

What you need to know about Contra Costa UD Ordinances under Covid-19

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California Tenant Protection Act of 2019

Tenant Protection Act of 2019: AB 1482: Rent Caps and Just Cause Eviction Overview

- ▶ AB 1482 was signed by the Governor on October 8, 2019 and went into effect January 1, 2020.
- ▶ Imposes rent caps on some residential rental properties in California.
- ▶ Imposes “just cause” eviction requirements that apply after tenants have occupied the unit for a certain period of time.
- ▶ In cities that have a rent control ordinance already in place, AB 1482 extends rent caps to some additional housing that is otherwise not covered under the existing local ordinance.
- ▶ Certain properties are exempt from the rent caps and just cause requirements.
- ▶ For just cause evictions, see Civil Code Section 1946.2.
- ▶ For rent increase limits, see Civil Code Section 1947.12.

New Rent Cap

Civil Code Section 1947.12

- ▶ Applies to increases occurring on or after March 15, 2019;
 - ▶ Ask if there were rent increases between March 15, 2019 through January 1, 2020, if they exceed the limit of this new law, rent must be adjusted.
- ▶ Max rent increase: 5% + CPI or 10% (whichever is less);
- ▶ No more than 2 increases per 12-month period once tenant has occupied unit for at least 12 months—so long as the increases do not exceed the rent cap.
- ▶ Sunset clause: Set to expire January 1, 2030.

Required Disclosure

- ▶ AB 1482 requires the following specific notice to be provided, in no less than 12-point type, to all new and renewed tenants starting July 1, 2020 and to existing tenants no later than August 1, 2020:

“California law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all of the tenants have continuously and lawfully occupied the property for 12 months or more or at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Section 1946.2 of the Civil Code for more information.”

- For tenancies commenced or renewed on or after July 1, 2020: This notice must be provided as an addendum to the rental agreement or as a written notice signed by the tenant.
- For tenancies existing prior to July 1, 2020: This notice must be provided as a written notice to the tenant or as an addendum to the rental agreement no later than August 1, 2020.

Exemptions from the Rent Cap

- ▶ AB 1482 rent caps do not apply to:
 - ▶ Affordable housing (Section 8 or deed-restricted)
 - ▶ New Construction (within the last 15 years)
 - ▶ Single-Family Homes and Condos
 - ▶ No corporate ownership
 - ▶ Requires written notice of exemption
 - ▶ Owner-Occupied Duplexes
 - ▶ Must be owner's principle place of residence.
 - ▶ Tenancy must have started after owner move-in
 - ▶ Covered by local rent control (Assuming local rent control is more restrictive)
 - ▶ Dormitories

Single-Family Home/Condo Exemption Requires Proper Notice

- ▶ Housing that is alienable separate from the title to any other dwelling unit (e.g. single-family homes and condominiums) provided:
 - ▶ The owner is not: a real estate investment trust, a corporation, a limited liability corporation, in which at least one member is a corporation.
 - ▶ AND the owner provides the tenant with a written notice that the property is exempt from this section and using the following statement:

“This property is not subject to the rent limits imposed by Section 1947.12 of the Civil Code and is not subject to the just cause requirements of Section 1946.2 of the Civil Code. This property meets the requirements of Sections 1947.12(d)(5) and 1946.2(e)(8) of the Civil Code and the owner is not any of the following: (1) a real estate investment trust, as defined by Section 856 of the Internal Revenue Code; (2) a corporation; or (3) a limited liability company in which at least one member is a corporation.”

Just-Cause Eviction

- ▶ AB 1482 prohibits a landlord from:
 - (1) Terminating a month-to-month tenancy; OR
 - (2) Choosing not to renew a fixed term lease, without providing an allowed reason for termination.
- ▶ Properties exempt from the rent caps under AB 1482 are also exempt from the just-cause provisions and the relocation payment requirements.
 - ▶ Additional owner-occupied properties are also exempt.
- ▶ Requirements apply after a tenant has continuously and lawfully occupied the unit for 12 months or one or more tenants has continuously and lawfully occupied the unit for 24 months or more.
- ▶ Two categories of just cause:
 - (1) At-fault just cause (tenant did something wrong); and
 - (2) No-fault just cause.

At-Fault Just Cause Includes all of the following:

- ▶ Default in the payment of rent.
- ▶ A breach of a material term of the lease, as defined.
- ▶ Maintaining, committing, or permitting a nuisance, as defined.
- ▶ Committing waste, as defined.
- ▶ The tenant had a written lease that terminates on or after January 1, 2020, and after a written request from owner, the tenant has refused to execute a written extension or renewal of lease with similar duration and similar provisions.
- ▶ Criminal activity by the tenant on the residential rental property, that is directed at any owner or agent of the owner of the property.
- ▶ Assigning or subletting the premises in violation of the tenant's lease.
- ▶ Refusal to allow the owner to enter the unit as authorized under the law, as defined.
- ▶ Using the premises for an unlawful purpose, as defined.
- ▶ An employee's failure to vacate the unit after the employee has been terminated.
- ▶ When a tenant fails to deliver possession of the unit after providing the owner written notice of his or her intention to terminate the lease, which the owner has accepted in writing.

At-Fault Just Cause

- ▶ Reason for the termination must be included in the notice.
- ▶ Before an owner of property issues a notice to terminate a tenancy for just cause, if the cause is a curable lease violation, the owner must first give notice of violation to tenant with an opportunity to cure. If the violation within the time period set forth in the notice, a three-day notice to quit without an opportunity to cure may be served to terminate the tenancy.
- ▶ “Any waiver of the rights under this section shall be void as contrary to public policy.” (Civil Code 1946.2(h))

No-Fault Just Cause

Includes any of the following:

- ▶ An owner's intent to occupy the unit, including the owner's spouse, domestic partner, children, grandchildren, parents, or grandparents.
 - ▶ For leases on or after July 1, 2020: owner can use this cause only if the tenant agrees in writing to the termination OR if there is specific language in the lease.
- ▶ Withdrawal of the residential property from the rental market.
- ▶ An order relating to habitability that necessitates vacating the property, an order issued by the government or court to vacate the property, or a local ordinance necessitating vacating the property.
- ▶ Intent to demolish or to substantially remodel the residential real property.

Relocation Disclosure and Payment for No-Fault Termination

- ▶ The landlord is required to make a relocation payment to the tenant if the termination is for a no-fault just cause.
- ▶ Amount of relocation assistance or rent waiver shall be equal to one month of the tenant's rent that was in effect when the owner issued the notice to terminate the tenancy.
- ▶ The landlord must do one of the following:
 - (1) Make a direct payment to the tenant equal to one month of the tenant's rent within 15 calendar days of service of the notice; or
 - (2) Waive in writing the payment of rent for the final month of the tenancy, prior to the rent becoming due.
- ▶ The owner must notify the tenant of the tenant's right to a relocation payment or rent waiver.
- ▶ "An owner's failure to strictly comply with this subdivision shall render the notice of termination void." (Civil Code Section 1946.2(d)(4))

Rent Control and Just Cause Eviction in Contra Costa County: City of Richmond

- ▶ The City of Richmond has its own rent increase limitation ordinance and just cause eviction ordinance: Richmond California Municipal Code 11.100 *et. seq.*
- ▶ For a unit covered under the ordinance, the landlord may only increase the rent one time per year by the annual general adjustment published by the Richmond Rent Board (the maximum allowable is the annual percent change in the CPI for all Bay Area consumers, which is usually between 1% and 3% per year)
 - ▶ The landlord must provide a rent increase notice to the tenant which includes a brochure prepared by the Richmond Rent Board.
- ▶ Richmond Eviction Control has eight reasons a landlord can evict a tenant.

LEGISLATIVE UPDATE & THE CARES ACT

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SB-1410 (Caballero)

- ▶ This bill would authorize an owner of real property and a tenant to sign and execute a tenant-owner COVID-19 eviction relief agreement that, during a state of emergency related to the COVID-19 pandemic, and unspecified additional days, would allow the tenant to defer the tenant's unpaid rent, and would prohibit the owner from serving a notice terminating the tenancy or filing a complaint for unlawful detainer for that unpaid rent or during the state of emergency, unless an exception applies.
- ▶ The agreement would require the tenant to repay the unpaid rent to the state as installments in accordance with a specified repayment schedule, or ahead of the repayment schedule, during taxable years beginning on or after January 1, 2024, and before January 1, 2034.
- ▶ Owner receives tax credits which can be sold immediately.

AB-1436 (Chiu)

- ▶ Provides that a tenant cannot be evicted due to unpaid rent accrued during the COVID-19 emergency or 90 days following the emergency. The bill does not alter the obligation to pay rent after the emergency period and allows for normal evictions for future missed rent.
- ▶ Gives tenants 15 months from the end of the COVID-19 emergency declaration to arrange for voluntary repayment before unpaid rent is considered in default, and protects tenants' credit and ability to rent in the future. After this period, landlords may use normal civil remedies for pursuing consumer debt.
- ▶ Allows tenants and landlords to make voluntary written repayment arrangements, provided the agreements don't lead to the renter owing more than the amount of unpaid rent due from the COVID-19 period, and requires landlords to account for any assistance they have received if they enter such an agreement or pursue collection of the debt.

AB-3088 (Chiu)

- ▶ This bill would, among other things, additionally exempt housing that has been issued a final inspection, final permit, or similar approval for initial residential occupancy of the unit within the previous 15 years.

AB-828 (Ting)

- ▶ This bill would prohibit a person from taking any action to foreclose on a residential real property while a state or locally declared state of emergency related to the COVID-19 virus is in effect and until 15 days after the state of emergency has ended, including, but not limited to, causing or conducting the sale of the real property or causing recordation of a notice of default.

CAREs ACT

March 27, 2020 through July 24, 2020

- ▶ Restricts “Covered Properties” from filing new eviction actions for non-payment of rent and /or charging late fees.
 - ▶ “Covered Properties” (references VAWA) - most federally subsidized programs, incl. Public housing, Sec. 8, project based, Sec. 236, LIHTC, etc.
 - ▶ Properties with federally backed mortgage loans (HUD, VA, USDA, Fannie Mae/Freddie Mac)
- ▶ CP may not evict a tenant after the moratorium expires except on 30 days’ notice - which may not be given until after the moratorium period. Sec. 4024(c)
- ▶ Does not preclude eviction based on a reason besides nonpayment of rent or late fees; “No cause” terminations are not contemplated, but tenant might argue that action is motivated by nonpayment
- ▶ Burden on owner to prove applicability/non-applicability

July 25 and onward

- ▶ “Still in effect” indefinitely until service and expiration of 30-day notice period (defaults to state law)
- ▶ Interaction with state and local moratoria

HEROEs Act - Housing Provision

- ▶ Passed by Congress 5/13/20, stalled in senate
- ▶ 175b in rental and homeownership assistance
- ▶ 100,000 emergency rental vouchers
- ▶ Strengthens payment relief option for homeowners
- ▶ 12 month eviction moratorium that covers ALL residential properties
- ▶ Outlook???

Unlawful Detainer Filings During Covid-19

- ▶ Compliance is mandated by Executive Order N-37-20
 - ▶ Compliance is mandated by California Rules of Court, Emergency Rule Appendix 1
 - ▶ Contra Costa County Emergency Rules-Civil (Fifth Amended)
 - ▶ Contra Costa County Board of Supervisor Ordinance 2020-20
 - ▶ City of Richmond—Fourth Supplemental Order Resolution No. 74-20
 - ▶ Other local city ordinances
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- *The county and cities have different restrictions on the filing of Unlawful Detainers*
 - *Cases are not based on non-payment of rent*

Executive Order N-37-20 (extended until September 30, 2020)

- (a) Deadline specified in Code of Civil Procedure 1167 extended for a period of 60 days, for any tenant who served while this Order is effect, with a complaint from a residence for nonpayment of rent
 - i. Must meet the requirements set forth in the executive order, including notifying landlord that inability to pay rent is based on Covid-19 and retains verifiable documentation.
 - ii. Answer deadline extended from 5 days to 60
 - iii. No writ may be enforced for nonpayment of rent if tenant satisfies the requirements of paragraphs (a)-(c) of the Executive Order.

California Rules of Court—Appendix I— Emergency Rules Related to Covid-19

(a) Issuance of Summons:

Court **MAY NOT** issue a summons on a complaint for an unlawful detainer **UNLESS** the Court finds, in its discretion and on the record, that the action is necessary to protect public health and safety.

1. Court must make a ruling on the record
 - a. Parties are not present
 - b. Record made regardless of granting or denying

California Rules of Court—Appendix I— Continued

2. Declaration must be under oath (i.e. under penalty of perjury) and must contain specific facts to show what the threat to public health and safety. If not, it will be rejected (Contra Costa Superior Court Emergency Rule of Court (Fifth Amended) 3(d)(iii))

a. Can't be general

b. Must include specific instances including dates etc.

3. Order for Court to sign must be included (Contra Costa Superior Court Emergency Rule of Court (Fifth Amended) 3(d)(iii))

California Rules of Court—Appendix I— Continued

4. Plaintiff is required to serve tenant with notice of ex parte request at least two days prior to filing request with the court (Contra Costa Superior Court Emergency Rule of Court (Fifth Amended) 3(d)(iv).

----Tenant may file an opposition but Court will make a ruling based on moving papers

5. If there is insufficient information or tenant has not been served, the Court may reject the filing and return to Plaintiff. Request can be presented again with updated information.

Defaults:

California Rules of Court—Appendix I

(c) A court may not enter a default or default judgment for restitution in an unlawful detainer action for failure of defendant to appear unless the court finds BOTH of the following:

(1) The action is necessary to protect the public health and safety; and

i. Affidavit necessary to show why default needs to be entered to protect public health and safety—is there still an ongoing emergency.

ii. Not enough to just enter a default based on failure of defendant to answer

(2) The defendant has not appeared in the action within the time provided by the law, including by an applicable executive order.

If Summons is Issued and Answer Filed: California Rules of Court—Appendix I

(d) If a defendant has appeared in the action, the court may not set a trial date earlier than 60 after a request for a trial is made unless the court finds that an earlier trial date is necessary to protect public health and safety.

1. Court on own motion based on the facts
2. Request from Plaintiff for order shortening time—need to set forth good cause for protection of public health and safety.

If Summons is Issued and Answer Filed: California Rules of Court—Appendix I Continued

- ▶ Unlawful Detainers filed before March 16, 2020
 1. Summons issued prior to March 16—can serve
 - a. Posting notice
 2. Any trial set prior to April 6 must be continued at least 60 days from the date of the initial trial.

Local Orders and Ordinances

Antioch

<https://antiochonthemove.com/wp-content/uploads/2020/04/2020.03.31-URGENCY-ORDINANCE-Moratorium-on-Evictions.pdf>

URGENCY ORDINANCE NO. 2182-C-S

- ▶ Applies to notices served on or after 3/16/2020.
- ▶ Expires on the expiration of the local emergency or the Governor's proclamation of a state of emergency, whichever is later
- ▶ 90 day grace period per month of arrears after expiration to repay any rent or utilities due, unless a state law provides for longer repayment period (so if 2 mo behind, get 180 days to repay arrears amount -- 2 mo x 90 days).
- ▶ No late fee or new fee on delayed rent
- ▶ Within 14 days after rent is due tenant must provide notice in writing (including email and text) of inability to pay full rent due to substantial decrease in household income or substantial out-of-pocket medical expenses and provide documentation

Concord

<http://cityofconcord.org/DocumentCenter/View/4348/Urgency-Moratorium-Ordinance-3-25-20?bidId=>

ORDINANCE NO. 20-3

- ▶ Effective 3/25/2020.
- ▶ Automatically extended if Governor's EO N-28-20 extended or tenant protections therein extended in another EO. Currently through September 30, 2020.
- ▶ 90-day grace period per month of arrears after expiration or other termination of ordinance (so if 2 mo behind, get 180 days to repay arrears amount -- 2 mo x 90 days).
- ▶ No late fees or penalties may be charge "during term of this ordinance," unless exempt under state law
- ▶ Tenant must notify LL in writing within 7 days before rent is due and provide documentation within 3 days after rent is due of "substantial decrease in household income" caused by COVID.
- ▶ Ordinance does not prohibit LL from evicting tenant for any lawful reason including pursuant to CCP section 1161
- ▶ No rent or utility increases during term of ordinance, unless exempt from AB 1482

El Cerrito

http://www.el-cerrito.org/DocumentCenter/View/14033/2020-03-Urgency-Temporary-Moratorium_ClerkCertified

URGENCY ORDINANCE NO. 2020-03

- ▶ Applies to notices served on or after the March 16, 2020
- ▶ Expires on the expiration of the local emergency or the Governor's proclamation of a state of emergency, whichever is later.
- ▶ Tenant must pay delayed rent within 6 months of expiration of ordinance unless state law adopted that provides for longer period.
- ▶ LL may not charge late fee on delayed rent or evict based on non-payment of delayed rent.
- ▶ Within 30 days after date rent is due, tenant must notify LL in writing (including text or email) of inability to pay due to COVID and provide documentation

Pinole

https://www.ci.pinole.ca.us/UserFiles/Servers/Server_10946972/File/City%20Government/Emergency%20Services/Final%20eviction%20ordinance.pdf

ORDINANCE 2020-02

- ▶ Applies to any rent payment due on or after March 16, 2020.
- ▶ Expired May 31, 2020 (protections from county ordinance still apply)
- ▶ Tenant must pay delayed rent within 120 days of the date of expiration of ordinance, unless a state law provides for longer period.
- ▶ LL may not charge late fee for delayed rent or evict based on non-payment of delayed rent, unless rent continues to remain unpaid after 120 days after expiration of ordinance.
- ▶ Tenant must notify LL within 30 days after rent is due that cannot pay full rent due to substantial decrease in household income due to COVID-19 or medical expenditure and provide documentation.

Pittsburg

<https://pittsburgcovid19.files.wordpress.com/2020/07/20-1473-cc-ord-pittsburg-urgency-ordinance-regarding-residential-evictions-during-the-covid-19-local-emergency.pdf>

ORDINANCE NO. 20-1473

- ▶ Applies to notices served on or after the March 16, 2020.
- ▶ Expires upon termination of the local emergency
- ▶ Tenant must pay delayed rent within six months of the termination of the local emergency.
- ▶ If the tenant suffers only a partial loss of income, the tenant must timely pay the pro-rated share of rent.
- ▶ LL may not charge or collect a late fee for delayed rent
- ▶ Within 15 days after the date that rent is due, tenant must notify the LL in writing, (including by email or text) of the inability to pay full rent due to financial impacts related to COVID-19, and provide documentation to support the claim.
- ▶ Prevents a no-fault eviction “unless necessary for the health and safety of tenants, neighbors, or the landlord”

Richmond

http://www.ci.richmond.ca.us/DocumentCenter/View/54517/2020-07-14-Reso-74-20_Extension-of-Eviction-Moratorium-00000002

RESOLUTION NO. 74-20

- ▶ Effective 3/17/2020.
- ▶ Lasts for period of “local emergency declared in response to COVID-19” - currently through September 30th, 2020
- ▶ LL may seek unpaid rent after expiration of local emergency and tenant must pay unpaid rent within 12 months of expiration (currently 9/20/21) .
- ▶ No late fee may be charged on delayed rent
- ▶ Within 30 days after rent is due, tenant must notify LL in writing (including text or email) of lost income due to “financial impacts” of COVID-19 and provide documentation (including, but not limited to medical or financial documents)
- ▶ Moratorium on no-fault evictions, “unless necessary for the health and safety of tenants, neighbors, or LL.”

San Pablo

<https://www.sanpabloca.gov/DocumentCenter/View/13002/008-Urgency-ordinance-suspending-evictions-and-rent-increase-moratorium-042720>

ORDINANCE NO. 2020-008

- ▶ Applies to notices served after March 16, 2020 (“Tenant shall have been current on payment of Rent as of March 16, 2020”)
- ▶ Expires based on any subsequent extensions approved by the City Council in conjunction with the Governor’s extension of Order N-28-20
- ▶ Tenant must pay as much rent as can and has up to 365 days following the expiration of the ordinance to pay back all delayed rent
- ▶ LL may not charge late fee for delayed rent for 365 days after expiration of the ordinance.
- ▶ Tenant must notify LL (by email, text or mail) within 14 days after rent is due that the Tenant needs to delay all or some rent because of an inability to do so due to COVID-19, and provide documentation of substantial loss of income or out of pocket medical expenses. And/or provide written notice of that eligibility to the LL within 14 days after receiving a notice of termination of Tenancy from the LL.
- ▶ Applies to a no-fault eviction - but LL may terminate tenancy if necessary to protect LL’s health or safety or any other Tenant’s health or safety, or necessary where LL or member of LL’s Immediate Family intends to occupy the unit.
- ▶ LL shall not terminate a Tenancy on the basis of a Tenant allowing an unauthorized occupant to live in the dwelling unit, if the occupant is a member of the Tenant’s Immediate Family living in the dwelling unit as a result of COVID-19.
- ▶ A LL may not increase rent until expiration of ordinance. Property that is exempt from the rent Ordinance limits imposed by Civil Code sections 1946.2 or 1947.12 is exempt from this section.

Contra Costa County

<https://www.contracosta.ca.gov/DocumentCenter/View/67807/Ordinance-2020-21>

ORDINANCE NO. 2020-21

- ▶ Effective 4/21, but retroactive application to eviction notices and UD's from 3/16 onward (except if tenant surrendered possession or UD was adjudicated before 4/16).
- ▶ *Extended to September 30th or any subsequent extensions approved by the Board of Supervisors
- ▶ Tenant has 120 days from expiration of ordinance to pay back unpaid rent due to COVID-19 - currently until 1/30/2021
- ▶ No late fees on unpaid rent due to COVID-19 for 120 days after expiration of ordinance
- ▶ Tenant must give notice to LL in writing before the rent is due or up until 14 days after, plus documentation. If tenant receives notice of termination, must notify LL in writing within 14 days that tenant is protected under the ordinance.
- ▶ Applies to no fault evictions
- ▶ Cannot evict on basis that allowing unauthorized occupant to live in dwelling if occupant is member of immediate family and living there due to COVID-19.
- ▶ No rent increase until ordinance expires, except for those properties exempt from Civil Code section 1947.12 ("anti-gouging" legislation)

Anti-Price Gouging

California Penal Code 396: Price Gouging During Disaster Emergencies

- ▶ Begins upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency
- ▶ Expires 30 days following that declaration
- ▶ It unlawful to increase rental rates more than ten percent from rate immediately prior to declaration of state of emergency.