



**California Apartment Association**  
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October 6, 2021

**Via Electronic Mail Only**

Hon. Keith Carson  
President  
Alameda County Board of Supervisors  
1221 Oak Street # 536  
Oakland, CA 94612

**RE: Alameda County Eviction Moratorium**

Dear Board President Carson & Supervisors:

The California Apartment Association (CAA) is the largest statewide rental housing trade association in the country, representing over 50,000 single family and multi-family rental housing owners in California. CAA proudly serves thousands of Alameda County housing providers.

In May and June 2020, CAA expressed significant concerns about the eviction moratorium which the Board adopted on June 23, 2020. That ordinance which aims at preventing evictions in Alameda County was adopted at a time when the novel coronavirus pandemic presented a significant health and financial crisis to all Californians.

Since June 23, 2020, much has fortunately changed. These new circumstances warrant a re-evaluation of Alameda County's current eviction moratorium ordinance.

The improving public health environment, the availability of vaccines, the lack of any shelter-in-place orders, and the much-improved economy, calls into question the necessity – and thus the legality – of the Alameda County eviction moratorium ordinance, especially when evaluated against the protections enacted by the California State Legislature as outlined in this letter.

Since the Alameda County eviction moratorium was adopted, we have learned much about the virus. Science has brought us vaccines. California has re-opened. The County's Health Officer rescinded the local shelter-in-place order. State and federal governments provided much needed financial relief to renters and business owners. California adopted comprehensive, statewide protections for renters. Considering these significantly improved conditions, CAA respectfully requests the Alameda County Board of Supervisors immediately lift its eviction moratorium.

**Statewide Robust Eviction Protections Exist that Did Not Exist in June 2020**

CAA recognizes that the COVID-19 pandemic created hardships for tenants and landlords throughout California. That is why CAA worked closely with the Legislature to enact robust statewide eviction protections through AB 3088 (August 2020), SB 91 (January 2021), AB 832 (June 2021). CAA has been the singular authority on those protections.

AB 3088 created the COVID-19 Tenant Relief Act (CTRA), which was then extended by SB 91 and AB 832. CTRA contains key tenant protections:

- Permanent eviction protections for non-payment of rent due between March 2020 and September 30, 2021 for tenants with pandemic related hardships. For debt incurred during March 1, 2020 through August 31, 2020, tenants can *never* be evicted for this debt so long as they submitted a hardship declaration to their landlord. For debt incurred during the period between September 1, 2020 and September 30, 2021, tenants can *never* be evicted for this debt so long as they submitted a hardship declaration and paid 25% of the rent. Again, these tenants can *never* be evicted for failing to pay the remainder of the rent owed. This protection is coupled with federal dollars to help tenants make that 25% payment.
- October 2020-March 2021 Extended Protections. Additionally, included in AB 832 is the COVID-19 Rental Housing Recovery Act (Recovery Act) which provides continued protections for renters from October 1, 2021 through March 31, 2022. The Recovery Act requires an owner to apply for emergency rental assistance before pursuing any evictions for non-payment of rent, even if the tenant never demonstrated a COVID-19 hardship. Specifically, the Recovery Act prohibits an owner from being granted an eviction judgment for nonpayment of rent through March 2022 unless the owner has applied for emergency rental assistance and has been denied (and provides proof of denial). This means an owner cannot evict a tenant who receives rental assistance or if there is a pending application for emergency rental assistance. In sum, tenants who are entitled to rental assistance will receive it and owners must wait until it is received, even if it takes much longer than expected. Even though CTRA has expired, the Recovery Act provides an enhanced safety net for tenants experiencing COVID-19 financial impact both before October 2021 and beyond.

These eviction protections are in addition to:

- AB 1482, enacted by the California Legislature in 2019, which created: (1) statewide rent control that limits rent increases to 5% plus inflation, and (2) eviction protections that apply to most rental properties in the state.
- California's anti-price gouging law, Penal Code Sec. 396, which makes it a crime to raise prices (including rents) by more than 10% during times of emergency.
- Rent relief programs at the state and local level, funded by federal funds, that will pay 100% of low-income tenant's back rent while protecting that renter from losing their home.

In enacting CTRA, the Legislature found the issue of COVID-19 eviction protections to be a matter of statewide concern and preempted further actions by most local governments to enact, extend, or expand COVID-19 eviction moratoria. While the Alameda County Ordinance was not subject to this pre-emption, it has only caused further confusion and uncertainty for Alameda renters and housing providers who are struggling to comply with various protections that differ from nearly every other county in California. To provide clarity to renters and landlords, Alameda must rescind the eviction moratorium and allow the state protections to apply prospectively in Alameda County.

### **Circumstances Have Changed Since June 2020; Alameda County is on the Rebound**

In adopting the eviction moratorium ordinance on June 23, 2020, the Board of Supervisors cited numerous "findings" to justify their action, finding that the financial effects caused by the closure of schools and the local public health orders would impede Alameda County residents' ability to properly pay their housing expenses (rent). The board found in June 2020 the following:

- “[A]ll eighteen (18) school districts within the County have suspended in-class instruction or closed all schools and as a result, parents and guardians are missing work to care for these children”
- The Shelter-in-Place Order also requires all businesses except essential businesses as described in the order to cease all activities at facilities located within the County except minimum basic operations and prohibits all public and private gatherings of any number of people except for limited purposes as well as all non-essential travel. These restrictions will reduce economic activity and as a result, household incomes during this time;
- Many employers have laid off or will need to lay off employees, working County residents with children may be compelled not to work in order to provide care for their child(ren), and many County residents who are working and become ill due to COVID-19, or who must self-quarantine due to COVID-19 because they have been exposed to COVID-19, do not have paid sick leave; and
- Those residents financially impacted due to COVID-19 may not be able to make timely rent or mortgage payments or be forced to choose between paying housing expenses and having sufficient funds for food, medical care or other necessities for themselves and their families;

These stark findings from more than a year ago are far different from our reality today. In fact, as of October 4, 2021:

- 78.3% of all eligible Alameda County residents are fully vaccinated;
- 91.3% of eligible residents have received at least one dose of the COVID-19 vaccine.
- Unemployment in Alameda County as of September 2021 stands at 6.3%, down from 6.5% in August 2021 and down from 10.5% in August 2020. Clearly the economy is on the rebound;
- There are no shelter-in-place orders in effect and all businesses are permitted to be open at full capacity;
- COVID-19 cases in Alameda County are on the decline;
- According to the Alameda County Office of Education, all K-12 districts in Alameda County have re-opened for the 2021-22 academic year;
- Over \$160,000,000 in rental assistance was made available for Alameda County renters to assist in repaying rental debt that accrued during the pandemic. Tenants who either made a payment of 25% of their rent due from September 2020-September 2021 or were awarded rental assistance cannot be evicted for failure to pay this rent.

Alameda County’s housing providers continue to navigate uncertain times and are facing significant financial pressure. Debt has been incurred as tenants who do not face hardship refuse to pay rent. It is not reasonable to prohibit normal operations and force housing providers (businesses, employers) to go without income especially when their residents cannot prove hardship and the circumstances facing our community have vastly improved and the State Legislature has taken bold action. A moratorium on evictions for all renters, allowing people to never pay rent and immunizing them from eviction in nearly all circumstances, even when they cause damage to the property or cause a nuisance, was an overzealous reaction to the COVID-19 pandemic; the moratorium should have been tailored and targeted to helping those impacted by COVID-19.

### **The Continued Application of the Ordinance to Incorporated Cities is an Improper Exercise of the Emergency Powers**

The Board relied on its emergency powers under the California Emergency Services Act – specifically, Government Code Sec. 8634 – to apply the ordinance within incorporated cities. *See* Alameda County Code Sec. 6.120.010 (“The temporary moratorium on evictions by this chapter is created pursuant to the county's

emergency authority pursuant to Government Code Section 8634...”). Counties do not, ordinarily, have the power to regulate within cities. *See* Cal. Const., art. XI, § 7; *City of Dublin v. County of Alameda* (1993) 14 Cal.App.4th 264, 275, as modified on denial of reh'g (Apr. 19, 1993) (“[T]he California Constitution specifies that the police power bestowed upon a county may be exercised ‘within its limits,’ i.e., only in the unincorporated area of the county”). Government Code Sec. 8634 itself is silent as to the power of county governments to apply emergency regulations within incorporated cities, but it has been interpreted to include such a power by a 1979 Attorney General Opinion (62 Ops.Cal.Atty.Gen. 701).

The authority to regulate conduct within cities during a local emergency is not, however, unlimited. By its own terms Government Code Sec. 8634 limits such emergency regulations to those “necessary to provide for the protection of life and property”. Even assuming that the ordinance was a proper exercise of emergency powers at the time it was adopted – a point which CAA does not concede – the continued application of the ordinance is clearly not proper given the significantly improved conditions in Alameda County, as described above. It cannot credibly be argued that an eviction moratorium prohibiting *all evictions*, with only very limited exceptions, is *necessary* to provide for the protection of life and property when there is no shelter-in-place order in place at the state or county level and at a time when all manner of other non-essential businesses – including so-called “mega events” – are able to operate with little to no restriction.

**Given the comprehensive statewide eviction protections, millions of dollars in assistance for Alameda renters, and the significantly improved public health and economic circumstances, the continued application and enforcement of the eviction moratorium is an improper and invalid exercise of the County’s police power. Accordingly, CAA strongly urges the County Board of Supervisors to rescind the moratorium at its next regularly scheduled meeting.**

CAA stands ready to partner with the Board on its efforts to wind down the local moratorium and ensure continued housing stability for renters through education and use of the emergency rental assistance funds.

Sincerely,



Joshua Howard  
Executive Vice President, Local Government Affairs  
California Apartment Association

CC: Supervisor David Haubert  
Supervisor Wilma Chan  
Supervisor Nate Miley  
Supervisor Richard Valle  
Susan S. Muranishi, County Administrator  
Anika Campbell-Belton, Clerk, Alameda County Board of Supervisors