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The **Rental Property News Magazine** is published monthly by the Santa Barbara Rental Property Association, Inc. Editorial/advertising offices are located at 123 West Padre Street, Suite D, Santa Barbara, CA 93105. Phone (805) 687-7007, Fax (805) 687-9708. Subscription is included in the annual membership dues.

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# President's Message



Betty L. Jeppesen Esq. • Attorney at Law and Real Estate Broker

The effects of the pandemic continue. Your Board of Directors and our intrepid Executive Director have been working hard to keep you updated on all developments both locally and state-wide.

I take a moment to remember George Floyd and to reiterate that Black Lives Matter.

*"Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."*

— Martin Luther King Jr., Letter from the Birmingham Jail.

The Governor's Executive Order N-28-20 remains in effect. This Executive Order authorizing local governments to halt evictions during the COVID-19 pandemic was first issued on March 27<sup>th</sup> and was extended on May 29<sup>th</sup> through July 28<sup>th</sup>. The Santa Barbara City Council voted on May 19<sup>th</sup> to extend our local Ordinance 5941 adopted on March 24, 2020 (which allows commercial and residential tenants to defer rent payments when they are unable to pay because of income reductions due to the Coronavirus (COVID-19) pandemic) to coincide with the time frame of the Executive Order. By the way, that Order also extends California's anti-price gouging law that prohibits a landlord from evicting a tenant and then charging the new tenant a rent higher than could have been legally charged to the evicted tenant.

The Santa Barbara Superior Court is not issuing Summons for Unlawful Detainer actions unless the Court determines that the action is "necessary to protect the health and safety of the public" as specified in California Rules of Court Rule 1 effective April 6, 2020. This means that you can file your action but the case will not move forward because the defendant has not been served. If you obtain approval from the Court that your action is necessary to protect the health and safety of the public so that a Summons is issued, the Sheriff's Civil Bureau is not serving process on these Unlawful Detainer actions at all; so, you must either employ a private investigator or use California Code of Civil Procedure Section 414.10 regarding who may serve process: "A summons may be served by any person who is at least 18 years of age and not a party to the action." Trials have commenced but instead of the former rule of a trial date within 21 days of the request, the rule now is not until

at least 60 days after the request. Once you have a Judgment for Possession, the Sheriff is not enforcing those until the Court directs that it is once again allowed. Also, all Court appearances are conducted via Zoom. Last week, I had two Court appearances and I have a Trial coming up in early August via Zoom. These are very different days. The Judge stated last Friday that "jury" trials will not commence until at the earliest March of 2021. Judge trials can be held sooner.

Meanwhile, CalRHA (the California Rental Housing Association) of which I am a member in order to assist you, is actively pursuing Renter Assistance Programs presented to the Governor and legislative leaders in early April to assist renters with rent payments and provide immediate funds to rental housing owners. This program will likely not get adopted due to: 1) the projected state budget deficit of \$54 billion. There are no funds in the budget for rental assistance; 2) no federal funds for rental assistance are forthcoming because the House HEROs bill which included \$160 million for rental assistance is "dead on arrival" in the U.S. Senate and 3) discussions are continuing regarding the inclusion of rental assistance in a budget trailer bill but is unlikely to have funds available unless federal funds become available or state tax receipts are significantly higher than current projections. Nevertheless, please support rental assistance programs whenever you have a chance to do so because not only will this assist your renters to pay but it will bring you rent payments to pay your rental property owner responsibilities. CalRHA is also working on what form the rent repayment framework will look like.

Significant Legislation for you to watch and oppose are:

1. SB 1410 (Caballero/Bradford/Pro Tem Atkins) which passed the Senate Governance and Finance Committee on June 22<sup>nd</sup> and will likely pass the Senate Appropriations on June 23<sup>rd</sup>.

Senate Bill 1410, if passed, would establish a program consisting of four parts: 1) creating "COVID-19 eviction relief agreements;" 2) making void any demand for unpaid rent or eviction accrued during the state of emergency and an unspecified period thereafter unless the tenant does not enter into an agreement or threatens public health and safety; 3) enacting a personal income and corporation tax credit equal to the amount of unpaid rent that can

*Continued on page 7*



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be claimed commencing in 2024; and, 4) creating a requirement for tenants to pay back the deferred rent to the state by including a payment with their tax returns beginning in 2024.

2. AB 828 (Ting/Weiner) – Moratorium on Foreclosures and Unlawful Detainers/Court Ordered Repayment of Rent. This Bill is pending referral in the Senate.

Assembly Bill 828, if passed, would prohibit a person from taking any action to foreclose on residential real property, require a tax collector to suspend the sale of tax-defaulted properties, and prohibit a county recorder from recording any instrument that constitutes a notice of default, sale or trustee's deed upon sale while a state or locally declared state of emergency related to the pandemic is in effect and until 15 days after the state of emergency has ended.

This Assembly Bill would also bar landlords from evicting tenants during the same time period and would require tenants to make a monthly payment to their landlords the calendar month after the state of emergency has ended for the amount of rent plus 10% or face possible eviction.

Multiple amendments have been submitted to the Legislature on this Assembly Bill.

3. AB 1436 (Chiu) which is also pending referral in the Senate.

Assembly Bill 1436, if passed, would prohibit rental housing providers from evicting tenants for up to 90 days AFTER the state of emergency is lifted and would prohibit rental housing providers from using nonpayment of rent during the pandemic as grounds for an eviction in the future. It would also give tenants 15 months to pay back rent from that time period after which rental property owners could claim any unpaid rent in a civil court. This Assembly Bill basically seeks to legitimize and continue the Judicial Council's Emergency Rule of Court 1 enacted on April 6, 2020.

What else do we know?

Bloomberg News reports: "California's legislature passed a \$143 billion general-fund budget for the next fiscal year that counts on federal aid before triggering spending cuts, a rejection of Governor Gavin Newsom's proposal to slash services ahead of more money from Washington... The bill was approved 61 to 13 in the Assembly and 29 to 11 in the Senate Monday. Both chambers are controlled by Democrats. Democratic leaders of both legislative chambers took a different approach: the budget passed Monday counts on \$14 billion in additional federal aid and only triggers cuts in October if it doesn't materialize. Their plan, if Congress fails to act, relies on measures such as deferring payments and moving the June payroll date for state workers into the next fiscal year. Benefiting the state is its record \$16 billion rainy-day account, which while

far short of closing the budget shortfall, can still help defer some painful decisions."

The Sacramento Bee announced on June 22nd: "We made compromises across the spectrum," the Democratic governor said. "It's not just having to address revenue shortfalls, it's also addressing increases in caseloads at the same time related to the economic consequences and the displacement associated with COVID-19."

Another budget source who declined to speak on the record said the agreement contains cuts to various sectors of the economy that could be reversed if the state receives \$14 billion in federal funds that Newsom and other state leaders have been requesting.

If those funds materialize, they will be used for K-12 schools and higher education, the judicial branch, housing, teacher training and state employee compensation, the source said. If the federal government provides less than \$14 billion, the source said money will be divvied up proportionally based on the language in the actual bill, which has not yet been released."

Also on June 22nd, the Los Angeles Times reported: "In reality, California has no real deadline for a final agreement — instead requiring the initial budget bill to be ratified by June 15 to prevent lawmakers from losing their pay, followed up by a series of budget-enacting bills approved on a more flexible timeline. A 2014 court ruling determined only the overview budget plan is subject to the June 15 constitutional deadline, with revisions and additional decisions allowed weeks or even months after the fiscal year begins July 1".

Stay safe and healthy. Wear your masks and observe social distancing.

Until we meet again,


*Betty L. Jeppesen*

President  
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# CalRHA President's Message



Sid Lakireddy, CALRHA President

Just like that, half of 2020 is behind us and we are quickly inching toward the day we defeat Michael Weinstein's rent control ballot initiative for a second time. I have said this before and I will say it again, we need all CalRHA members to stay involved before it's too late. It's not enough to expect that voters will turn it down like they did in 2018 and it's not enough to fully rely on lobbyists to do all the work for us. It's up to us to make this happen. Although we have the best lobbying team working diligently on your behalf to ensure our opinions are being heard with legislators on proposed policy, a ballot initiative is different.

To stop Weinstein, we need all hands-on deck. We will continue to build our online presence and host virtual events as the economy slowly reopens. With the ongoing health crisis and recommendations from health officials to stay inside, CalRHA hosted a webinar to keep members updated on the state housing policy and budget.



Michael Weinstein

The webinar was led by **Capitol Advocacy**, one of the top leading lobbyist groups in California. Small rental housing providers throughout the state joined the webinar to discuss top priority legislation CalRHA is focused on and on-going negotiations with the legislature. We also discussed how COVID-19 is impacting the budget, and how Weinstein's ballot initiative and the split roll initiative would inflict major harm to our industry if passed.

A major shift has taken place with the arrival of COVID-19. Now, more so than before, the narrative of housing has shifted more toward renters' needs so much so that we are focused on highlighting compelling stories and illustrate the impact this all has on rental property owners.

After pushing for financial assistance for renters suffering from the impacts of COVID-19 for months in the media and at the Capitol, State Senate leaders introduced a comprehensive plan that include a state renter assistance program (SB 1410) and ways to increase the housing stock.



**SB 1410** would authorize property owners to participate in the program, and would pay them 80% of the amount of rent owed. If the property owner agrees to participate in the program they

would not be allowed to demand the lost 20% from the tenant. In a series of five bills, the plan also presents a bill that ends mortgage interest for second homes, a cap on development impact fees, and CEQA relief for affordable and homeless housing.

In the best interest of our members, CalRHA and its lobbying team will remain focused on influencing housing policy with the COVID-19 pandemic in full motion and state budget deficit.

## UPDATE PRIORITY HOUSING LEGISLATION

Many legislators are focusing only on COVID-19 related bills. In which case, many of the priority bills we were monitoring in the beginning of the year will no longer be on the table for this legislative cycle. CalRHA will update this list every month: <https://cal-rha.org/>



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# CalRHA 2020 Housing Legislation



Chris Zraggen, Capitol Advocacy

June 12, 2020

With the Legislature back in session, and a full plate of issues to tackle, life in California's capitol has been busy, albeit in a socially distanced manner. Both houses of the Legislature recommenced committee hearings to hear and pass a much smaller bill load than what was introduced at the beginning of the year. Leadership of both houses have indicated that only top priority bills addressing COVID-19 or the most pressing issues in the state will be considered this year, and housing certainly falls under one of the most pressing issues. On June 3rd, the Assembly Appropriations Committee held their Suspense hearing to consider bills that have a high fiscal impact to the state. Given the budget deficit that the state is currently in, a number of bills were held which further reduced the overall total of bills that are still making their way through the legislative process. The Senate Appropriations Committee will hold their Suspense hearing on Tuesday on June 18th.

While many bills, including multiple housing bills passed off of the Assembly Appropriations Suspense file, CalRHA did see a significant win. **AB 2406** authored by Assemblymember Buffy Wicks was held in that committee and is now dead for the year. This bill would have required all property owners who accept any federal or state funds related to COVID-19 to provide very specific information to an online rental registry portal. A similar bill failed last year and CalRHA opposed **AB 2406** this year from the beginning and was instrumental in killing it.



Assemblymember  
Buffy Wicks

In response to the COVID-19 pandemic, another bill was substantively amended to provide options and assistance to tenants in the state, however, it is strongly opposed by property owners. Assemblymember David Chiu (who is the Chair of the Assembly Housing Committee and the author of last year's rent control bill, AB 1482), substantively amended a bill that is currently in the Senate. **AB 1436** would provide tenants who do not pay rent during the COVID-19 state

of Emergency 15 months to repay back owed rent after the state of emergency is lifted. In addition, property owners would be prohibited from evicting tenants who fail to repay owed rent after the 15-month repayment period, however, they would be authorized to bring civil suit against the tenant. This bill is objectionable for a multitude of reasons. First, many property owners are unable to absorb a financial hit of this magnitude. There is also little to no recourse for those who do not repay the owed rent after the 15-month period has expired. Without the ability to evict these tenants, property owners will have to wade through lengthy civil litigation in order to recuperate what is theirs. Lastly, it is unclear how long this state of emergency will last, which means tenants could refuse to pay rent for months. CalRHA is actively working in opposition to this bill to stop it this year.



Assemblymember  
Phil Ting

**SB 1410** which was previously authored by Senator Lena Gonzalez, but has since been amended to now make Senator Anna Caballero the lead author. This bill would establish the COVID-19 Rental Assistance Program which would provide up to 80% of the amount rent owed. Property owners would be authorized to participate in this program, however, if they do choose to participate they then forgo their right to recuperate the remaining 20% of rent. While CalRHA has long advocated for a renter's assistance program, we believe that this bill should be amended to add means testing in order to determine those who receive the funding. By adding means testing we will ensure that assistance is given to those who need it most. This bill is currently on the Senate Appropriations Suspense file and will be decided on June 18th.



Senator Anna Caballero

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On May 20th, Senate Democrats introduced a package of bills to address the state's housing crisis. Senate Pro Tem Toni Atkins, along with Senators Wiener, Skinner, and Caballero sent out a press release describing the bills that they have amended to make up this package.



Senate Pro Tem  
Toni Atkins

These bills are listed below:

**SB 902** (Wiener) – This allows local governments to pass a zoning ordinance that is not subject of CEQA for projects with up to 10 units and are located in transit-rich and job-rich areas.

**SB 995** (Atkins) – This expands the application of streamlining CEQA for housing projects that consist of at least 15% of affordable housing.

**SB 1085** (Skinner) – This would increase incentives to developers by enhancing the existing Density Bonus Law.

**SB 1120** (Atkins) – This would encourage small scale neighborhood development by streamlining the process to create a duplex.

**SB 1385** (Caballero) – This would unlock existing land that has been zoned for office and retail use and authorize it to be used for housing.

In addition to legislative activity, the Assembly and Senate Budget Committees, along with the Governor have worked diligently to develop the state's budget. The Department



of Finance has estimated that the state faces a budget shortfall of nearly \$54.3 billion due to the impacts that COVID-19 and the statewide shelter in place ordinance have had on the economy. Given this shortfall the Governor proposed cuts to a number of programs in his May Revision of the Budget, and the Legislative Budget Chairs and the Governor have continued negotiations on where cuts should be made and what programs should continue to be funded. The Legislature is constitutionally required to pass the state budget by June 15th, but negotiations will continue beyond that date. We expect a number of cleanup bills to be introduced that will help implement the state budget as we gain a better understanding of the state's financial position.

Though the COVID-19 pandemic has caused the Legislature to reevaluate and adjust how they conduct business this year, a lot is still happening in Sacramento. We expect the Legislature will continue to address key issues that face the state and housing will remain a priority for both the Legislature and the Governor. CalRHA will continue to advocate for thoughtful legislative solutions to the housing crisis amidst the COVID-19 pandemic.

## Welcome New Members

*Glen Serbin, Bryan Friedman,  
Paulette Jensen, Emerson Sekban*

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# NEW RENT CAP CPI VALUES FOR 2020

As you remember, 1482 rent cap calculations must use the Dept. of Industrial Relations' CPI Index value in April of each year. Thus far in 2020 we have been using the April 2019 CPI of 3.34%. I've been watching the DIR for their posting of the California April 2020 CPI as it is published mid-June.

The DIR has posted the new 2020 CPI Index value, thus going forward new 1482 leases you write are subject to 5% + 2020 CPI. According to my calculations, our new 2020 CPI is....

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3) Select beginning month	<input type="text" value="April"/>	<input type="text" value="280.275"/>
4) Select beginning year	<input type="text" value="2019"/>	
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6) Select ending year	<input type="text" value="2020"/>	<input type="text" value="283.006"/>

Based upon the Index, Index type, and the time period you have specified, the percent change in the Consumer Price Index is equal to:

**1.0%**

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**2020 Rent cap for new 1482 leases ==> 5 + 1 = 6%**

**NOTE: Remember that SB County STILL continues to be under the Governor's 2017 Anti-Gouging Executive Order prohibiting a price increase of more than 10% of the previously charged or advertised price.**

For rental housing that was not rented or advertised for rent prior to a declaration of emergency, the price cannot exceed 160% of the fair market value of the rental housing as established by HUD.) Executive Order N-22-19 extended price gouging protections in Santa Barbara and 7 other counties until December 31, 2020. <https://www.caloes.ca.gov/cal-oes-divisions/legal-affairs/price-gouging>

**If you have questions, please consult your attorney regarding whether the Order is applicable to you.**

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### **Why Should I Support NAAPAC Now?**

During the COVID-19 pandemic, it has become clearer than ever that legislation, especially laws adopted at the federal level, can have a direct impact on the multi-family industry.

As of early June 2020, nearly 40 million Americans are unemployed. The longer the emergency continues, the more residents of our communities will have difficulty paying their rent.

Congress missed a chance with the CARES Act to construct an emergency rental assistance package to help renters. What Congress did do was to enact a moratorium on evictions, providing little recourse for owners and managers to respond to health and safety threats to their communities.

What is more, parts of the HEROES Act passed in the House of Representatives (but not adopted in the Senate) package would do the following:

- Extend the eviction moratorium a full 12 months until after the end of the declared emergency and expand it to every rental property in the country; and
- Construct a rental assistance program that, while sizable at \$100 billion, will be channeled through one mechanism (ESG funds) and will primarily target only low income renters;
- And of course, there is separate federal legislation (HR 6515) that would cancel all rents and condition rental assistance on rent freezes, among other things.

While we do not know when COVID -19 will end, we do know that Election Day is less than 6 months away. The apartment industry must make sure that the people who are elected to Congress are people who know that hurting us doesn't help residents.

NAAPAC has remained active since the COVID-19 outbreak, supporting friends of the industry in early primaries. And we are watching rescheduled primaries for opportunities to make our voice heard today.

Of course, fundraising has leveled off since the start of the year, so we will need additional help to keep going through the summer into the fall.

We hope you will support us.

To support the latst from NAAPAC, go here: <https://www.naahq.org/advocacy/naapac>

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<b>SOLD MARCH 2020</b>	<b>4 Units by Girsh Park (low rents)</b>	<b>\$1,550,000</b>
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## Make sure your Section 8 Income Criteria is in compliance!



Santa Barbara Housing: HASB's Casa de las Fuentes

Beyond accepting Section 8 applications, you must also properly calculate whether they meet your income criteria. On Saturday (6/6/2020), the Independent featured an article written by a Section 8 renter who is filing complaints against five Santa Barbara property management companies.

SBRPA cannot provide you with legal advice on whether you are in compliance. So, I went to Rob Fredericks, President of the Santa Barbara Housing Authority, to ask what guidance he could provide landlords on how to calculate whether a prospective Section 8 resident meets your income criteria. Please see his response below.

All my best,

*Laura*

---

### CALIFORNIA SENATE BILL 329

#### How income should be calculated for a Section 8 Voucher Holder

*The net effect of the law is that the voucher amount must be considered as part of the tenant's income and any income standard applied by the landlord must be based on the portion of the rent which would be paid by the tenant, rather than the contract rent.*

For example, let's assume the contract rent for a one bedroom unit is \$1,600. If the prospective renter is a voucher holder and this prospective renter's portion of the rent is just \$400 per month, then if a landlord uses an income standard such as a 3x multiplier, it would be  $\$400 \times 3 = \$1,200$ , rather than taking the contract rent amount of and multiplying it 3, which would be a substantial difference at \$4,800 per month.

The point of the voucher program is to take the issue of making enough money to afford the rent out of the equation. So, in my opinion there really should not even be a multiplier standard for voucher holders; but if you apply such an income standard, it would be based on the portion of the rent paid by the tenant.

Rob Fredericks  
Executive Director/CEO  
Housing Authority of the City of Santa Barbara  
[www.hacsb.org](http://www.hacsb.org)

\* SBRPA NOTE: Some local attorneys disagree that the tenant's earned income is to be used to calculate the income standard that must be met, so always consult your own attorney.

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We encourage everyone to comply with state and local ordinances regarding the COVID-19 pandemic. Call now to schedule maintenance on your existing system.



## COVID-19 and Your HVAC System

The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has developed proactive guidance to help address coronavirus disease 2019 (COVID-19) concerns with respect to the operation and maintenance of heating, ventilating and air-conditioning systems. ASHRAE guidance can be found at <https://www.ashrae.org/technical-resources/resources>

According to the CDC and ASHRAE, HVAC systems can play a vital role in mitigating the spread of diseases like COVID-19. While an air filter can help trap dirt and germs, it will NOT kill germs or viruses. If you are changing your own air filter and you suspect or know someone in your home has been diagnosed with COVID-19, please take precautions: wear gloves and a face mask, have a plastic bag ready to dispose of the used filter, turn off the system, carefully remove the used filter, place it in the plastic bag, tape it shut and place it in an outside trash bin.

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Rob Fredericks

## Stable affordable housing works with the help of our landlord community!



Our national, state, and local economies have been decimated from the impacts of COVID-19, leaving no one unaffected. Last week, The Bureau of Labor Statistics reported the jobless rate in April reached 14.7%, with 36.5 million workers applying for unemployment benefits over the last two months.

Furthermore, a recent study from Columbia University is projecting homelessness to grow as much as 45% this year. To prevent this from happening, federal rental assistance programs like the Section 8 Housing Choice Voucher program, which provides direct rental payments to landlords on behalf of households, should be expanded. Such expansion is being considered by Congress through various measures such as the HEROES Act.

The Housing Authority would like to take this opportunity to thank the many local landlords participating in the Section 8 program for decades, helping to keep our seniors, disabled individuals, and low-income workforce stably housed. At this time, there remains a great need, so we encourage our local landlords to provide housing to our other voucher holders who are seeking a place to live.

The main benefit of the Section 8 program is that rent to the landlord is all but guaranteed. If a tenant's income is lowered or lost altogether the adjusted subsidized portion of rent is paid by the Housing Authority on time, directly to the landlord. Landlords do not suffer a loss of rent, and can continue to help house our vulnerable populations.

We have streamlined and improved the operation of the program through electronic document signing and processing, and incentives including damage protection up to \$2,000. Please reach out to our Leasing Agent, Jerry Morales, at 805-897-1049 or [jmorales@hacsb.org](mailto:jmorales@hacsb.org) for more information.

**Rob Fredericks,**  
Executive Director/CEO  
Housing Authority of the City of Santa Barbara

# Temporary Eviction Moratorium Due to COVID-19

On March 24, 2020, the Santa Barbara City Council adopted Ordinance No. 5941 which allows commercial and residential tenants to defer rent payments when they are unable to pay because of income reductions due to the Coronavirus (COVID-19) pandemic. The Temporary Eviction Moratorium Ordinance (TEMO) became effective immediately. The TEMO was initially slated to expire on May 31, 2020. Tenants must provide written notice of their request for rent deferral within 20 days after the rent is due. Details on the form of the notice and what it must contain are in the Ordinance and FAQs available below.



On May 19, 2020, the Santa Barbara City Council adopted Ordinance No. 5943 to extend the TEMO to be in effect as long as the Governor's Executive Order N-28-20 remains in effect.

The adopted text of the TEMO, Ordinance No. 5941 is available on the SBRPA website <http://sbrpanetwork.org/wp-content/uploads/2020/03/CITY-MORATORIUM-hyperlink.pdf>.

On May 29th, Governor's Newsom's Executive Order N-66-20 extended EO N-28-20, and as a result the TEMO, until July 28, 2020. The Council also specified that tenants must repay any deferred rent in 12 equal monthly installments after expiration of the COVID-19 emergency orders, now projected to be July 28, 2020.

**SBRPA is not permitted to provide legal advice to the public. City Attorney Ariel Calonne will provide technical assistance to attorneys by telephone at (805) 564-5326.**

## City of Santa Barbara COVID-19 TEMO FAQ's

### 1. What is the Temporary Eviction Moratorium Ordinance?

*The Ordinance ("TEMO") is a local law passed by the Santa Barbara City Council to protect residential and commercial tenants from eviction for nonpayment of rent due to the COVID-19 emergency. The TEMO went into effect on March 24, 2020.*

### 2. How does a tenant get protection under the TEMO?

*The TEMO allows you to delay paying all or part of your rent by sending a written notice to your property owner or agent within 20 days after your rent due date. For example, if your rent is due on April 1, 2020, you would need to send the notice on or before April 21, 2020.*

### 3. What does the written notice need to include?

*The notice is different for residential and commercial tenants.*

- *For residential tenants, the notice must describe the "Significant Negative Change to*

*their Household Financial Condition" that makes the tenant unable to pay all or part of their rent. The lease payment that the tenant believes they can make on a current monthly basis and the amount the tenant seeks to defer during the emergency. The notice also has to include documentation that establishes the Significant Negative Change to Their Household Financial Condition.*

- *For commercial tenants, the notice must describe the "Unforeseeable Emergency Commercial Conditions" that make the tenant unable to pay all or part of their rent. The notice must include the amount of the rent or lease payment that the tenant believes they can make on a current monthly basis and the amount the tenant seeks to defer during the emergency. The notice also has to include documentation that establishes the Unforeseeable Emergency Commercial Conditions.*

4. What does "Significant Negative Change to their Household Financial Condition" mean for residential tenants?

*This means a residential tenant can delay their rent or lease payment when they experience a substantial decrease in household income as a result of any of the following:*

- *Being sick with COVID-19, or caring for a household or family member who is sick with COVID-19;*
- *Lay-off, loss of compensable work hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19;*
- *Compliance with an order or recommendation from a government authority to stay home, self-isolate or quarantine, or avoid congregating with others during the state of emergency;*
- *Extraordinary out-of-pocket medical expenses as a result of COVID-19; or*
- *Child care needs arising from school closures related to COVID-19.*

5. What does "Unforeseeable Emergency Commercial Conditions" mean for commercial tenants?

*This means a commercial tenant can delay their rent or lease payment when they experience a substantial decrease in business income or substantial out-of-pocket medical expenses, or reduced hours of operation or modes of operation.*

6. What kind of documentation does a tenant need to include with their notice?

*The tenant needs to produce written material that shows a substantial decrease in household or business income, such as medical records (including medical bills), layoff or termination notices, income or revenue records, child care expenses or other documents that show a substantial household income decrease as a result of COVID-19.*

*It is important to be complete and truthful with this documentation because if the owner tries to evict you, you will need to demonstrate in court that you had a substantial decrease in income related to COVID-19.*

7. How does the TEMO protect a tenant's personal information?

*The TEMO requires the owner or the owner's agent to keep all medical or financial information contained in a notice confidential, except when disclosure is both necessary to enforce the owner's rights under this ordinance and otherwise lawful.*

8. How long will the TEMO be in effect?

*The rent deferral and eviction protection parts to the TEMO expire on May 31, 2020, unless the City Council takes action to extend the law.*

9. What can a tenant do if the property owner tries to evict them in violation of the TEMO?

*The TEMO creates what is called an "affirmative defense" to eviction for nonpayment of rent. If the property owner files an unlawful detainer action against a tenant for nonpayment of rent, the tenant can defend themselves in court by demonstrating that they sent the notice and supporting documentation to the owner within 20 days after the rent was due.*

10. What can a property owner do if a tenant falsifies the documentation in their notice?

*An owner can attempt to evict the tenant. The tenant will bear the burden in court of demonstrating their eligibility for the rent deferral affirmative defense.*

11. How long does a tenant have to pay back the rent that is deferred under the TEMO?

*The TEMO does not specify a payback period at the present time. The TEMO encourages owners and tenants to work together to develop mutually acceptable repayment schedules. However, the City Council specifically directed reconsideration of the ordinance, including repayment terms, at its meeting on May 12, 2020.*

12. Where can I find additional information?

*You can look at the City Attorney's Rental Housing Information website located at [https://www.santabarbaraca.gov/gov/depts/attorney/rental\\_housing\\_information.asp](https://www.santabarbaraca.gov/gov/depts/attorney/rental_housing_information.asp).*

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BRE 01361925



# AAGLA Files Lawsuit Challenging Eviction Moratorium

June 12, 2020

Claiming that Los Angeles city officials have unconstitutionally placed the entire economic burden of the coronavirus pandemic on the backs of property owners and landlords, an apartment association has filed a lawsuit against the city of Los Angeles challenging the city's eviction moratorium and rent freeze.

**BISNOW**



**The Apartment Association of Greater Los Angeles filed the lawsuit Thursday on behalf of its 10,000 members.**

"The eviction ban is being challenged now because there's no apparent end in sight on if or when the city, mayor or the city council will lift the local emergency declaration," Apartment Association of Greater Los Angeles Executive Director Dan Yukelson said to Bisnow. "The moratorium allows residents to not pay rent for an entire year after the emergency ban is lifted and waives interest and late fees without any documentation requirements evidencing need for these interest-free loans."

Los Angeles City Attorney Mike Feuer's office did not reply to a request for comment by press time.

The lawsuit comes more than a month after the Los Angeles City Council extended its moratorium on residential and commercial evictions due to the coronavirus pandemic. Los Angeles Mayor Eric Garcetti implemented the eviction moratoriums in March as part of the city's efforts to protect residents and commercial businesses that may have been impacted by the coronavirus. As of Thursday, Los Angeles recorded 68,875 coronavirus cases and 2,813 deaths.



*L.A. Mayor Eric Garcetti*

"This is a common sense action to help tenants stay in their homes," Garcetti said at the time. "Angelenos who have lost hours or been laid off, or can't work as a result of a COVID-19 diagnosis, should not face the extra burden of a spike in their rent."

Yukelson said while tenants are protected, many apartment owners in the city are also suffering from financial hardships but see no reprieve from lenders. Yukelson said many apartment owners may soon face foreclosure.



*The city of Los Angeles has one of the nation's most unaffordable housing markets*

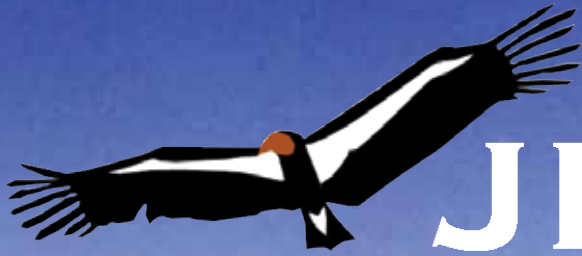
"The city's housing providers are predominantly smaller 'mom-and-pop' owners who, like renters, already struggled financially and lived month-to-month before the onset of the pandemic," Yukelson said. "Many of the city's housing providers have also lost full-time jobs or been inflicted with the coronavirus and have very little in financial reserves to weather a long-term emergency. Many of these owners are not only struggling to meet the financial obligations of maintaining and managing their rental property, they have been struggling to provide housing, food and clothing for their families."

The lawsuit is challenging the city's eviction ban and rent freeze on constitutional grounds.

Yukelson said the city's actions are a violation of the contract clauses and the takings clauses under the California and U.S. Constitutions, and a violation of the Fourteenth Amendment by denying the due process rights of property owners under the California and U.S. Constitutions.

"The eviction ban is the functional equivalent of illegally and forcibly requiring landlords to become involuntary lenders to their tenants and to eliminate any charges a lender would impose after evaluating the risks of any particular 'debtor,'" said Rutan & Tucker's Douglas Dennington, Apartment Association of Greater Los Angeles' attorney. "In fact, these involuntary interest-free loans are being given to tenants without any ability to verify lost income or

*Joseph Pimentel  
Bisnow, Southern California*



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# The Attorney's Corner



David M. Grokenberger, Esq. • Rogers, Sheffield & Campbell, LLP

## TERMINATING A TENANCY UNDER CODE OF CIVIL PROCEDURE 1161(4)

As cities and urban areas continues to grow, the demand for rental housing close to population and economic centers increases. With only so much desirable space available, these areas are becoming more dense and crowded, despite efforts of local governments to control population density through zoning regulation. Ambitious renters may seek to sublet their units to individuals willing to sacrifice traditional living arrangements in exchange for a location closer to town. Furthermore, with more occupants in a given neighborhood, and in closer quarters, the potential for noise, disruption and illegal activity increases.

A powerful tool for a landlord seeking to deal with tenants subletting, engaging in unlawful activity, or creating a disturbance is the unlawful detainer under California Code of Civil Procedure ("CCP") section 1161(4). CCP 1161(4) states that a person is guilty of unlawful detainer (and can be evicted) as follows:

Any tenant, subtenant, or executor or administrator of his or her estate heretofore qualified and now acting, or hereafter to be qualified and act, assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his or her lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using the premises for an unlawful purpose, thereby terminates the lease, and the landlord, or his or her successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of the demised premises under this chapter. For purposes of this subdivision, a person who commits or maintains a public nuisance as described in Section 3482.8 of the Civil Code, or who commits an offense described in subdivision (c) of Section 3485 of the Civil Code, or subdivision (c) of Section 3486 of the Civil Code, or uses the premises to further the purpose of that offense shall be deemed to have committed a nuisance upon the premises.

As can be seen, CCP 1161(4) can also be used to evict a tenant who is causing a nuisance, participat-

ing in illegal activities at the property or assigning/subletting without permission. CCP 1161(4) is an expeditious process as it allows the landlord to evict a tenant without providing the tenant an opportunity to "cure." In contrast, CCP 1161(2) provides that the tenant must either pay the rent or move within 3 days. Similarly, CCP 1161(3) states that the tenant must either cure their rental agreement violation or move within 3 days. Furthermore, with the adoption of California's "Just Cause Eviction" statute effective January 1, 2020, section 1161(4) is more valuable as it constitutes "just cause" that may serve as grounds for eviction (Civ. Code, § 1946.2(1)(C), (D), (G), (I)).

## NUISANCE GROUNDS

Because CCP 1161(4) is a relatively "harsh" grounds for unlawful detainer, courts will analyze the landlord's claim of nuisance to a relatively high level, asking whether the landlord's issue really constitutes a nuisance to support an eviction under CCP 1161(4). So, what constitutes a nuisance to support an unlawful detainer under California Code of Civil Procedure 1161(4)?

The Civil Code defines a nuisance as "[a]nything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway" (Civ. Code, § 3479). CCP 1161(4) also references code sections regarding dogfighting, possession of illegal weapons and ammunition, and use of the premises related to controlled substances, as activities constituting a nuisance on the premises. These types of activities are often criminal acts as well, and thus police reports or other documentation from the criminal justice system could be of assistance to a landlord in prosecuting a case under CCP 1161(4).

Acts that constitute a nuisance do not have to result in physical harm, nor do they need to occur for a certain

*Continued on page 29*



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amount of time. In *Swords to Plowshares v. Smith*, the court considered a notice to quit based upon the tenant's threats of physical violence to others (294 F. Supp. 2d 1067, 1074 (2002)). The alleged nuisance had no connection to actual injury, nor was there an indication of the duration of the alleged conduct (Ibid.). The court noted that a nuisance is "an invasion that is 'definitely offensive, seriously annoying or intolerable,' . . . the degree of [which] is to be judged by an objective standard . . ." (Ibid.). The court referred to a California Supreme Court opinion that "the primary test for determining whether the invasion is unreasonable is whether the gravity of the harm outweighs the social utility of the defendant's conduct" (Ibid.). In finding that the allegations could arise to nuisance under CCP 1161(4), the court determined that there need not be actual damage, but conduct which, objectively, could be considered offensive, annoying or intolerable, and that the interference need not have lasted a long time, but instead is unreasonable if the gravity of the harm outweighs the social utility of the conduct (Ibid.).

However, because of the relative high level of scrutiny applied by the courts in CCP 1161(4) nuisance cases, it would be safer for a landlord to base his unlawful detainer on more than just a single nuisance occurrence or a relatively minor nuisance issue. Another question for the landlord to ask is whether the nuisance is "curable." If it is, perhaps the landlord should utilize CCP 1161(3) instead, giving the tenant 3 days to cure his violation before commencing the unlawful detainer action.

### UNLAWFUL PURPOSE/SUBLETTING

As can be seen by the discussion of nuisance under CCP 1161(4), some illegal activity can constitute a nuisance, and vice-versa. Similarly, some subletting activity (such as short-term renting through Air BnB) is also using the property for an unlawful purpose.

In the City of Santa Barbara, short-term rentals are considered a hotel activity and can only occur in areas zoned for such use. This eliminates essentially every residential area in the city from short-term renting, but the practice is nonetheless widespread. Accordingly, tenants renting out a portion or all of their units through Air BnB and similar services are potentially both subletting and using the premises for illegal activity.

A California court recently had the opportunity to review a trial court's decision regarding the use of CCP 1161(4) to evict a tenant that was renting out a one-bedroom loft in Venice on a short-term basis, and advertising the rental online (*Chen v. Kraft* (2016) 243 Cal.App.4th Supp. 13). The trial court had granted

the landlord's motion for summary judgment, meaning that based upon undisputed facts (the location of the apartment in a residential zone, the municipal code prohibition on short-term renting in residential zones, advertisements of the rental online, deposition testimony from the tenant confirming the short-term renting), the activity constituted use of the premises for an unlawful purpose under CCP 1161(4) as a matter of law (Id. at 16). This ruling was made in the face of evidence that the original lease had an addendum permitting short-term renting, and that the tenant had a certificate to collect transient occupancy tax (Id. at 17). On appeal, the reviewing court upheld the ruling, finding that the proof of a transient occupancy (short-term renting) practice on a property not zoned for such use constituted an unlawful purpose under CCP 1161(4) (Id. at 21). The court found that any addendum purportedly allowing short-term renting was void as contrary to public policy, and did not permit the tenant's actions (Id. at 22).

The Chen case provides important lessons for landlords: (1) document evidence, if possible, of subletting or short-term rentals such as web advertisements or reviews, (2) become familiar with the municipal codes and county ordinances which define zoning and allowable uses for a property, and (3) do not automatically assume that a written agreement to allow short-term rentals automatically allows a tenant to do so. While the situation in the Chen case is not the only way short-term renting can be the basis for eviction under CCP 1161(4), it provides an illustration of a successful case.

The information contained in this article is not intended as legal advice for any specific situations or individuals, and as always, you should seek independent legal counsel as to your particular circumstance. If you have questions on these topics and/or need legal advice on these subjects, please call (805) 963-9721 or email David Grokenberger (david@rogerssheffield.com), Michael Brelje (mike@rogerssheffield.com), or Scott Soulages (ssoulages@rogerssheffield.com) for further discussion.



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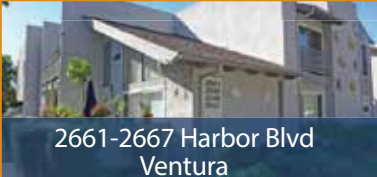
When challenging times come, our community pulls together.

I am here to help with any questions about local rental ordinances or potential impacts of the pandemic on your property.

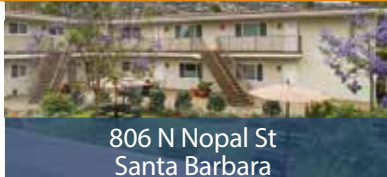
Stay safe, stay well. This will pass.

*- Christos Celmayster*

**CHRISTOS'S RECENT SALES**



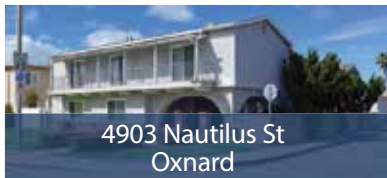
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# Santa Barbara Happenings



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## Rent Control Will Appear Again on November 2020 Ballot

Recently, another concerning ballot measure (Initiative 19-0001 also known as the Rental Affordability Act) qualified to be on the November 2020 ballot. Initiative 19-0001 would further expand the ability of local governments to regulate a land owner's authority to set rents for his or her units. Initiative 19-0001 is flawed and it is critical that voters are aware of the possible consequences if passed.

Initiative 19-0001 would significantly alter the existing Costa Hawkins Act. The Costa Hawkins act, established in 1995, provides several important limitations on how the state and local governments may regulate the rents that are charged by landlords. Some of the notable restrictions include allowing landlords to raise the rent to the market rate once a unit is voluntarily vacated, preventing local governments from establishing rent control on units built after February 1995, and exempting single family homes and condos from local rent control laws.

Initiative 19-0001 would weaken and/or eliminate these protections. Rather than creating new housing, this measure will likely lead some rental properties to be taken off the market and others to be converted into condos or townhouses.

Initiative 19-0001 would also undermine the recently enacted statewide rent control law by changing it before any effects could be seen. Unlike the statewide rent control laws, which expire in 2030, the proposed changes under Initiative 19-0001 would be permanent. More regulations are not the answer to California's housing shortage. Increased regulations will likely discourage owners from investing back into their properties, ultimately driving down value and reducing tax revenue. Increased regulations also adversely affect tenants by reducing the effort and attention spent on improvements to the buildings they occupy.

**More information regarding how to oppose Initiative 19-0001 can be found at <https://californiansforaffordablehousing.org/join-the-coalition/>**

Three Reports find what Property Owners Already Knew: The City of Santa Barbara should Decrease Regulations on Land Development

Recently, three reports were presented to the Santa Barbara City Council that outlined how the current burdensome review process halts land development. These frustrations have been echoed previously by both commercial and residential developers and contribute to the high vacancy rates in and around the Santa Barbara downtown corridor. Reports were conducted by Novak Consulting Firm, the Santa Barbara County Grand Jury, and the newly created COVID-19 Business Advisory Task Force.

Novak Consulting's report discussed the issues surrounding property development. Land development itself involves conflicting interests. Developers want to finish projects quickly and efficiently, the city wants to make sure all zoning and safety requirements are met, and neighboring community members want to maintain Santa Barbara's historic character. There is a lack of consistency in how projects begin the approval process. Currently, a developer can choose to begin with an overall design review, meet one-on-one with staff, or get feedback from multiple departments. This leads to confusion for both city staff and customers.

In response to this confusion, Novak Consulting and the COVID-19 Business Advisory task force recommended that the city assign single plan checkers that would remain constant throughout the length of the project.

Another problem Novak Consulting's report discussed is that some staff see narrow project applications as an opportunity to review entire

properties for compliance with the most recent guidelines. This often results in increased costs and delays for a given project. To address these issues and others, it is recommended that the city limit the scope of these reviews.

The Santa Barbara Grand Jury added that the city needs to hold the City's Community Development Department more accountable for helping to get projects permitted.

The takeaway from all of the reports is that Santa Barbara City needs to cut red tape and become more business friendly. This directive is as important now as ever before due to the additional business struggles caused by COVID-19. Hopefully the city will now get the message and take action.

**Solvang City Council Votes to Limit Expansion**

Recently, Solvang City Council voted to adopt an urban growth boundary to stop the expansion of Solvang's city limits for the next 20 years. The adoption of this proposal reflects the efforts of many citizens to keep Solvang's small town, rural character. It also provides incentives for developers to propose well thought out plans to gain voter approval. The decision bypasses the need for a citizen vote that would have occurred on the November 3, 2020 ballot.

The urban growth boundary does not prevent all growth, but rather allows for growth in certain locations only after an affirmative vote from residents. Goleta and Buellton have similarly adopted growth boundary measures. In Buellton, an initiative passed that calls for voter approval for expansion outside city limits. This measure will be in effect until the end of 2025.

### **Santa Barbara County Board of Supervisors to Make Changes to Cannabis Industry**

Recently, the Santa Barbara Board of Supervisors (Board) considered changes to the current cannabis ordinance, as recommended by the Santa Barbara County Planning Commission (Planning Commission). One of the most significant recommendations by the Planning Commission was to require a stricter application process through requiring permits for all cannabis cultivation, called conditional-use permits (CUPs). The Board instead directed staff to propose an amendment to the current ordinance that would require CUPs if the

operator proposes to cultivate cannabis on more than 51% of the land.

However, the Board also directed staff to prepare an amendment to the current cannabis ordinance that would ban all commercial cannabis cultivation and processing in rural neighborhoods, including Tepusquet and Cebada Canyons northeast of Lompoc. This came after many complaints surrounding the greater noise, traffic, night lights, and odor that came along with the increased cultivation in the county.

Additionally, the Board adopted an initial vote to require a 50-foot buffer from the property line for all cannabis cultivation in the North County. This would not affect growers in Carpinteria, which raised issues for residents there who complained about the large-scale cannabis operations in Carpinteria.

The Board also unanimously proposed a ban on outdoor drying and processing of cannabis to help control odor. This will require North County growers to either construct facilities on site with the best available odor control technology or to process cannabis offsite.

Santa Barbara County Board of Supervisors will hold a public hearing later this summer and cast a final vote on the proposed ordinance amendments following the hearing.

### **The City of Santa Barbara Looks to Respond to the Decrease in Revenues**

With tourism down due to the COVID-19 pandemic, the city's bed taxes from hotels and other lodging businesses went down 62% in March and 93% in April from last year's numbers. There was also a 28% decline in the sales tax revenues for the quarter ending March 31, 2020 compared to the same quarter last year.

This drop-in sales and hotel bed taxes paired with the estimated \$30 million deficit in the city's general fund has significantly decreased the overall projected budget revenues. While this decline was expected, it is crucial that the city take steps to expedite the permit process and support businesses as the economy reopens. Chairperson of the Finance Committee, Councilmember Eric Friedman, suggests that this deficit requires the



use of reserves, strategic spending reductions, and labor negotiations.

In an effort to improve the situation for local restaurants (and improve tax revenues it collects), the City of SB now allows expansion of tables and customer seating space onto the sidewalks and street. Come and walk down pedestrian only State Street and see the new spaces. Perhaps your favorite eatery will be open and you can have a new outdoor experience. Expect to see other jurisdictions take action on their budgets in the near future as the effect of decreased revenues from the virus quarantine starts to be felt.

### SB County History: Alisal Road

For many years there was a county road (and probably an Indian/Mission/Rancho trail/road before that) that led from the "Nojoqui Grade" to Santa Ynez. Grading improvements and modifications proposed for that route in July 1914 called it the "Alisal Road", also a map dated August 1914 shows "Alisal Canyon Road" as a public thoroughfare. (Hat tip to local historian Neal Graffy).



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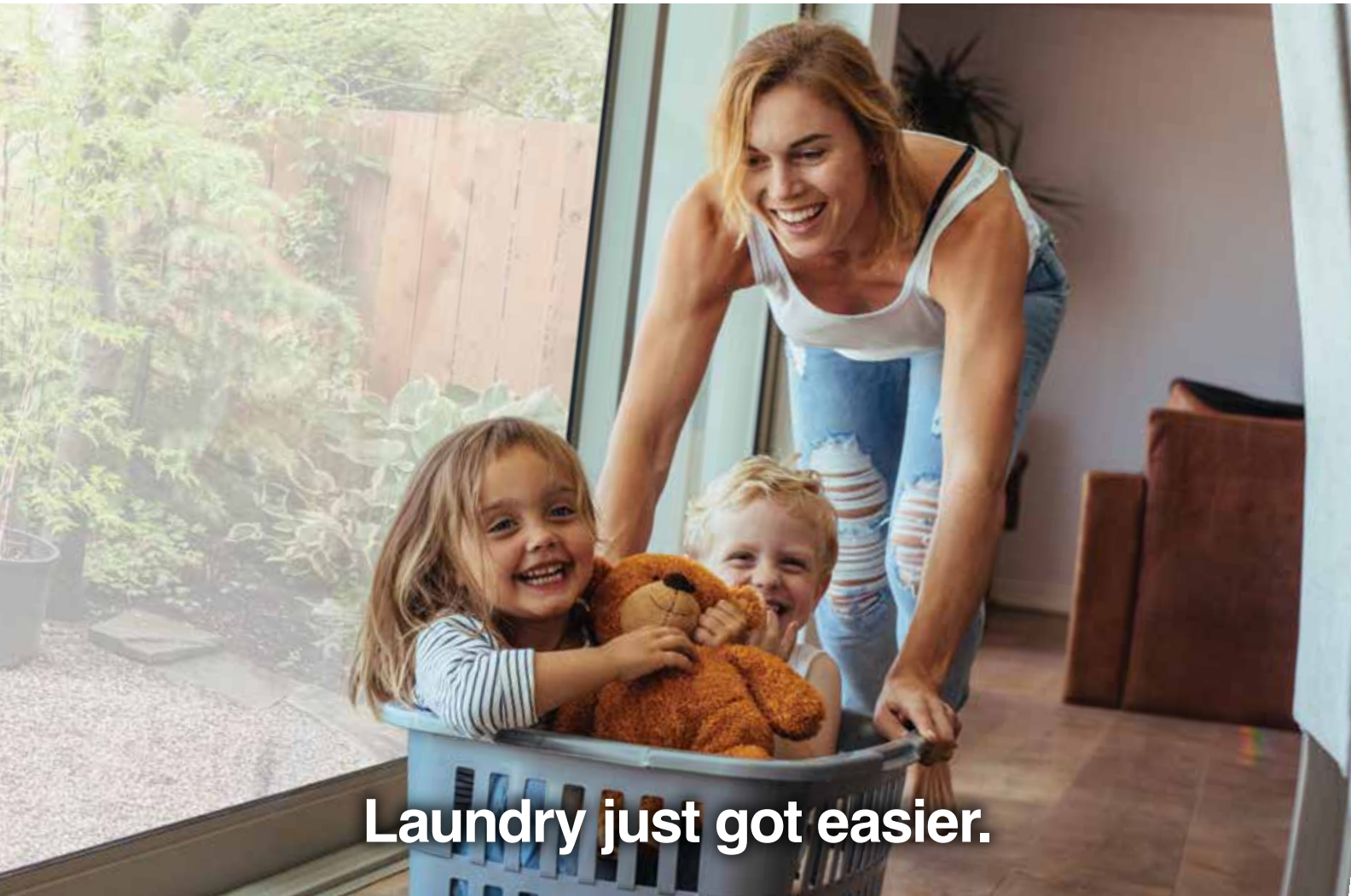
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