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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