

ORDINANCE NO. 04 – 2020

AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF EAST PALO ALTO

EXTENDING A TEMPORARY MORATORIUM ON RESIDENTIAL EVICTIONS
FOR NON- PAYMENT OF RENT BY TENANTS IMPACTED BY THE COVID-19 PANDEMIC

SECTION 1. FINDINGS

WHEREAS, the world continues to be faced with a pandemic as a result of a Coronavirus known as COVID-19; with current statistics indicating more than 1,701,500 people in the United States have been infected and at least 100,000 have died; and

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-20, which grants cities, counties, and cities and counties authority to enact temporary moratoria on residential and commercial evictions based on a nonpayment of rent caused by the COVID-19 pandemic or the federal, state and/or local response to the COVID-19 pandemic; and

WHEREAS, on March 17, 2020, the East Palo Alto City Council determined that the threat to public health from the introduction of COVID-19 in San Mateo County constitutes an emergency and proclaimed that a local emergency now exists in the City of East Palo Alto; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 which, among other things, directs all California residents to immediately heed current State public health directives, including the March 19, 2020 directive of the State Public Health Officer to all State residents to stay home or at their place of residence, subject to certain exceptions; and

WHEREAS, on March 26, 2020, the City Council of the City of East Palo Alto adopted Ordinance No. 01-2020, an urgency ordinance establishing a temporary moratorium on residential evictions for nonpayment of rent by tenants impacted by the COVID-19 pandemic after the San Mateo County Board of Supervisors proclaimed a local emergency throughout San Mateo County related to the novel Coronavirus, and the San Mateo County Health Officer declared a local health emergency throughout San Mateo County and the Board of Supervisors adopted an Emergency Regulation for San Mateo County that established a moratorium for nonpayment of rent by residential tenants directly impacted by the COVID-19 emergency and no-fault terminations of tenancy, unless the eviction is necessary for the health and safety of the tenant or the landlord; and

WHEREAS, on March 16, 2020, the Health Officer issued an order directing all individuals currently living within San Mateo County to shelter in their place of residence (“Shelter-in-Place Order”), and authorizing individuals to leave their residences only for certain “Essential Activities,” “Essential Governmental Functions,” or to operate “Essential Businesses,” as defined in the Shelter-in-Place Order and on April 29, 2020 and May 15, 2020, the Health Officer extended the Shelter-in-Place Order with some modifications; and

WHEREAS, as of the date of this ordinance, State and County officials report that there are approximately 2,000 confirmed cases of COVID-19 as well as over 80 deaths within San Mateo County, over 100,000 confirmed cases in California, and nearly 4,000 COVID-19 related deaths in California, a substantial increase from the numbers in March; and

WHEREAS, on March 24, 2020, the County Board adopted Emergency Regulation 2020-001 for San Mateo County establishing the moratorium for nonpayment of rent by residential tenants directly impacted by the COVID-19 emergency and no-fault terminations of tenancy, unless the eviction is necessary for the health and safety of the tenant or the landlord, and on May 26, 2020 the County Board extended the Emergency Regulation through June 30, 2020; and

WHEREAS, on May 29, 2020, Governor Newsom issued Executive Order N-66-20 which, among other things, extended the authority granted to cities, counties, and cities and counties to enact temporary moratoria on residential and commercial evictions based on a nonpayment of rent caused by the COVID-19 pandemic or the federal, state and/or local response to the COVID-19 pandemic through July 28, 2020; and

WHEREAS, despite the national, state, and local responses to COVID-19, the measures to combat the virus have had and will continue to have severe impacts of the residents of the City of East Palo Alto, including business closures, layoffs, reduction in work hours, expenditures due to school closures, and health care expenditures, and other expenditures stemming from compliance with emergency orders; and

WHEREAS, tenants in the City of East Palo Alto who experience these impacts will be vulnerable to eviction; and

WHEREAS, displacing renters who are unable to pay rent due to COVID-19-related causes will worsen the present crisis by making it difficult for them to follow the County's Shelter-in-Place Order, which will put tenants and many others at risk; and

WHEREAS, during the state of emergency, the public interest in preserving peace, health, and safety and preventing further transmission of COVID-19 will be served by avoiding unnecessary displacement and homelessness; and

WHEREAS, the City of East Palo Alto City Council ("City Council") finds it appropriate to extend the provisions of its urgency Ordinance No. 01-2020 to protect residential tenants from eviction for nonpayment of rent related to the economic impacts of the COVID-19; and

WHEREAS, the City Council finds that the foregoing recitals and administrative report presented with this Ordinance are true and correct and are incorporated into this Ordinance by this reference and adopted as findings of the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO DOES ORDAIN AS FOLLOWS:

SECTION 2. APPLICABILITY

This Ordinance applies to eviction notices based on nonpayment of rent and No-Fault Termination of Tenancy and Unlawful Detainer actions based on such notices, served or filed on or after the date of adoption of this Ordinance through the Termination Date.

SECTION 3. DEFINITIONS

(a) For purposes of this Ordinance, the following definitions shall apply:

(1) "Delayed Payment" includes a payment made after the time set forth in the rental

agreement between a Landlord and a Tenant or Tenants or as otherwise agreed between the parties ("Due Date") as a result of the following: (i) a Tenant lost household income as a result of being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (ii) a Tenant lost household income as a result of a lay-off, loss of hours, loss of business, or other income reduction resulting from COVID-19 or the federal, state or local government response to COVID-19; (iii) a Tenant lost household income due to compliance with the Shelter-in-Place Order or a recommendation from a government agency to stay home, self-quarantine or avoid congregating with others during the state of emergency; (iv) a Tenant lost household income as a result of caring for minor children affected by school, pre-school and/or childcare closures due to the state of emergency; (v) a Tenant or a member of Tenant's household incurred substantial medical costs related to COVID-19; and (vi) a Tenant suffered any other substantial financial hardship caused directly by COVID-19 or the governmental response to the COVID-19 pandemic. To qualify as a "Delayed Payment" under this Ordinance, a Tenant must notify the Landlord in writing of the Tenant's lost income and inability to pay full rent on the Due Date and provide documentation to support the claim on or before termination of the state of emergency, or prior to the date of actual displacement of the Tenant by execution of an Unlawful Detainer judgment, whichever is later. For purposes of this section, "in writing" may include e-mail or text communications to a Landlord or the Landlord's representative with whom the Tenant has previously corresponded by e-mail or text. Any medical or financial information provided to the Landlord shall be held in confidence, and only used for evaluating the Tenant's claim.

- (2) "No-fault termination of tenancy" as used in this Ordinance shall refer 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 California Civil Code Section 1946.2(b)(2) and Code of Civil Procedure Sections 1161(1) and 1161(5).
- (3) "Tenant" shall mean any renter, tenant, subtenant, lessee or sublessee of a rental unit, or successor to a renter's interest or any group of tenants, subtenants, lessee's or sublessee's of any rental unit or any other person entitled to the use or occupancy of such Residential Rental Unit, Mobile Home or Mobile Home Space.
- (4) "Landlord" shall mean an owner of record, lessor, sublessor or any other person, entity, or non-natural person entitled to receive rent for the use or occupancy of any Residential Rental Unit, Mobile Home or Mobile Home Space, or an agent representative, affiliate, member, shareholder, trustee or successor of any of the foregoing. If an owner of a Residential Rental Unit, Mobile Home or Mobile Home Space is other than a single natural person, then all entities, and persons that share ownership and/or control (direct or indirect) of the units shall be considered one and the same landlord.
- (5) "Mobile Home" shall mean those structures defined in California Civil Code Section 798, et seq., and other forms of vehicles designed or used for human habitation, including camping trailers, recreational vehicles, motorhomes, slide-in campers, or travel trailers, that occupy a site in a Mobile Home Park.
- (6) "Mobile Home Park" shall mean any mobile home or manufactured home park, as defined in Civil Code Sections 798.4 and 798.6.
- (7) "Mobile Home Space" shall mean the site within a mobile home park intended, designed or used for the location or accommodation of a mobile home and any accessory structures

or appurtenances attached thereto or used therewith.

- (8) "Mobile Home Tenant" shall mean any person entitled to occupy a mobile home pursuant to ownership thereof or a lease or rental arrangement with the owner thereof.
- (9) "Residential Rental Unit" shall mean any unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy, together with all housing services connected with the use or occupancy of such property such as common areas and recreational facilities available for use by the tenant.

SECTION 4. TEMPORARY PROHIBITION ON RESIDENTIAL EVICTIONS

- (a) Except as otherwise provided in this Ordinance, until July 28, 2020, unless further extended by the City before that date ("Termination Date"), no Landlord shall endeavor to evict a Tenant in either of the following situations: (i) for nonpayment of rent if the Tenant demonstrates that inability to pay rent is due to the COVID-19 pandemic or the federal, state or local government response to the COVID-19 pandemic, or (ii) for a No-Fault Termination of Tenancy as defined herein unless necessary for the health and safety of the Tenant, other residents of the building at which the Tenant resides, or the Landlord, or the Landlord's family. Endeavors to evict that are prohibited by this Ordinance include issuance of a Three-Day Notice to Pay Rent or Quit or a Notice of No-Fault Termination of Tenancy after the effective date of this Ordinance, or attempting to enforce a termination of tenancy through an Unlawful Detainer filing based on any notice issued but not yet expired prior to the effective date of this Ordinance.
- (b) Prior to taking any action, during the term of this Ordinance, to endeavor to evict a Tenant for nonpayment of rent or under any circumstance that constitutes a No-Fault Termination of Tenancy, the Landlord must first provide the affected Tenant or Tenants with written notice of this Ordinance using a form developed and approved by the City of East Palo Alto; the form shall include at a minimum (i) the amount of rent to which the Landlord is legally entitled pursuant to any written or oral agreement and under the provisions of State or local law; (ii) that this rent is due unless the Tenant promptly establishes in writing to the Landlord that the amount of rent due qualifies as a Delayed Payment, as defined in this Ordinance; and (iii) that the notice from Tenant to the Landlord referenced in Section (4)(a)(1) regarding Delayed Payment must be provided to the Landlord as soon as reasonably practicable thereafter.
- (c) For purposes of this Ordinance, notice provided by a Tenant to the Tenant's Landlord within fourteen days of receipt from the Landlord of the written notice as required pursuant to Section 3(b) shall be presumed to have been provided within a reasonable timeframe, provided that notices provided on a timeframe greater than fourteen days may be deemed reasonable, depending on the totality of the circumstances.
- (d) Nothing in this Ordinance shall relieve the Tenant of the obligation to pay rent as it comes due after the termination of the state of emergency or of the liability for the unpaid rent that is a Delayed Payment; payment which the Landlord may seek after the termination of the state of emergency. However, with respect to any Delayed Payment covered by this Ordinance, a Tenant shall not be deemed to be in default of rent payment obligations unless the Tenant fails to tender the full amount of the Delayed Payment within 180 days of termination of the state of emergency. Further, a Landlord may not charge or collect a late fee for a Delayed Payment as defined in this Ordinance. Any Three-Day Notices to Pay or Quit or No-Fault Eviction notices served prior the effective date of this Ordinance but not yet expired are automatically deemed served the day following the expiration of this Ordinance.

- (e) An action taken by a Landlord to evict a Tenant for a Delayed Payment shall not be considered a violation of this Ordinance where the action was taken before the Tenant provided the Landlord notice of the Tenant's lost income and inability to pay full rent on the Due Date and provided documentation to the Landlord in accordance with this Section; provided that the Landlord ceases further endeavors to evict the Tenant on this basis upon receiving the notice and documentation from the Tenant required in this Section.

SECTION 5. REMEDIES

- (a) This Ordinance provides an affirmative defense to eviction in the event that an Unlawful Detainer action is commenced in violation of this Ordinance.
- (b) In the event of a violation of this Ordinance, an aggrieved tenant may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages (including damages for mental or emotional distress as specified below), and any other relief the Court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled in 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 court order.
- (d) Violations of this Ordinance shall be punishable as set forth in Chapter 1.14 and Chapter 8.08 of the East Palo Alto Municipal Code. In addition, this Ordinance shall serve as a defense in the event that an unlawful detainer action is commenced in violation of this Ordinance.
- (e) The remedies available under this Section shall be in addition to any existing remedies which may be available to the tenant under local, state or federal law.

SECTION 6. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The adoption of the proposed Ordinance is not a project under the California Environmental Quality Act ("CEQA"), as it is general policy-making activity pursuant to Section 15378(b)(2) of the CEQA Guidelines.

SECTION 7. SEVERABILITY

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

SECTION 8. EFFECTIVE DATE

This Ordinance was introduced and adopted on June 2, 2020 and shall be effective immediately upon adoption. Furthermore, this Ordinance shall remain in effect until termination of the state of emergency.

SECTION 9. PUBLICATION

The City Clerk is hereby directed to cause publication of this Ordinance as required by law.

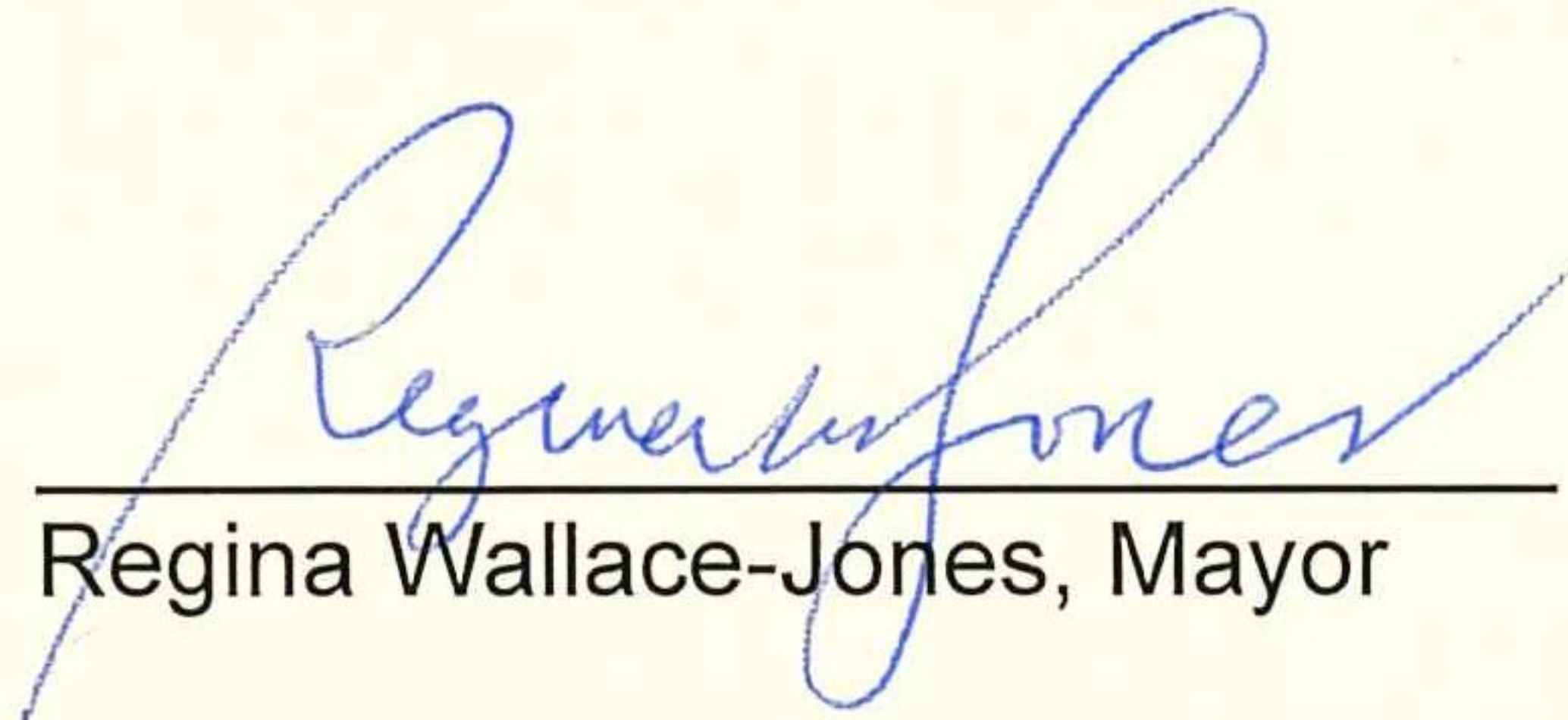
PASSED AND ADOPTED this 2nd day of June 2020, by the following vote:

AYES: Abrica, Gauthier, Moody, Romero, Wallace-Jones

NOES:

ABSENT:

ABSTAIN:



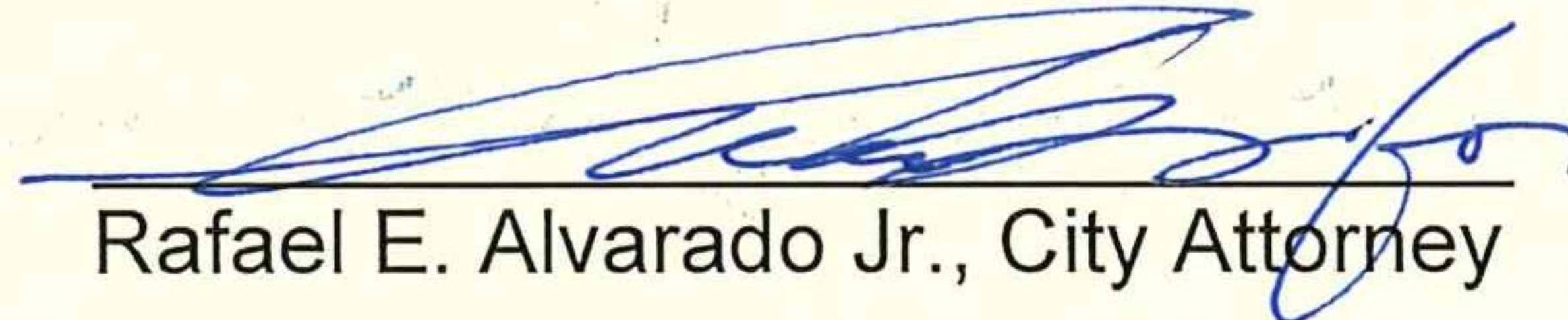
Regina Wallace-Jones, Mayor

ATTEST:



Walfred Solorzano, City Clerk

APPROVED AS TO FORM:



Rafael E. Alvarado Jr., City Attorney