

URGENCY ORDINANCE NO. 2182-C-S

AN URGENCY ORDINANCE OF THE CITY OF ANTIOCH ENACTING A TEMPORARY MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT FOR RESIDENTIAL AND COMMERCIAL TENANTS WHERE THE FAILURE TO PAY RENT RESULTS FROM INCOME LOSS RESULTING FROM THE NOVEL CORONAVIRUS DISEASE 2019 (COVID-19)

WHEREAS, governments and public health professionals around the world have detected and are actively responding to the outbreak of the novel coronavirus disease 2019 (the “**Coronavirus**” or “**COVID-19**”), a potentially life-threatening infectious disease that causes respiratory illness with fever, coughing, and/or difficulty breathing and for which there is currently no known natural immunity or vaccine;

WHEREAS, on January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the Coronavirus outbreak a public health emergency of international concern;

WHEREAS, on March 4, 2020, the California Governor Gavin Newsom proclaimed a state of emergency in California as a result of the threat of the Coronavirus;

WHEREAS, on March 10, 2020, Contra Costa County proclaimed a local emergency caused by the introduction of Coronavirus and its contribution to the shortage of essential health care supplies;

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency due to the Coronavirus;

WHEREAS, on March 14, 2020, Contra Costa County Health Officer issued an order prohibiting mass gatherings of 100 or more persons and as defined in the order;

WHEREAS, on March 16, 2020, pursuant to California Health and Safety Code sections 101040 and 120175, seven health officers within six Bay Area counties, including Contra Costa County, issued a legal order directing their respective residents to shelter at home for three weeks beginning March 17, 2020 in an effort to reduce and slow the spread of the Coronavirus by limiting activity, travel and business functions to only the most essential needs;

WHEREAS, on March 16, 2020, California Governor Gavin Newsom issued Executive Order N-28-20 ordering waiver of time limitations set forth in Penal Code section 396(f) concerning protections against residential evictions, and suspending any provision of state law that would preempt or otherwise restrict a local government’s exercise of its police power to impose substantive limitations on residential or commercial evictions related to the Coronavirus. The order further suspended statutory causes of action for judicial foreclosure, including Code of Civil Procedure section 725a et seq., the statutory cause of action for unlawful detainer, Code of Civil Procedure section 1161 et seq., and any other statutory cause of action that could be used to evict or otherwise eject a residential tenant or occupant of residential real property after foreclosure;

WHEREAS, on March 17, 2020, pursuant to Section 4-2.06(A)(1) of the Antioch Municipal Code, the Director of Emergency Services proclaimed a local emergency;

WHEREAS, on March 24, 2020 the City Council of the City of Antioch ratified the proclamation of the Director of Emergency services and proclaimed that a local emergency exists and shall continue to exist in the City of Antioch until the City Council resolves that the local emergency is terminated;

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued Executive Order N-33-20 ordering all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operation of the federal critical infrastructure sectors, critical government services, schools, and construction, including housing construction;

WHEREAS, on March 26, 2020, the New York Times reported that the United States has the world's most reported Coronavirus cases with 81,321 and over 1,000 deaths have been linked to the Coronavirus in the United States;

WHEREAS, both large and small events across the Bay Area and in Antioch are being canceled or postponed due to the County and State Orders and recommendations at all levels of government to cancel large gatherings due to concerns about the spread of the virus;

WHEREAS, cancellations and postponements of conferences, events, activities, and meetings cause loss of revenue for businesses that rely on such gatherings to provide demand for their products and services;

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, and general welfare, of their citizens;

WHEREAS, California Government Code Section 36937 authorizes the City Council to introduce and adopt an ordinance it declares to be necessary as an emergency measure to preserve the public peace, health, and safety at one and the same meeting if passed by at least four-fifths affirmative votes;

WHEREAS, this Ordinance is a temporary moratorium intended to promote stability and fairness within the residential and commercial rental market in the City during the Coronavirus pandemic outbreak, and to prevent avoidable homelessness and evictions thereby serving the public peace, health, safety, and public welfare and to enable tenants in the City whose income and ability to work is affected due to the Coronavirus to remain in their homes;

WHEREAS, displacement through eviction destabilizes the living situation of tenants and impacts the health of Antioch residents and businesses by interfering with and disrupting employment, schooling, business relationships, and social networks that are important to citizens' welfare and the stability of communities within the City of Antioch;

WHEREAS, displacement through eviction creates undue hardship for tenants through additional relocation costs, and during the Coronavirus pandemic outbreak, affected tenants who have lost income due to impact on the economy or their employment may be at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted;

WHEREAS, housing instability threatens the public peace, health, and safety as eviction from one's home can lead to prolonged homelessness, the inability to remain gainfully employed, strain on social services, stress and anxiety experienced by those displaced, interruption of the education of children in the home; and increased exposure to, and spreading of the Coronavirus;

WHEREAS, businesses affected by the Coronavirus and may be unable to pay rent and, therefore, may be evicted resulting in negative impact on the local economy through layoffs, lost income and healthcare for employees, lost products and services for residents, and increased risk of life-threatening COVID-19 exposure;

WHEREAS, the City Council finds and determines that regulating the relations between residential and commercial landlords and tenants is essential to preventing the spread of the Coronavirus in the City and thereby serve the public peace, health, and safety; and

WHEREAS, an urgency ordinance that is effective immediately is necessary to avoid the immediate threat to public peace, health, and safety as failure to adopt this urgency ordinance would result in the avoidable displacement or exposure to the Coronavirus of the City's residents and community members and to the amplification of the factors that lead to the spread of the virus, as described in these Recitals.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ANTIOCH, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Incorporation of Recitals.

The City Council of the City of Antioch hereby finds that all of the Recitals are true and correct and incorporated herein by reference. The provisions of the Governor's Executive Order N-28-20, including its recitals, are incorporated by reference in their entirety herein.

Section 2. Urgency Findings.

The City Council of the City of Antioch hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency measure. This finding is based upon the facts stated in the Recitals above, the staff report dated March 31, 2020, as well any oral and written testimony at the March 31, 2020 City Council meeting.

This Ordinance and any moratorium that may be established hereunder is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the City Council.

Section 3. Moratorium on Eviction for Nonpayment of Rent during the COVID-19 Emergency.

A. During the term of this Ordinance, no landlord shall endeavor to evict a residential or commercial tenant for nonpayment of rent, including but not limited to any such action under Civil Code sections 1940 et seq. or 1954.25 et seq., if the tenant provides written documentation or other objectively verifiable proof evidencing the following:

1. The tenant's inability to pay rent is was caused by, or arises out of, a substantial decrease in household or business income (including but not limited to the circumstances described in subsections B or C) or substantial out-of-pocket medical expenses; and
2. The decrease in household income, or out-of-pocket medical expenses, was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

B. "**Substantial decrease in household income**" includes but is not limited to loss of income caused by COVID-19 illness or caring for a household or family member with COVID-19 illness, work

closures, layoffs, job loss, a reduction in the number of compensable hours or other economic or employer impacts of COVID-19, including missing work due to a minor child's school closure, compliance with government health authority orders, or a similarly-caused reason resulting in loss of household income due to COVID-19, that is substantiated with written documentation.

C. **“Substantial decrease in business income”** includes, but is not limited to, loss of income caused by work closures, reduction in staff reporting to work, reduction in opening hours, or reduction in consumer demand, compliance with government health authority orders, or other similarly caused reason resulting in loss of business income due to COVID-19, substantiated with written documentation or other objectively verifiable proof of same.

D. A landlord that knows that a tenant cannot pay some or all of the rent temporarily for the reasons set forth above shall not serve a notice pursuant to Civil Code of Procedure section 1161, file or prosecute an unlawful detainer action based on a three-day pay or quit notice, or otherwise seek to evict for nonpayment of rent.

E. The City encourages tenants to inform landlords in writing of their inability to pay full rent as soon as practicable after they become aware of a substantial decrease in household income or business income or out-of-pocket medical expenses that would prevent them from paying full rent. A landlord knows of a tenant's inability to pay rent within the meaning of this Ordinance if the tenant, within 14 days after the date that rent is due, notifies the landlord in writing of the tenant's inability to pay the full rent because a substantial decrease in household or business income or the need to pay out-of-pocket medical expenses was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and provides documentation to support the claim. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim. For purposes of this Ordinance, **“in writing”** includes email or text communications to a landlord or the landlord's representative with whom the tenant has previously corresponded by email or text.

F. Nothing in this Ordinance relieves the tenant of liability for the unpaid rent, which the landlord may seek after the expiration of this Ordinance, affected residential and affected commercial tenants shall receive a ninety (90) day grace period per month of arrears after expiration or other termination of the term of this Ordinance during which to repay any monies due to a landlord for failure to pay rent or utilities, unless a state law or order is amended or adopted providing for a longer repayment period, in which case the payment period provided by the state law or order shall apply under this Ordinance.

G. A landlord may not charge or collect a late fee or any other new fees for rent that is delayed for the reasons stated in this Ordinance, nor may a landlord seek rent that is delayed for the reasons stated in this Ordinance through the eviction process.

H. This Ordinance may be asserted as an affirmative defense in any unlawful detainer action or other action brought by an owner or landlord to recover possession. A tenant may bring a civil suit seeking owner or landlord compliance with any provisions of this Ordinance.

I. This Ordinance applies to nonpayment eviction notices and unlawful detainer actions based on such notices, served or filed on or after March 16, 2020 and until the expiration of this Ordinance, as set forth in Section 7, below.

J. Courts shall have the sole discretion to determine in an unlawful detainer action or other eviction action whether the tenant's written notice and documentation are sufficient to show a **“substantial decrease in household”** or **“substantial out-of-pocket medical expenses.”**

Section 4. Moratorium on Judicial Foreclosures during the COVID-19 Emergency.

As provided for in Executive Order N-28-20 and consistent with the other provisions in this Ordinance, the statutory cause of action for judicial foreclosure, Code of Civil Procedure section 725a et seq.; the statutory cause of action for unlawful detainer, Code of Civil Procedure section 1161 et seq.; and any other statutory cause of action that could be used to evict or otherwise eject a residential or commercial tenant or occupant of residential real property after foreclosure is hereby suspended as applied to any tenancy, or residential real property and any occupation thereof, to which a limitation on eviction is imposed pursuant to this Ordinance.

Section 5. Compliance with the California Environmental Quality Act.

The City Council hereby finds approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under Section 15061(b)(3) of the CEQA Guidelines.

Section 6. Severability.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid or unconstitutional.

Section 7. Effective Date and Publication.

This Urgency Ordinance shall become effective immediately upon its adoption by not less than a four-fifths vote of the Antioch City Council pursuant to California Government Code Section 36937 and shall remain in effect until May 31, 2020 or the expiration of the local emergency or the Governor’s proclamation of a state of emergency, whichever is later. Prior to the expiration of fifteen days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law.

THE FOREGOING URGENCY ORDINANCE was INTRODUCED, ADOPTED AND ORDERED published at a special meeting of the City Council held on March 31, 2020 and passed by the following vote:

AYES: Council Members Wilson, Thorpe, Ogorchock, Motts & Mayor Wright
NOES: None
ABSENT: None
ABSTAIN: None

Sean Wright, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch