

Legislation Text

File #: 200421, **Version:** 1

Amending Chapter 9-800 of The Philadelphia Code, entitled “Landlord and Tenant,” to address matters related to the landlord and tenant relationship during the novel coronavirus of 2019 pandemic, including providing for repayment agreements, and making certain technical changes, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1.

The Council of the City of Philadelphia hereby makes the following legislative findings:

1. On March 6, 2020, in response to the 2019 novel coronavirus disease, COVID-19, the Governor of Pennsylvania issued a Proclamation of Disaster Emergency.
2. On March 11, 2020, the World Health Organization (“WHO”) declared the COVID-19 outbreak a global pandemic, defined as the worldwide spread of a new virus for which most people do not have immunity.
3. On March 19, 2020, the Governor of Pennsylvania ordered all non-life-sustaining businesses in Philadelphia and the surrounding counties to close their physical locations to slow the spread of COVID-19, which remained in place for Philadelphia through June 5, 2020.
4. On March 22, 2020, the Mayor and the Commissioner of Public Health jointly issued their second Emergency Order Temporarily Prohibiting Operation of Non-Essential Businesses and Congregation of Persons to Prevent the Spread COVID-19, which has been superseded, in part, by a series of orders that gradually allowed for the reopening of businesses in Philadelphia with significant restrictions to protect the public health.
5. On March 23, 2020, the Governor of Pennsylvania and Pennsylvania Secretary of Health issued a Stay at Home Order that applied to Philadelphia and numerous surrounding counties, which remained in place for Philadelphia through June 5, 2020.
6. The local and state orders shut down or reduced the operations of many businesses in Philadelphia. 99.7% of Greater Philadelphia’s economy consists of small businesses.

7. These business closures and stay at home orders were necessary measures to prevent the spread of COVID-19 and had the effect of reducing the spread of COVID-19 in Philadelphia, thereby saving lives.
8. Beginning June 5, 2020, the City lifted stay at home requirements and allowed the gradual reopening of businesses pursuant to the limitations required by the Mayor and Health Commissioner's Emergency Order Allowing Limited Reopening of Businesses, Advising Philadelphians that they are Safer at Home, and Establishing Safety Measures to Prevent the Spread of the 2019 Novel Coronavirus (COVID-19), as it has been amended.
9. The Secretary of Health of the Commonwealth and the Philadelphia Department of Public Health continue to impose necessary restrictions on business operations to reduce transmission of the virus, including, but not limited to, limiting the number of individuals that can gather, limiting the occupancy of restaurants and other businesses, and mandating cleaning protocols.
10. As the City's Health Commissioner has warned, there is a significant risk that the City may see an increase in the spread of COVID-19 during the fall and winter, and that restrictions that have previously been loosened may need to be imposed again if the spread of the virus increases, including the possibility of further business closures and stay at home orders.
11. Philadelphia has recently seen a large increase in the average number of new confirmed COVID-19 cases and the positivity rate for tests that the Department of Public Health is continuing to monitor.
12. On March 16, 2020, the Supreme Court of Pennsylvania issued Orders to prevent the Judiciary from effectuating an eviction, ejection or other displacement from a residence. The Supreme Court extended these Orders on April 28, 2020. On May 7, 2020, Governor Wolf signed an executive order staying foreclosure and eviction notice requirements for 60 days, thereby tolling the ability to commence the timelines necessary for the initiation of foreclosure and eviction proceedings until July 10, 2020. On May 21, 2020, Governor Wolf amended the May 7, 2020 executive order to apply the revised notice provisions only to matters involving the nonpayment of monies and proceedings related to removal of any tenant solely because the tenant has held over or exceeded the term of a lease.
13. On September 1, 2020, the Centers for Disease Control and Prevention (CDC) issued an order to temporarily halt certain residential evictions to prevent the further spread of COVID-19. The order is effective September 4, 2020 through December 31, 2020.
14. As the CDC has expressly recognized, an eviction moratorium is an appropriate and effective public health measure to prevent the spread of communicable disease and that keeping people in their homes facilitates self-isolation by those who become ill or those who must isolate due to increased risk of severe illness, allows state and local authorities to more easily implement various public health directives, and keeps individuals out of higher contact spaces such as congregate care.
15. As the CDC has further recognized, evicted renters often must share housing or move into congregate settings, which increases the number of individuals in a household and therefore the risk of transmission of COVID-19 since COVID-19 transmission within households is approximately 6 times greater than

with other close contacts.

16. The CDC has also recently updated its guidance to reflect that COVID-19 transmission is airborne and infectious particles can remain suspended in the air over distances greater than six feet and for hours, further indicating increased risk of transmission within households.
17. Philadelphia is also one of the poorest cities in America, where 24.5%, or 377,000 Philadelphia residents, live in poverty.
18. Philadelphia has a high population of renters. The number of renters in Philadelphia has rapidly increased in recent years, growing from 40.7% in 2000 to almost half of the population today.
19. Before the pandemic, Philadelphia had the 4th highest eviction rate among large cities, with 1 out of every 14 renters facing eviction each year.
20. More than 300,000 of Philadelphia's renters struggled to afford rent before the COVID-19 pandemic. In 2017, 53.4% of Philadelphia renters were cost-burdened, meaning they pay more than 30% of their income on rent, and 31% of Philadelphia renters were severely cost-burdened, meaning they spent more than 50% of their income on rent.
21. To address the city's affordable housing crisis, Philadelphia City Council established a Tenant Legal Defense Fund in 2017, an anti-eviction task force in 2017, and right to counsel in 2019 to address evictions.
22. The number of Philadelphians struggling to pay rent has undoubtedly increased since the onset of the COVID-19 pandemic, as at least 2.1 million Pennsylvanians and over 230,000 Philadelphians have filed for unemployment since March 2020, exacerbating already-existing financial burdens.
23. The average annual cost for the City of Philadelphia to provide shelter to a family of four is \$58,000.
24. In May 2020, the City of Philadelphia used approximately \$10 million in federal funds to create PHL Rent Assist, a program that will provide rental assistance to approximately 3,757 renter households. Approximately 13,000 Philadelphians--more than three to four times the number of families that could be funded--applied for this program.
25. On June 18, 2020, City Council enacted the Emergency Housing Protection Act, which included legislation creating a temporary eviction moratorium, authorizing the creation of a temporary eviction diversion program, mandating hardship repayment plans, and temporarily barring late fees. Mayor Kenney signed the Emergency Housing Protection Act into law on July 1, 2020.
26. On June 25, 2020, City Council adopted the budget for fiscal year 2021, which was signed into law by Mayor Kenney on June 26, 2020. The budget included \$750 million of reductions in planned spending due to the negative impact of COVID-19 on city revenues. These reductions resulted in spending cuts

for programs that serve Philadelphia's most vulnerable residents and small businesses.

27. Evicting individuals from their homes, or even attempting to evict individuals, can make it more difficult for tenants to find housing since evictions are publicly filed.
28. Being evicted or moving to unstable housing situations can make it challenging for individuals to maintain work and children to attend school, and has been connected with a range of negative health outcomes.
29. Working in conjunction with landlord advocates, the City has launched several programs to assist residential landlords who have been impacted by tenant unemployment and business shutdowns due to COVID-19 including, but not limited to the following:
 - a. The City of Philadelphia Impact Fund to provide low interest loans with delayed repayment to qualifying landlords.
 - b. The Rental Improvement Fund, to help finance property repairs for qualifying landlords.
 - c. The shallow rent program, that provides up to \$500 per tenant per month for qualifying tenants directly to landlords.
 - d. In July 2020, the City launched Phase 2 of PHL Rent Assist, using \$28.45 million in CARES funds allocated to Pennsylvania, and in September, the City allocated \$8 million in CARES funds to this program. As of October 6, \$20.9 million of funds have been reserved for complete applications for assistance from landlords and tenants. Pursuant to state authorizing legislation, this program expired on September 30, but on October 5, Governor Wolf extended the deadline to apply for rental assistance until November 4.
30. On September 1, 2020, the City of Philadelphia launched the Eviction Diversion Program, which connects tenants and landlords to housing counseling and rental assistance. Except in situations necessary to prevent imminent threat of harm, landlords are required to participate or attempt to participate in the diversion program prior to evicting any residential property of a tenant who has suffered a COVID-19 financial hardship. Though nearly two hundred landlords have initiated the diversion process, over 500 filings for eviction were made between September 3 and 17, in potential violation of this requirement.
31. In light of the CDC order prohibiting certain evictions, the President Judge of Philadelphia Municipal Court issued an order on September 9 directing Philadelphia Municipal Court's Landlord-Tenant Officer to not serve any alias writs of possession until September 23, 2020. The President Judge has issued subsequent orders extending this moratorium. On October 5, 2020, the President Judge issued an order extending the moratorium through November 8, 2020.

32. As a result of the orders issued by the Pennsylvania Supreme Court, the temporary eviction moratorium enacted by City Council and signed into law by Mayor Kenney, the Governor’s executive orders prohibiting evictions for nonpayment of rent, and the orders issued by the President Judge of Philadelphia Municipal Court, evictions have been prohibited in Philadelphia since March 16th. Since then, over 1,000 evictions have been filed, many in violation of the law, and over 1,600 eviction hearings are in the process of being scheduled. Upon the expiration of the President Judge’s most recent order prohibiting evictions, over 2,100 tenants whose eviction proceedings have already advanced beyond the initial hearing will be at imminent risk of eviction.
33. As of October 6, 2020, there have been over 38,000 confirmed cases of COVID-19 in Philadelphia, and 1,817 deaths. In Philadelphia, there remains a high risk of community transmission of COVID-19.
34. Evicting people during the COVID-19 pandemic in Philadelphia will increase the number of cases of COVID-19 in Philadelphia by exposing a number of evicted residents to congregate settings or doubled-up household living situations where the possibility of contracting COVID-19 is elevated.
35. The COVID-19 pandemic’s negative impact on the lives and incomes of Philadelphians, and City revenues, has exacerbated the pre-existing housing crisis and created a housing emergency in the City of Philadelphia. The measures identified below are necessary to ensure small businesses stay in business, and that residents are able to remain in their homes, that residents are not at an increased risk of catching or spreading COVID-19, and that residents are shielded from the myriad of problematic outcomes that result from eviction and housing instability.

SECTION 2. Chapter 9-800 of The Philadelphia Code is hereby amended to read as follows:

CHAPTER 9-800. LANDLORD AND TENANT

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§ 9-809. COVID-19 Emergency Housing Protections.

(1) Definitions. The following definitions apply to this Section 9-809 only:

* * *

(a) Certification of Hardship. *Either a signed copy of the Declaration Under Penalty of Perjury for the Centers for Disease Control and Prevention’s Temporary Halt in Evictions to Prevent Further Spread of COVID-19, OMB Control No. 0920-1303, (“CDC eviction declaration”), or a [A] signed written statement, which may be signed by use of a typed electronic signature and provided electronically or may be provided in hard copy, that is subject to the provisions of Section 1-108 of the Code (Certification), and is submitted by an individual with personal knowledge of the facts set forth therein stating, at minimum, as follows, provided that any initial statements may be further supplemented with additional explanation, facts, or support at any time:*

(1) In the case of a residential tenant, that a residential tenant has lost income due to the pandemic and setting forth facts that provide an explanation of the COVID-19 financial hardship suffered.

(2) In the case of a commercial tenant, that a small business has suffered a small business financial hardship and setting forth facts supporting such financial hardship.

(b) COVID-19 emergency period. The period beginning on the date the ordinance adding Section 9-809 to the Code becomes law and ending August 31, 2020.

(b.1) COVID-19 first extended emergency period. The period beginning September 1, 2020 and ending December 31, 2020.

(b.2) COVID-19 inclusive emergency period. The period beginning March 1, 2020 and ending December 31, 2020.

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(7) Mandatory Hardship Repayment Agreement for Residential Tenants with a Certified Financial Hardship as the Result of the COVID-19 Pandemic.

(a) Financial Hardship. Except as provided in subsection (7)(g) below, any residential tenant that has suffered a COVID-19 financial hardship during the [retroactive emergency period or the COVID-19 emergency period,] *COVID-19 inclusive emergency period* and has failed to pay rent as normally due at any point prior to the end of the [COVID-19 emergency period] *COVID-19 inclusive emergency period* shall have the right to enter into [a hardship repayment agreement as set forth in subsections (7)(b)(.1) through (.3),] *a mandatory hardship repayment agreement as specified in subsections (7)(b.1) or (b.2) below, as applicable*, without incurring any penalty. Such tenant shall be considered in full compliance with any payment obligations under such tenant's lease, and any associated payment agreements, provided such tenant provides such tenant's landlord the following and thereafter enters into a hardship repayment agreement:

(1) A certification of hardship; and

(2) Documentary evidence of the loss of income or increases in expenses the tenant has incurred during the [retroactive emergency period or the COVID-19 emergency period] *COVID-19 inclusive emergency period* as a result of such tenant's COVID-19 financial hardship, or if such documentation cannot be reasonably provided, a further certification explaining why such documentation is not available which may be signed by use of a typed electronic signature and provided electronically or may be provided in hard copy, that is subject to the provisions of Section 1-108 of the Code [(Certification).] *(Certification), provided the requirement in this subsection (7)(a.1)(.2) does not apply if the tenant has provided the landlord a signed CDC eviction declaration.*

(b) Hardship Repayment Agreement. Any landlord whose residential tenant qualifies for a hardship repayment agreement pursuant to [subsection (7)(a), "Financial Hardship",] *this subsection (7)* shall enter into a repayment agreement with such tenant to pay past due rent pursuant to the following [terms:] *terms set forth in paragraphs (b.1) or (b.2), as applicable.*

(b.1) With respect to a tenant who has entered into a mandatory hardship repayment agreement

before the date the ordinance adding this paragraph (b.1) becomes law:

(1) The tenant shall pay the full amount of past due rent to the landlord [within nine (9) months after the last day of the] [COVID-19 emergency period.] *by May 31, 2021.*

(2) Beginning the first day of the month following the COVID-19 emergency period *or the date the tenant enters into the repayment agreement, whichever is later*, and every month thereafter, the tenant shall pay:

(a) The full monthly rate of rent as normally due; plus

(b) At a minimum, the lesser of the following: thirty percent (30%) of the full monthly rate of rent due during the COVID-19 emergency period or the total amount of past due rent divided by nine (9).

(3) No late fees or other charges related to past due rent may be charged [during the] [retroactive emergency period, the COVID-19 emergency period,] [and the nine (9) months thereafter.] *from March 1, 2020 through the later of May 31, 2021, or the date any restrictions related to the charging or acceptance of late fees, interest, or similar charges provided by Section 9-809(6) have expired.*

(4) If the tenant does not renew or extend the term of the lease, at the end of the term of the lease, the landlord may apply any security deposit towards any past rent due.

(b.2) For tenants entering into a mandatory hardship repayment agreement under this subsection (7) on or after the date the ordinance adding this subsection (7)(b.2) becomes law:

(1) *The tenant shall pay the full amount of past due rent to the landlord by September 30, 2021.*

(2) *Beginning the first day of the month following the first extended COVID-19 emergency period or the date the tenant enters into the repayment agreement, whichever is later, and every month thereafter, the tenant shall pay:*

(a) The full monthly rate of rent as normally due; plus

(b) At a minimum, the lesser of the following: thirty percent (30%) of the full monthly rate of rent due during the COVID-19 inclusive emergency period or the total amount of outstanding past due rent divided by nine (9).

(3) No late fees or other charges related to past due rent may be charged from March 1, 2020 through the later of September 30, 2021, or the date any restrictions related to the charging or acceptance of late fees, interest, or similar charges provided by Section 9-809(6) have expired.

(4) If the tenant does not renew or extend the term of the lease, at the end of the term of the lease, the landlord may apply any security deposit towards any past rent due.

(c) Prohibition on Hardship Repayment Agreements Reduced to Judgment. It shall be unlawful for a landlord to require or request a residential tenant who has suffered a COVID-19 financial hardship to

memorialize a hardship repayment agreement entered into pursuant to *this* subsection (7) [(7)(b), "Hardship Repayment Agreement",] in a judgment by agreement, consent order, a consent judgment, or similar court order.

(d) Notice Required and Limitation on Eviction for Nonpayment of Past Due Rent. In addition to any other limitations set forth under this Section 9-809, until [nine (9) months after the last day of the] [COVID-19 emergency period] *October 1, 2021*, the nonpayment of rent shall not be a legal basis to evict a tenant unless the following conditions are met:

(.1) With respect to a tenant that has not entered into a hardship repayment agreement or requested to enter into a hardship repayment agreement, the landlord has provided the tenant written notice regarding the tenant's rights under this subsection (7), "Mandatory Hardship Repayment Agreement for Tenants with a Certified Financial Hardship as the Result of the COVID-19 Pandemic", as provided under subsection (8), "Notice, Forms, and Regulations" of this section 9-809 at least thirty (30) days prior to the date a landlord takes any such [action and, if applicable.] *action*.

(.2) With respect to a tenant who has the right to enter into a hardship repayment agreement and has requested to enter into such an agreement at any point prior to the end of the thirty (30) day notice period in subsection (7)(d)(.1), above, but has not yet entered such an agreement, the eviction action is based on a failure to pay the ongoing monthly rate of rent as it is normally due after the end of the [COVID-19 emergency period.] *COVID-19 inclusive emergency period*.

(.3) With respect to a tenant who has entered into a hardship repayment agreement, the eviction action is either (.a) based on a failure to pay the ongoing monthly rate of rent as it is normally due after the end of the [COVID-19 emergency period;] *COVID-19 inclusive emergency period*; [or] (.b) the tenant is in arrears in an amount equal to four or more monthly payments required under subsection [(7)(b)(.2)(b), "Hardship Repayment Agreement".] (7)(b.1); *or the tenant is in arrears in an amount equal to three or more monthly payments required under subsection (7)(b.2)*.

(e) In addition to any other limitations set forth under this Section 9-809, the Code, or any other applicable law, until [nine (9) months after the last day of the] [COVID-19 emergency period] *October 1, 2021*, it shall be unlawful for a landlord to take any steps in furtherance of recovering possession of a residential premises occupied by a tenant or a guest of a tenant, on any basis other than a legal basis for eviction. For the purposes of this subsection (7)(e), sending a notice required under this Section 9-809 or participating in an eviction diversion or mediation program established by the City shall not be considered taking steps in furtherance of recovering possession of a residential premises.

(f) Forms. The Commission, or such other City department or office as the Mayor may designate, is authorized to create a form to be used by landlords and tenants entering into a hardship repayment agreement as provided for under subsection (7)(a) and a form for notice under subsection (7)(c).

(g) This subsection (7), ["Mandatory Hardship Repayment Agreement for Residential Tenants with a Certified Financial Hardship as the Result of the COVID-19 Pandemic",] shall not apply if one or more of the following conditions are applicable to the residential tenant, or the residential premises occupied:

(.1) The tenant receives a federal housing subsidy pursuant to 42 U.S.C. § 1437f that is not a tenant-based subsidy; or

(.2) The tenant receives a federal housing subsidy administered by the U.S. Department of Housing and Urban Development; or

(.3) A loan financing the residential premises is insured or assisted under 12 U.S.C. § 1701q, § 1715l(d)(3), or § 1715z-1; or 42 U.S.C. § 1485.

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SECTION 3. This Ordinance shall be effective immediately.

Explanation:

[Brackets] indicate matter deleted.

Italics indicate new matter added.