

ORDINANCE NO. 2020-16

AN URGENCY ORDINANCE CONTINUING AND MODIFYING A TEMPORARY PROHIBITION ON EVICTIONS OF RESIDENTIAL AND CERTAIN COMMERCIAL REAL PROPERTY TENANTS IN CONTRA COSTA COUNTY IMPACTED BY THE COVID-19 PANDEMIC, AND CONTINUING AND MODIFYING A MORATORIUM ON CERTAIN RESIDENTIAL RENT INCREASES

The Contra Costa County Board of Supervisors ordains as follows:

Section 1. Findings.

- A. On January 30, 2020, the World Health Organization declared the outbreak of a novel coronavirus that causes the disease named coronavirus disease 2019 ("COVID-19"), a public health emergency of international concern.
- B. On January 31, 2020, as the result of confirmed cases of COVID-19, the U.S. Secretary of Health and Human Services declared a public health emergency nationwide.
- C. On March 3, 2020, Contra Costa Health Services announced the first case of local transmission of the virus causing COVID-19 in Contra Costa County.
- D. On March 4, 2020, Governor Gavin Newsom proclaimed the existence of a state of emergency in California under the California Emergency Services Act, Gov. Code § 8550 et seq., and reported that as of that date, there were more than 94,000 cases of COVID-19 worldwide, resulting in more than 3,000 deaths, with 129 confirmed cases of COVID-19 in the United States, including 53 in California.
- E. On March 10, 2020, the Board of Supervisors found that due to the introduction of COVID-19 in the County, conditions of disaster or extreme peril to the safety of persons and property had arisen, commencing on March 3, 2020. Based on these conditions, pursuant to Government Code section 8630, the Board adopted Resolution No. 2020/92, proclaiming the existence of a local emergency throughout the County.
- F. The legislative bodies of a number of cities in Contra Costa County have also adopted local emergency proclamations due to COVID-19 pursuant to Government Code section 8630.
- G. On March 16, 2020, the County Health Officer issued an order requiring County residents to shelter at their places of residence in order to slow community transmission of COVID-19, subject to exceptions for the provision and receipt of essential services while complying with social distancing requirements to the maximum extent possible. The County Health Officer extended the order on March 31, 2020, and on April 29, 2020.
- H. On March 16, 2020, Governor Gavin Newsom issued Executive Order N-28-20, which authorizes local jurisdictions to suspend the evictions of residential and commercial tenants for the non-payment of rent if the non-payment is a result of the COVID-19 pandemic. The protections in Executive Order N-28-20 extend through May 31, 2020.

- I. On March 27, 2020, Governor Gavin Newsom issued Executive Order N-37-20, which prohibits landlords throughout California from evicting residential tenants for nonpayment of rent when the inability to pay is due to COVID-19, and the tenant has provided notice to the landlord and has documentation showing the nonpayment is because of the COVID-19 pandemic. The protections in Executive Order N-37-20 extend through May 31, 2020.
- J. On April 6, 2020, the Judicial Council of California adopted temporary emergency rules, effectively suspending action on or entry of default in eviction cases, and suspending judicial foreclosures, except where necessary to protect public health and safety, through 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.
- K. On May 18, 2020, the County Health Officer extended the shelter-in-place order. The order continues to restrict many activity, travel, and business functions, but in light of progress achieved in slowing the spread of COVID-19 in Contra Costa County, the order allows a limited number of additional businesses to resume operating.
- L. The COVID-19 pandemic and associated public health orders have resulted in the closure of many local small businesses, and have imposed extreme restrictions on other local small businesses.
- M. The COVID-19 pandemic and associated public health orders are expected to result in a loss of income to a widespread portion of the local population that depend on wages or business income to pay rent and result in medical expenses for certain Contra Costa County residents.
- N. Contra Costa County and the cities within the County are also experiencing a housing affordability crisis, which is driving homelessness and displacement of residents.
- O. Many County residents are experiencing or will experience losses of income as a result of the local emergency and shelter-in-place orders, hindering their ability to pay rent and leaving them vulnerable to eviction.
- P. Many of the County's renters are rent-burdened, paying over 30 percent of their income on rent, and some renters are severely rent-burdened, paying over 50 percent of their income on rent, which leaves less money for families to spend on other necessities like food, healthcare, transportation, and education.
- Q. Without local protection, eviction notices, including notices for failure to pay rent, are likely to surge as residents and businesses are unable to earn income due to the COVID-19 pandemic, or are forced to pay medical expenses associated with the COVID-19 pandemic.
- R. Housing displacement due to rent increases and evictions occurring during the local emergency would hinder individuals from complying with state and local directives to shelter in place, and would lead to increased spread of COVID-19, overburdening the healthcare delivery system and potentially resulting in greater loss of life.

- S. On April 21, 2020, the Board of Supervisors adopted Ordinance No. 2020-14, an urgency ordinance temporarily prohibiting evictions of residential and commercial real property tenants in the County impacted by the COVID-19 pandemic and establishing a moratorium on certain rent increases.
- T. There is an urgent need for the County to continue a temporary prohibition on certain evictions and continue a temporary moratorium on certain residential rent increases to protect the health, safety, and welfare of its residents in light of the emergency declared regarding the COVID-19 pandemic, including the need to keep residents in their homes during the time that they need to shelter-in-place.

Section 2. Definitions. For purposes of this ordinance, the following words and phrases have the following meanings:

- (a) "Commercial real property" means any developed real property that is used as a place of business for a small business or a non-profit organization.
- (b) "Immediate family" means a person's spouse, domestic partner, children, grandchildren, parents, or grandparents.
- (c) "No fault cause for eviction" means any eviction for which the notice of termination of tenancy is not based on an alleged fault of the tenant.
- (d) "Non-profit organization" means an organization that is exempt from taxation under Section 501(c)(3) or Section 501(c)(4) of the United States Internal Revenue Code.
- (e) "Owner" means any natural person, partnership, corporate or fictitious entity, acting as a lessor or sublessor, whether as a principal or through an agent, who receives or is entitled to receive rent in exchange for the use or occupancy of any residential or commercial real property for rent.
- (f) "Rent" means the financial obligation or monetary payment a tenant owes an owner for the occupancy or use of commercial or residential real property whether by written or oral agreement.
- (g) "Residential real property" means any dwelling unit that is intended or used for human habitation.
- (h) "Small business" has the meaning set forth in Government Code section 14837(d)(1)(A).
- (i) "Tenancy" means the lawful occupancy of residential or commercial real property by agreement on a month-to-month basis or for a fixed term in excess of 30 days.
- (j) "Tenant" means the lawful occupant of residential or commercial real property whether by lease, sublease, or other agreement.

Section 3. Prohibitions on Residential and Commercial Evictions.

- (a) **Through** , 2020, an owner of residential real property or commercial real property shall not terminate a tenancy for failure to pay rent if the tenant demonstrates that the failure to pay rent is directly related to a loss of income or out-of-pocket medical expenses associated with the COVID-19 pandemic or any local, state, or federal government response to the pandemic.

For the protections of this subsection (a) to apply, a tenant must demonstrate through documentation or other objectively verifiable means:

- (1) Loss of income from: (i) job loss; (ii) layoffs; (iii) a reduction in the number of compensable hours of work; (iv) a store, restaurant, office, or business closure; (v) a decrease in business income caused by a reduction in opening hours or consumer demand; (vi) the need to miss work to care for a homebound school-age child or a family member infected with coronavirus; or (vii) other similarly-caused loss of income, where the conditions listed in (i) through (vii) resulted from the COVID-19 pandemic or related guidance or public health orders from local, State, or federal authorities; or
- (2) Out-of-pocket medical expenses for themselves or their immediate family related to the COVID-19 pandemic.

“Adequate documentation” of lost income or out-of-pocket medical expenses from the COVID-19 pandemic includes but is not limited to a declaration signed by the tenant under penalty of perjury, letters from employers citing the COVID-19 pandemic or related government action as the basis for termination of employment or reduced work, employer paycheck stubs, bank statements, or letters or notifications from schools in which the tenant has a dependent enrolled regarding COVID-19-related closures that affected the tenant’s income.

The tenant must notify the owner in writing before the rent is due, or within a reasonable period of time afterwards not to exceed 14 days, that the tenant needs to delay all or some payment of rent because of an inability to pay the full amount due to reasons related to COVID-19.

- (b) **Through** , 2020, an owner of residential real property or commercial real property shall not terminate a tenancy for any no fault cause for eviction.
- (c) **Through** , 2020, an owner of residential real property shall not terminate a tenancy on the basis of a tenant allowing an unauthorized occupant to live in the dwelling unit, if the occupant is a member of the tenant’s immediate family living in the dwelling unit as a result of the COVID-19 pandemic.
- (d) Notwithstanding the foregoing, nothing in this section limits an owner’s ability to terminate a tenancy for any of the following reasons:

- (1) The termination is necessary to protect the owner's health or safety or any other tenant's health or safety.
- (2) The termination is necessary where the owner or a member of the owner's immediate family intends to occupy the residential real property.
- (3) The termination is to remove the residential real property from the rental market, but only when authorized by Government Code section 7060 et seq.

Section 4. Notices of Termination of Tenancy.

- (a) An owner's failure to comply with this ordinance shall render any notice of termination of tenancy, where the termination would be in violation of this ordinance, void. Any notice of termination served on a tenant during the COVID-19 pandemic must contain the reason for the termination of the tenancy. Any notice of termination served on a tenant during the COVID-19 pandemic must also include a notice of the tenant's rights under this ordinance and a notice of emergency rental assistance programs. The owner shall provide these notices to the tenant on a form approved by the Contra Costa County Employment and Human Services Department.
- (b) A tenant eligible for protection under this ordinance must provide written notice of that eligibility to the owner within 14 days after receiving a notice of termination of tenancy from the owner.

Section 5. Late Fees. Through _____, 2020, an owner may not charge or collect a late fee for unpaid rent due from a tenant who demonstrated loss of income or out-of-pocket medical expenses as required under this ordinance.

Section 6. Grace Period.

- (a) Except as otherwise provided in subsection (b) of this section, a tenant who demonstrated loss of income or out-of-pocket medical expenses as required under this ordinance shall pay all past due rent no later than _____, 2020, unless the owner agrees to a longer repayment period.
- (b) If a tenant at a place of business did not pay rent in April 2020 or May 2020 pursuant to Ordinance No. 2020-14, and the place of business is not a small business or non-profit organization, then the tenant shall pay all past due rent for those months no later than _____, 2020, unless the owner agrees to a longer repayment period.
- (c) This ordinance does not relieve a tenant of the obligation to pay rent and does not restrict an owner's ability to recover rent due, and shall not prevent a tenant who is able to pay all or some of the rent due from paying that rent in a timely manner.

Section 7. Moratorium on Residential Rent Increases.

- (a) An owner may not increase rent on a residential real property through _____, 2020.

- (b) A residential real property that is exempt from the rent limits imposed by Civil Code section 1947.12 or Civil Code section 1954.50 et seq. is exempt from this section.
- (c) This section does not apply to a residential real property where one or more scheduled rent increases occur pursuant to a written rental agreement that was entered into before March 16, 2020.
- (d) This section does not apply when a unit becomes vacant and the owner sets the initial rent for a new tenancy.

Section 8. Remedies.

- (a) The provisions of this ordinance may be asserted as an affirmative defense in an unlawful detainer action.
- (b) If an owner attempts to recover possession or recovers possession of residential real property or commercial real property in violation of this ordinance, retaliates against a tenant for the exercise of any rights under this ordinance, or attempts to prevent a tenant from acquiring any rights under this ordinance, the tenant may institute a civil proceeding for injunctive relief, money damages of not more than three times actual damages (including damages for mental or emotional distress), and whatever other relief a court deems appropriate. If damages are awarded for mental or emotional distress, the award shall only be trebled if the trier of fact finds that the owner acted in knowing violation of or in reckless disregard of the provisions of this ordinance. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.

Section 9. Supersedes. This ordinance supersedes Ordinance No. 2020-14. This ordinance applies to eviction notices, and unlawful detainer actions based on those notices, served or filed on or after May 26, 2020, except to the extent a tenant has surrendered possession of its premises, or an unlawful detainer lawsuit was finally adjudicated before March 16, 2020. Ordinance No. 2020-14 applied to eviction notices, and unlawful detainer actions based on those notices, served or filed between March 16, 2020, and May 25, 2020.

Section 10. Applicability. Government Code section 8634 authorizes the Board of Supervisors to promulgate countywide orders and regulations necessary to provide for the protection of life and property during a local emergency. Pursuant to Government Code section 8634, the regulations in this ordinance shall apply to cities within Contra Costa County and unincorporated Contra Costa County. To the extent that the governing body of a city enacts an ordinance or adopts a regulation that governs the subject matter of this ordinance, that city ordinance or regulation shall supersede this ordinance within that jurisdiction.

Section 11. Severability. If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other ordinance provisions or clauses or applications thereof that can be implemented without the invalid provision or clause or application, and to this end the provisions and clauses are declared to be severable. The Board of

Supervisors hereby declares that it would have adopted this ordinance and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional, or otherwise unenforceable.

Section 12. Declaration of Urgency. This ordinance is hereby declared to be an urgency ordinance necessary for the immediate preservation of the public peace, health, and safety of the County. The facts constituting the urgency of this ordinance's adoption are set forth in Section 1.

Section 13. Effective Date. This ordinance becomes effective immediately upon passage by four-fifths vote of the Board of Supervisors. This ordinance shall expire and be repealed as of _____, 2020, unless shortened or extended by the Board of Supervisors based on the existence of a local emergency.

Section 14. Publication. Within 15 days after passage, this ordinance shall be published once with the names of the supervisors voting for and against it in the East Bay Times, a newspaper published in this County.

PASSED ON May 26, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: DAVID J. TWA,
Clerk of the Board of Supervisors
and County Administrator

Board Chair

By:

Deputy

[SEAL]

TLG:

H:\2020\Covid 19\evictions\urgency ordinance continuing eviction moratorium - draft1.docx