



Northern
California

Honorable Board of Supervisors
Administration Building
1221 Oak Street, Suite 536
Oakland, California 94612

June 9, 2020

Dear Board of Supervisors:

We write to oppose the proposed changes to the Urgency Ordinance adopted on April 21, 2020, that would allow landlords to retroactively collect debt from tenants and lead to evictions during a pandemic. We appreciate that the Board recognized that the moratorium was necessary to protect public health of all tenants impacted by the novel coronavirus. However, the need to protect tenants has not ceased and, if the proposed change are passed, many Alameda County residents will face insurmountable financial hardships. While the Board was right in adopting the original moratorium, this abrupt decision to make tenants pay for rent they likely cannot afford is legally and morally a leap in the wrong direction.

Retroactively allowing rent debt collection since implementing the Ordinance would violate Due Process

“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Greene v. Lindsey*, 456 U.S. 444, 449–50 (1982) (internal citations omitted). Additionally, in many situations, notice regarding rules and contesting a fundamental deprivation are necessary.¹

Because of the pandemic, the fundamental right to notice and a hearing are disrupted. Changes, such as court closures, could deny tenants the opportunity for adequate notice regarding any eviction proceedings. Indeed, on June 1, 2020, the Honorable Tani G. Cantil-Sakauye, Chief Justice of California and Chair of the Judicial Council, issued an Emergency Order extending the authority of the Superior Court of Alameda County to take certain actions pursuant to Government Code section 68115.² Some of these actions include physical court closures and a

¹ See *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 14–15 (1978) (notice “does not comport with constitutional requirements when it does not advise the customer of the availability of a procedure for protesting a proposed termination of utility service as unjustified.”).

² “Oakland, California: Superior Court of Alameda County receives extension of Emergency Order and issues further Implementation Order,” Superior Court of California, County of Alameda, June 1, 2020, available at <http://www.alameda.courts.ca.gov/Resources/Documents/COVID-19%20June%201%20Press%20Release.pdf>.

lack of access to self-help desks.³ These changes are happening at such a fast rate, the Board should not be considering allowing retroactivity to any debt collection regarding rent that would lead to possible evictions. It will likely be a violation of basic due process.

Tenants have vested rights and the Board should not and cannot retroactively authorize rent debt collection since adopting the Urgency Ordinance

On March 31, 2020, the Board of Supervisors crafted a temporary moratorium and then published an expanded Urgency Ordinance on April 21, 2020. Tenants relied on the eviction moratorium to stay housed and the County cannot legally now deprive tenants of their rights during this time.⁴ The Board cannot now create an inconsistent message proposing changes to the Urgency Ordinance that will create real financial hardship if landlords are permitted to collect rent debt accumulated during a clear timeframe for the moratorium on rent.⁵

If the Board allows for there to be retroactivity to the moratorium, this will likely force tenants to incur large debts and destabilize any housing they currently have. Forcing tenants to potentially choose between everyday necessities and housing, while we are still without a cure for a global pandemic, is asking tenants to make an impossible decision. The Board should completely suspend any obligation to pay rent and ensure that there is no retroactivity to alleviate these risks.

Additionally, the proposed changes frustrate the purpose of the eviction moratorium. If the Board votes to allow retroactive collection of rent, it presumes that people have been saving their rent this entire time or now have the means to retroactively pay past rent. Indeed, the point of the eviction moratorium is to recognize that tenants likely did not have additional funds during the ever-changing nature of the pandemic. In Alameda County, many tenants were already living paycheck to paycheck. The pandemic has added job insecurity, emergency costs to cover other basic needs, and many renters may not have even had the option of working from home. Thus, many tenants likely have months with no income. And for the Board to then allow landlords to potentially ask for money they may not have will have a devastating impact on tenants.

The Board will disproportionately harm people of color during a peak time of unemployment

According to data from the Employment Development Department (EDD), as of May 2020, unemployment increased to 14.2 percent.⁶ The year-ago estimate for the same time in 2019 was 2.7 percent. Jobs decreased by at least 169,400 in Alameda and Contra Costa county within a month period from March to April 2020. Since March 14, 2020, EDD processed at least 4.7

³ *Id.*

⁴ *Anderson v. City Council of Pleasant Hill*, 229 Cal. App. 2d 79, 89 (1964).

⁵ *Id.*

⁶ “OAKLAND-HAYWARD-BERKELEY METROPOLITAN DIVISION (MD) (ALAMEDA AND CONTRA COSTA COUNTIES) Nonfarm payrolls down 169,500 over the month and 175,700 over the year”, Employment Development Department, Labor Market Information Division, *available at* [https://www.labormarketinfo.edd.ca.gov/file/1fmonth/oak\\$pds.pdf](https://www.labormarketinfo.edd.ca.gov/file/1fmonth/oak$pds.pdf).

million unemployment claims for California residents.⁷ According to the EDD, during times of recession, their process rate for a similar timeframe is about 700,000.

If the proposed changes are enacted, people of color are most likely to suffer from this decision. The ACLU's Data Analytics team analyzed national eviction data from 2012 to 2016,⁸ provided by the Eviction Lab at Princeton University, and found that on average, Black renters had evictions filed against them by landlords at nearly twice the rate of white renters.⁹ Women of color, and particularly Black women, bear the burden of eviction.¹⁰ The harmful impact of eviction is further compounded by other racial, gender, and socioeconomic barriers—such as wealth gaps, pay disparities, and inequities in our healthcare system.

Under the Government Code, the Board should use its authority to protect tenants not harm them

Government Code Section 8634 authorizes local governments during local emergencies to “promulgate orders and regulations necessary to provide for the protection of life and property.” And the original Urgency Ordinance has language to that effect. The proposed changes directly contradict what seemed to be your original intent to protect tenants and residents more broadly. Indeed, enforcing evictions during this time is irreconcilable with the shelter-in-place and social distancing requirements of Governor Newsom's March 20 Executive Order N-33-20. A family cannot shelter in place if they are forced out of their home. Enforcing evictions during this time would also make it impossible for people who have been ordered to quarantine at home to comply. Ensuring tenants have a place to shelter will prevent unnecessary financial hardship, medical and mental health issues, and homelessness.¹¹ This was true when the moratorium was first enacted by the Board and remains true today as the pandemic continues.

Conclusion

In amending the Ordinance to allow for retroactivity, the Board is essentially green lighting evictions. Allowing landlords to evict families, simply because they relied on an eviction moratorium, is not only bad for families but also threatens the health of all residents by increasing their community contacts if they need to move, while exacerbating growing financial

⁷ Unemployment benefit payments top \$12 billion in California, California Office of Emergency Services, May 14, 2020, available at <http://www.oesnews.com/unemployment-benefit-payments-top-12-billion-in-california/>.

⁸ Sophie Beiers et al., *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color* (Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>.

⁹ *Id.*

¹⁰ “Sandra Park, Unfair Eviction Screening Policies Are Disproportionately Blacklisting Black Women”, ACLU, (Mar. 30, 2017), <https://www.aclu.org/blog/womens-rights/violence-against-women/unfair-eviction-screening-policies-are-disproportionately>; Matthew Desmond, *Poor Black Women Evicted at Alarming Rates, Setting Off a Chain of Hardship* (Mar. 2014), https://www.macfound.org/media/files/HHM_-_Poor_Black_Women_Are_Evicted_at_Alarming_Rates.pdf.

¹¹ Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity among the Working Poor*, Oxford: Social Problems Advance Access 1–12 (Jan. 11, 2016), <http://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>; see also Allison Bovell-Ammo & Megan Sandel, *The Hidden Health Crisis of Eviction*, Boston Univ. School of Public Health (Oct. 5, 2018), <https://www.bu.edu/sph/2018/10/05/the-hidden-health-crisis-of-eviction/>.

woes. We urge the Board to reject the proposed amendments to the Ordinance and, instead, abide by the original intent of the moratorium of protecting all Alameda County tenants.

Sincerely,

A handwritten signature in black ink, appearing to be 'Abre' Conner', written in a cursive style.

Abre' Conner, Staff Attorney

Angélica Salceda, Staff Attorney

ACLU Foundation of Northern California

American Civil Liberties Union of Northern California

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