease in household or business income or the out-of-pocket medical expenses were caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented, or (2) for a no-fault eviction unless necessary for the imminent health and safety of tenants, neighbors, or the landlord.
- B. A landlord who reasonably knows that a tenant cannot pay some or all of the rent temporarily for the reasons set forth in paragraph A of this section shall not serve a notice pursuant to Code of Civil Procedure section 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for nonpayment of rent. A landlord knows of the tenant's inability to pay rent within the meaning of this Ordinance if the tenant notifies the landlord in writing of lost income and inability to pay full rent and is able to provide documentation to support the claim. Requirements to notify the landlord do not preclude the tenant from protections under the Moratorium if the tenant was unable to notify the landlord in writing.
- C. For purposes of this section, "in writing" includes email or text communications to the landlord or the landlord's representative with whom the tenant has previously corresponded by email or text.

- D. For the purposes of this section, documentation to support a claim of inability to pay due to the COVID-19 pandemic may include, without limitation: a statement signed under penalty of perjury that the inability to pay is due to a Covered Reason for Delayed Payment as defined herein; medical bills or reports; documents showing reduced income such as pay stubs or unemployment benefit documents; correspondence from an employer citing COVID-19 as a basis for reduction in work hours or termination of employment. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim.
- E. Nothing in this Ordinance shall relieve the tenant of liability for the unpaid rent, which the landlord may seek after expiration of the moratorium, unless the landlord and tenant agree otherwise. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance.
- F. Either party may request to participate in a mediation process through the City of Hayward Rent Review Office, to assist the parties with negotiating, among other things, reduced rental amounts during the moratorium period and repayment schedules for unpaid rent during the moratorium period. Any negotiated reduced rent during the mediation process would not affect the base rent calculation of rent-controlled units pursuant to Chapter 12, Article 1 of the Hayward Municipal Code. The parties may request the assistance of the Rent Review Office, to renegotiate agreements as circumstances change.

SECTION 4. Application

- A. This Ordinance applies to all residential rental units in the City of Hayward.
- B. This Ordinance applies to nonpayment eviction notices, no-fault eviction notices, and unlawful detainer actions based on such notices, served or filed during the effective period of this Ordinance. With respect to delayed payment covered by this Ordinance, a landlord may seek such rent after expiration of the moratorium but may not institute unlawful detainer proceedings for non-payment for a period of 90 days after expiration of the moratorium, unless the tenant has breached the terms of a negotiated agreement as described in Section 3F above. In any event the landlord must meet and confer with the tenant prior to commencement of unlawful detainer proceedings described in this section.

SECTION 5. Enforcement

The City, at its sole discretion, may choose to enforce the provisions of this ordinance through administrative fines and any other administrative procedure set forth in Hayward Municipal Code Chapter 1, section 1-3.00. Violations of the provisions of this ordinance may be subject to fines of up to \$4,000. The City's decision to pursue or not pursue enforcement of any kind shall not affect a tenant's rights to pursue civil remedies.

SECTION 6. Civil Remedies.

A Tenant may bring a civil suit in the courts of the state alleging that a Landlord has violated any of the provisions of this Ordinance or any regulations promulgated hereunder. In a civil suit, a Landlord found to violate this Ordinance shall be liable to the Tenant for all actual damages, including but not limited to the damages described in this Section. A prevailing Tenant in a civil action brought to enforce this Ordinance shall be awarded reasonable attorneys' fees and costs. Additionally, upon a showing that the Landlord has acted willfully or with oppression, fraud, or malice, the Tenant shall be awarded treble damages. No administrative remedy need be exhausted prior to filing suit pursuant to this Section.

SECTION 7. Severability.

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 8. Effective Date and Expiration Date.

This Ordinance shall become effective immediately upon its adoption by five (5) or more affirmative votes of the Hayward City Council but shall be of no further force or effect 90 days from its date of adoption unless otherwise extended by the City Council.

SECTION 9. California Environmental Quality Act (CEQA)

The City Council independently finds and determines that this action is exempt from CEQA pursuant to Public Resources Code section 21065, based on the finding that this Ordinance is not a "project" within the meaning of Section 15378 of the CEQA Guidelines. The City Council further independently finds and determines that this action is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

INTRODUCED at a special meeting of the City Council of the City of Hayward, held the 24th day of March, 2020, by Mayor Halliday.

ADOPTED at a special meeting of the City Council of the City of Hayward, held the 24th day of March, 2020, by the following votes of members of said City Council.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Zermeno, Márquez, Mendall, Lamnin, Wahab, Salinas
MAYOR: Halliday

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

APPROVED:

Barton Halliday
Mayor of the City of Hayward

DATE: March 24, 2020

ATTEST:

William Furr
City Clerk of the City of Hayward

APPROVED AS TO FORM:

Michael S. Lee
City Attorney of the City of Hayward