

ORDINANCE NO. 31521

An ordinance providing for a COVID notice of possible eviction by residential landlords before a notice to vacate a residential tenancy due to the COVID-19 pandemic; creating a COVID hardship notice for tenants; creating an offense; providing a penalty not to exceed \$500; and providing an effective date.

WHEREAS, on March 12, 2020, the Mayor of the City of Dallas issued a Declaration of Local Disaster that allows the city to take measures to reduce the possibility of exposures to COVID-19 and promote the health and safety of Dallas residents; and

WHEREAS, on March 13, 2020, Governor Abbott issued a declaration of State of Disaster to prepare for, respond to, and mitigate the spread of COVID-19 to protect the health and welfare of Texans; and

WHEREAS, the COVID-19 virus is contagious and spreads through person-to-person contact, especially in group settings; and

WHEREAS, on March 15, 2020, the Centers for Disease Control and Prevention (“CDC”) recommended the organizers (whether groups or individuals) cancel or postpone in-person events that consist of 50 people or more throughout the United States; and

WHEREAS, on March 16, 2020, President Trump acknowledged the gravity of the COVID-19 Pandemic, releasing strict guidelines to limit people’s interactions, including that Americans should avoid groups of more than 10 people; and

WHEREAS, on March 19, 2020, Governor Abbott issued Executive Order GA-08 Relating to COVID-19 Preparedness and Mitigation taking certain actions to minimize the exposure to COVID-19; and

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WHEREAS, Mayor Eric Johnson has issued several emergency regulations to combat the spread of COVID-19 and obtain health information needed to identify the extent of COVID-19 infections and hospital bed, ICU and ventilator capabilities; and

WHEREAS, in order to comply with federal guidance, Governor Abbott's Executive Orders, and the City's Emergency Regulations, and to avoid person-to-person contact, individuals may be unable to work and may incur COVID-19 related expenses, which may impact a tenant's ability to pay rent, fees, or other charges associated with the tenant's lease; and

WHEREAS, County Judge Clay Jenkins has issued orders advising the Dallas County Justices of the Peace to suspend eviction hearings and writs of possession for a minimum of 60 days from April 8, 2020, to prevent renters from being displaced; and

WHEREAS, the Texas Supreme Court has issued orders delaying or suspending certain proceedings related to eviction lawsuits through April 30, 2020, and May 7, 2020; and

WHEREAS, it is found that if a landlord provides a COVID notice of possible eviction, a tenant will have an opportunity to cure overdue rent, fees, or other charges associated with the tenant's lease, or to negotiate a modification to the lease before the tenant loses housing, which will reduce person-to-person contact with individuals outside of the tenant's household; and

WHEREAS, it is found that establishing a notice provision prior to evicting residential tenants during the COVID-19 Pandemic, will enable landlords and tenants to work collaboratively to permit tenants to remain in their homes while at the same time ensuring that landlords will maintain a level of revenue that will permit them to continue to provide housing options for tenants is a matter of public health, safety, and welfare and serves the public purpose of safeguarding all City of Dallas residents from the detriments of the COVID-19 Pandemic; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. DEFINITIONS.

(1) COVID FINANCIAL IMPACT means a substantial decrease in household income for a residential tenant related to COVID-19, due to business closure, loss of compensable hours of work or wages, layoffs, or substantial out-of-pocket medical expenses. A financial impact is “related to COVID-19” if it is caused by the COVID-19 Pandemic or any governmental response to the COVID-19 Pandemic, including complying with any public health orders or recommended guidance related to COVID-19 from local, state, or federal governmental authorities.

(2) COVID HARDSHIP NOTICE means a written objectively verifiable notice a tenant may provide to the tenant’s landlord of the tenant’s COVID financial impact, in the form of an email, text, letter, or any other form of written communication, evidencing any loss of income or increase in expenses, and a statement from the tenant that the loss of income or increase in expenses is due to financial impacts related to COVID-19.

(3) COVID IMPACTED TENANT means a person, or a member of a person’s household, who is authorized by a lease to occupy residential property to the exclusion of others and suffers a COVID-19 financial impact and provides documentary proof to the tenant’s landlord to that effect.

(4) COVID NOTICE OF POSSIBLE EVICTION means a notice to precede the statutory notice to vacate described in Texas Property Code Section 24.005 that a residential landlord shall send to a residential tenant notifying the tenant of the landlord’s possible intent to evict for the tenant’s non-payment of rent during the COVID-19 Pandemic.

(5) LANDLORD means a person who rents residential real property to a tenant. This term also includes an owner’s agent.

(6) NOTICE TO VACATE means the statutory notice to vacate required by Texas Property Code Section 24.005 that must precede the filing of an eviction suit.

(7) PERSON means an individual, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity, but does not include the city.

(8) TENANT means a person who rents a residential real property from a landlord.

SECTION 2. NOTICE REQUIREMENTS.

(a) If a residential tenant fails to pay rent during the COVID-19 declared state or local disaster, a landlord shall give the tenant a COVID notice of possible eviction that notifies the tenant of the tenant’s rent delinquency and provides the tenant the right to respond as described in Subsections (c) and (g)(5) below, which includes curing any delinquent payments, before giving a tenant a notice to vacate.

(b) If a COVID impacted tenant provides a COVID hardship notice to the landlord before receiving a COVID notice of possible eviction, and provides the objectively verifiable documentation described in Subsection (c) below, the landlord shall provide the tenant the right to respond as described in Subsection (g)(5) below, which includes curing any delinquent payments, before giving a tenant a notice to vacate. After receipt by the landlord, the notice and objectively verifiable documentation described in Subsection (c) will create a rebuttable presumption that a tenant is unable to pay the full rent due to financial impacts related to COVID-19.

(c) Within the minimum time period in Subsection (g)(5) below, the tenant shall provide the landlord with documentation or objectively verifiable information that the tenant is unable to pay rent due to a COVID-19 financial impact.

(d) If a landlord and tenant agree to the terms of a COVID-19 rental assistance program, and the tenant makes an application and is approved for participation in the COVID-19 rental assistance program, the landlord shall accept the program schedule for repayment and not take action on any eviction proceedings against the tenant instituted after the effective date of this ordinance, except for a breach of the lease other than due to a nonpayment of rent or fees, or as provided in Section 4 below. A landlord's acceptance can be shown either by delivery in writing by the landlord to the tenant, or by the tenant's receipt of notice from the COVID-19 rental assistance program of the landlord's agreement to participate in the COVID-19 rental assistance program on the tenant's behalf.

(e) If a tenant does not provide evidence of a COVID financial impact or a COVID hardship notice to the landlord, the landlord may pursue any enforcement action in accordance with state and local laws.

(f) If a tenant complies with Section 2(d) above, a landlord shall not send a notice to vacate except as provided for in Section 4 below.

(g) A COVID notice of possible eviction must be in writing substantially in the form attached to this ordinance as Exhibit A and include the following:

- (1) notice to the tenant of the tenant's rental delinquency with a request for a response from the tenant;
- (2) a statement that complies with Subsection (m);
- (3) a right for the COVID impacted tenant to respond, which includes curing any delinquent payments or providing a payment plan;
- (4) options for the tenant to resolve the rent delinquency, which may include:
 - (A) negotiating a payment plan directly with the landlord, and

(B) referring a tenant to submit an application for rental assistance to a COVID-19 rental assistance program such as that provided for in the City of Dallas which can be accessed at <https://dallascityhall.com/departments/housing-neighborhood-revitalization/Pages/default.aspx>; and

(5) the minimum time period of 21 days to respond.

(h) Except as provided in this section, a COVID notice of possible eviction must be delivered to a tenant in person or by mail at the premises in question. Notice in person may be by personal delivery to the tenant or any person residing at the premises who is 16 years of age or older or personal delivery to the premises and affixing the notice to the inside of the main entry door. Notice by mail may be by regular mail, by registered mail, or by certified mail, return receipt requested, to the premises in question.

(i) As an alternative to the procedures in Subsection (h), a landlord may deliver a COVID notice of possible eviction by securely affixing to the outside entrance of the main entry door a sealed envelope that contains the COVID notice of possible eviction and on which is written the tenant's name, address, and in all capital letters, the words "IMPORTANT DOCUMENT" or substantially similar language and, not later than 5:00 p.m. of the same day, depositing in the mail in the same county in which the premises in question is located a copy of the COVID notice of possible eviction to the tenant if:

(1) the premises has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises to affix the COVID notice of possible eviction to the inside of the main entry door; or

(2) the landlord reasonably believes that harm to any person would result from personal delivery to a tenant or a person residing at the premises or from personal delivery to the premises by affixing the COVID notice of possible eviction to the inside of the main entry door.

(j) A COVID notice of possible eviction is considered delivered under Subsection (i) on the date the envelope is affixed to the outside of the door and is deposited in the mail, regardless of the date the COVID notice of possible eviction is received.

(k) A COVID impacted tenant who responds to a COVID notice of possible eviction within the time period described in Subsection (g)(5) has 60 days from the date of receipt of the COVID notice of possible eviction to enter a payment plan, apply for rental assistance, or make other plans for curing delinquent rent.

(l) A COVID impacted tenant who provides the tenant's landlord with a COVID hardship notice before the landlord sending a COVID notice of possible eviction, has 60 days from the date of sending the COVID hardship notice to enter a payment plan, apply for rental assistance, or make other plans for curing delinquent rent.

(m) The statement described in Subsection (g) must:

(1) be in 16-point font, bold typeface, and underlined;

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(2) be placed at the top of the first page of the COVID notice of possible eviction in English and Spanish; and

(3) include the following text:

“THIS NOTICE IS TO PROVIDE YOU WITH AN OPPORTUNITY TO PAY DELINQUENT RENTS INCURRED WHILE THERE IS A STATE OF DISASTER BECAUSE OF THE COVID-19 PANDEMIC TO AVOID EVICTION. YOU DO NOT HAVE TO MOVE WHEN YOU GET THIS NOTICE BUT YOU MAY HAVE TO MOVE IF YOU AND YOUR LANDLORD DO NOT WORK OUT AN AGREEMENT REGARDING THE PAYMENT OF DELINQUENT RENT. THIS NOTICE DOES NOT EXCUSE YOUR OBLIGATION TO PAY AND YOU CAN BE EVICTED IF YOU FAIL TO PAY AS REQUIRED UNDER THE LEASE. YOU ARE REQUESTED TO DISCUSS THIS NOTICE WITH YOUR LANDLORD AS SOON AS POSSIBLE BUT NO LATER THAN 21 DAYS FROM WHEN YOU RECEIVE THIS NOTICE.”

(n) A notice to vacate that is given before the expiration of the time periods provided in Subsections (g)(5), (k), or (l) of this section has no legal effect.

SECTION 3. NO EXCUSE FROM THE PAYMENT OF RENT OR FEES.

Nothing in this ordinance should be construed as relieving a tenant from the requirement to pay rent or fees under a lease.

SECTION 4. EVICTIONS DUE TO BREACHES OF THE LEASE OTHER THAN NONPAYMENT OF RENT OR FEES; IMMINENT THREAT OF PHYSICAL HARM; OR CRIMINAL ACTIVITY.

The requirement to send a COVID notice of possible eviction does not apply to the case where a landlord initiates eviction proceedings against a tenant, members of the tenant’s household, or guests who (1) breach the terms of the lease other than due to nonpayment of rent or fees; (2) pose an imminent threat of physical harm to any person, including children and elders within the same household as well as the landlord’s employees or management representatives; or (3) engage in any criminal activity including abatable crime and squatting, and the reason is stated in the notice to vacate as the grounds for the eviction.

SECTION 5. VOLUNTARY MEDIATION.

The city encourages landlords and tenants to utilize mediation to attempt to resolve disputes that may arise between them that they cannot resolve themselves. Mediation is a process where an impartial mediator facilitates a settlement conference between the parties so that they can discuss ways to resolve their differences. This section does not impose a mandatory requirement that landlords and tenants participate in mediation. However, landlords and tenants are encouraged to utilize mediation as a potential means to resolve their disputes while this ordinance is in effect. Landlords and tenants should take advantage of no cost or low-cost mediators to help reduce costs to both the landlord and the tenant.

SECTION 6. OFFENSE AND PENALTY.

(a) A person who knows of facts that provide a tenant with an affirmative defense to eviction under this ordinance, and who nonetheless in bad faith endeavors to evict a tenant commits an offense punishable by a fine not to exceed \$500.

(b) It is a defense to prosecution that a landlord or property owner initiates eviction proceedings for any tenant, members of the tenant's household, or guests if they pose an imminent threat of (1) physical harm to any person, including children and elders within the same household as well as the landlord's employees, or management representatives or (2) any criminal activity including abatable crime and squatting.

SECTION 7. EXPIRATION.

This ordinance expires on the later of the termination of the Governor's declared state of disaster due to the COVID-19 Pandemic or the Mayor's declared state of local disaster due to the COVID-19 Pandemic.

SECTION 8. SAVINGS.

That any notice given or act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced on or after the effective date of this ordinance or before the amendment or repeal of this ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of this ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if this ordinance, should it be amended or repealed, or part thereof, had remained in force.

SECTION 9. EFFECTIVE DATE.

That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained and shall not apply to any eviction proceedings instituted prior to the effective date of this ordinance, including any notice to vacate given prior to the effective date of this ordinance.

APPROVED AS TO FORM:

CHRISTOPHER J. CASO, City Attorney

By 
Assistant City Attorney

Passed APR 22 2020

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Exhibit A

COVID NOTICE OF POSSIBLE EVICTION

THIS NOTICE IS TO PROVIDE YOU WITH AN OPPORTUNITY TO PAY DELINQUENT RENTS INCURRED WHILE THERE IS A STATE OF DISASTER BECAUSE OF THE COVID-19 PANDEMIC TO AVOID EVICTION. YOU DO NOT HAVE TO MOVE WHEN YOU GET THIS NOTICE BUT YOU MAY HAVE TO MOVE IF YOU AND YOUR LANDLORD DO NOT WORK OUT AN AGREEMENT REGARDING THE PAYMENT OF DELINQUENT RENT. THIS NOTICE DOES NOT EXCUSE YOUR OBLIGATION TO PAY AND YOU CAN BE EVICTED IF YOU FAIL TO PAY AS REQUIRED UNDER THE LEASE. YOU ARE REQUESTED TO DISCUSS THIS NOTICE WITH YOUR LANDLORD AS SOON AS POSSIBLE BUT NO LATER THAN 21 DAYS FROM WHEN YOU RECEIVE THIS NOTICE.

You are in default for not paying your rent as required in your lease.

You should contact your landlord and immediately attempt to work out a payment plan or lease modification in order to stay in your residence. If you have not responded within 21 days of this notice, Landlord can proceed with a Notice to vacate and file an eviction proceeding to remove the residents from the subject property.

If you are in default because of financial hardship caused by COVID-19, and you can provide verifiable documentation to your landlord, your response to this notice could give you up to 60 days before an eviction will be filed. However, you are responsible for full payment of all rents through this time unless and until you negotiate a binding agreement with your landlord.

You may also apply for rental assistance to help you pay the required rent from any local, state, federal, or nonprofit organization who may be offering assistance during this COVID-19 pandemic and beyond.

Please note that the landlord may still institute eviction proceedings immediately if you, members of your household or guests pose an immediate threat or physical harm to any person or engage in criminal activity.

Please do not ignore this notice as your failure to respond may result in the landlord sending a Notice to Vacate requesting you to vacate the premises, followed by a judicial action before the Justice of the Peace to evict you.

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This notice was served by: (check one):

mail

hand delivery to a person over 16 years of age answering the door

affixing the notice to the inside of the main entry door

affixing the notice to the outside of the main entry door and mailing notice

On _____ (date) by _____ (signature of person delivering notice).

Witness: _____ (signature of person witnessing delivery).

200647



PROOF OF PUBLICATION – LEGAL ADVERTISING

The legal advertisement required for the noted ordinance was published in the Dallas Morning News, the official newspaper of the city, as required by law, and the Dallas City Charter, Chapter XVIII, Section 7.

DATE ADOPTED BY CITY COUNCIL APR 22 2020

ORDINANCE NUMBER 31521

DATE PUBLISHED APR 25 2020

ATTESTED BY:

A handwritten signature in black ink, appearing to be "R. G. ...", is written over a horizontal line. The signature is stylized and cursive.



Agenda Information Sheet

File #: 20-802

Item #: 45.

STRATEGIC PRIORITY: Government Performance and Financial Management

AGENDA DATE: April 22, 2020

COUNCIL DISTRICT(S): All

DEPARTMENT: Mayor and City Council Office

EXECUTIVE: Kimberly Bizer Tolbert

SUBJECT

An ordinance **(1)** providing for a COVID notice of possible eviction by residential landlords before a notice to vacate a residential tenancy due to the COVID-19 pandemic; **(2)** creating a COVID hardship notice for tenants; **(3)** creating an offense; **(4)** providing a penalty not to exceed \$500.00; and **(5)** providing an effective date - Financing: No cost consideration to the City

BACKGROUND

The coronavirus, referred to as COVID-19, is a highly contagious virus that spreads from person to person, especially in group settings.

The Mayor of the City of Dallas issued a Declaration of Local Disaster on March 12, 2020. The Declaration allows the City to take necessary measures to reduce the possibility of exposures to COVID-19 and promote the health and safety of Dallas residents. On March 13, 2020, Governor Greg Abbott issued a declaration of State of Disaster to prepare for, respond to, and mitigate the spread of COVID-19 to protect the health and welfare of Texans.

Several emergency regulations to combat the spread of COVID-19 and minimize exposure have been issued since the first official emergency declarations. To comply with federal guidance, individuals may be unable to work and may incur COVID-19 related expenses, which may impact a tenant's ability to pay rent, fees, or other associated charges.

Dallas County Judge Clay Jenkins issued orders advising Dallas County Justices of the Peace to suspend eviction hearings and writs of possession for a minimum of 60 days beginning April 8, 2020. The Texas Supreme Court issued orders delaying or suspending certain proceedings related to eviction lawsuits through April 30, 2020 and May 7, 2020.

If a landlord provides sufficient notice of possible eviction, a tenant will have the time that may enable the tenant to cure overdue rent, fees, or other charges associated with the tenant's lease, or to negotiate a modification to the lease before the tenant loses housing. This would also serve to

reduce person-to-person contact with individuals outside of the tenant's household.

Establishing a notice provision prior to evicting residential tenants during the COVID-19 Pandemic will enable landlords and tenants to work collaboratively to permit tenants to remain in their homes. This is in consideration while at the same time ensuring landlords maintain a level of revenue that will permit them to continue to provide housing options for tenants.

Under the proposed Ordinance, a residential landlord will be required to provide a COVID Notice of Possible Eviction (COVID Notice) that informs the tenant of the option to seek rental assistance and provides time for the negotiation of lease payment agreements prior to initiating the eviction process via a Notice to Vacate. The Ordinance requires that the tenant respond to the COVID Notice no later than 21 days from receipt.

The Ordinance delays eviction for 60 days if a tenant has experienced a financial hardship due to the COVID-19 disaster and encourages negotiation between the landlord and tenant to create a lease payment plan, modification, or other options.

The Ordinance excludes any delays of eviction when there is a breach of the lease other than nonpayment of rent or fees or evidence of abatable criminal activity and establishes a specific termination period of the ordinance to expire the later of the termination of the Governor's declared state of disaster due to the COVID-19 Pandemic or the Mayor's declared state of local disaster due to the COVID-19 Pandemic.

The Ordinance applies only to evictions related to residential properties and does not excuse the tenant of any requirement to pay rent or fees under a lease, but encourages the parties to collaborate on a workable solution.

The Ordinance creates an offense not to exceed \$500.00 when a person who knows of facts that provide a tenant with an affirmative defense to eviction under this ordinance, and who nonetheless in bad faith endeavors to evict a tenant.

The purpose of the Ordinance is to address matters of public health, safety, and welfare and serves the public purpose of safeguarding all City of Dallas residents from the detriments of the COVID-19 Pandemic.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On April 1, 2020, the Dallas City Council considered a previous notice of eviction proposal and the matter was referred to the Ad Hoc Committee on COVID-19 Human and Social Recovery and Assistance.

The Ad Hoc Committee on COVID-19 Human and Social Recovery and Assistance was briefed on the proposed COVID Landlord-Tenant Notice Ordinance on April 9, 2020.

On April 16, 2020, the Ad Hoc Committee on COVID-19 Human and Social Recovery and Assistance unanimously voted to refer the proposed COVID Landlord-Tenant Notice Ordinance to the full Council for consideration.

FISCAL INFORMATION

No cost consideration to the City.

Memorandum



CITY OF DALLAS

DATE April 17, 2020

TO Honorable Mayor Eric Johnson

SUBJECT **Recommendation of the Ad Hoc Committee on COVID-19 Human and Social Recovery and Assistance on the COVID Landlord-Tenant Notice Ordinance**

The Ad Hoc Committee on COVID-19 Human and Social Recovery and Assistance (Ad Hoc Committee) unanimously voted in favor of the attached COVID Landlord-Tenant Notice Ordinance and recommended full review by the City Council at the upcoming April 22, 2020 Council Agenda Meeting.

As Chairman of the Ad Hoc Committee, I want to express my sincerest appreciation for the opportunity to brief this policy item through the Committee's review process. The original ordinance was fatally flawed, but through the great work of many coming together, we made great progress in a short amount of time. Thank you for your willingness to shepherd this process and for your leadership during this time. We respectfully request you to place the item on the April 22, 2020 agenda per the Committee's recommendation and in your authority as Mayor.

I am grateful for the work of my fellow Committee members, my City Council colleagues, our city attorney's office, and the large number of external stakeholders who offered their expertise and feedback on such a rapid timeline. Within two weeks, the Committee briefed the proposed amendment, solicited public input, and synthesized feedback to produce the draft COVID Landlord-Tenant Notice Ordinance attached. There remain legal issues with this ordinance. However, we are weighing the unique circumstances of this pandemic, and we have made every effort to narrowly tailor our response to give the city the greatest chance of positive impact while limiting unintended consequences. We may need to re-visit this ordinance as a council depending on the length of our disaster declaration.

Reflective of the will of the body, it is the intent that this ordinance provides protections to help neighbors remain housed during this unprecedented pandemic while also incentivizing the payment of rent, good-faith collaboration between tenants and landlords, and preservation of public safety for all. It is my hope that we will continue to see tenants and landlords working together beyond this crisis, and that Dallas will continue to be a city that advocates for the best interest of all.

Highlights of the Ordinance include:

- Landlords must issue a COVID Notice of Possible Eviction that informs tenants of options to seek rental assistance, and provide additional time for the negotiation of lease payment agreements prior to initiating the eviction process via a Notice to Vacate. Tenants must respond no later than 21 days from receipt. Notice language is provided for landlords in English and Spanish;
- Delays eviction for 60 days if a tenant has experienced a financial hardship due to the COVID disaster and encourages negotiation between the landlord and tenant to create a lease payment plan, modification or other options;

DATE April 17, 2020
SUBJECT **SUBJECT**

- Excludes **any** delays of eviction when there is evidence of abatable criminal activity;
- Establishes a specific termination period of the ordinance to end with the COVID disaster declaration;
- Applies only to evictions related to residential properties.
- Does not excuse the tenant of any requirement to pay rent or fees under a lease but encourages the parties to collaborate on a workable solution.

We believe many landlords and tenants across our great city are already doing the right thing, working with each other, and coming together for the greater good during this time. In Dallas, we remain a city seeking to serve each other and #LoveYourNeighbor.

We remain committed to a transparent and comprehensive process as this policy undergoes further consideration and as we seek to uphold the safety, health and welfare for all living and doing business in the City of Dallas.

Sincerely,



B. Adam McGough
Chairman, Ad Hoc Committee on COVID-19 Human and Social Recovery and Assistance

Attachments: COVID Landlord Tenant Notice Ordinance & Exhibit

c: Honorable Members of the City Council
Chris Caso, City Attorney
T.C. Broadnax, City Manager

Kimberly Bizzor Tolbert, Chief of Staff to the City Manager
M. Elizabeth (Liz) Cedillo-Pereira, Chief of Equity and Inclusion