

DIRECTION OF EMERGENCY SERVICES ORDER NO. 20-1

AN ORDER OF THE DIRECTOR OF EMERGENCY
SERVICES (CITY MANAGER) OF THE CITY OF BENICIA
STAYING EVICTIONS IN THE CITY OF BENICIA

WHEREAS, Pursuant to California Government Code a Special Meeting of the City Council of the City of Benicia was properly noticed and convened; and,

WHEREAS, California Government Code Section 8630 empowers the City Council to proclaim the existence or threatened existence of a Local Emergency when the City is affected or likely to be affected by a public calamity; and,

WHEREAS, Government Code Section 8634 empowers the City to promulgate orders and regulations to provide for the protection of life and property; and,

WHEREAS, pursuant to Benicia Municipal Code section 2.36.050(A)(1), the Director of Emergency Services has declared the existence of a Local Emergency, which Local Emergency has been ratified by the City Council on March 19, 2020; and,

WHEREAS, the Director of Emergency Services does hereby find that conditions of extreme peril and a crippling disaster which severely impairs the safety of persons or property have arisen within the City caused by the virus COVID-19 and its rapid transmission as reported by various local, state and national health organizations; and,

WHEREAS, the aforesaid conditions of extreme peril warranted and necessitated the proclamation of the existence of a Local Emergency; and

WHEREAS, as a result of the Local Emergency and the precautions recommended by health authorities, including shelter-in-place directives, many tenants in the City of Benicia have or may soon experience sudden and unexpected income loss; and

WHEREAS, the Governor of the State of California ("Governor") has stated that individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19, and such individuals and their families may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks; and

WHEREAS, Many seniors and vulnerable populations reside in mobile home parks throughout the City, and the sudden displacement of these residents due to their inability to pay rent as a result of the state of emergency would be particularly injurious to the health and safety of the community; and

WHEREAS, on March 19, 2020 the Governor issued Executive Order N-33-20 mandating that all Californians stay home or at their place of residence except in order to maintain critical infrastructure sectors; and

WHEREAS, many businesses and commercial establishments do not constitute critical infrastructure sectors and therefore these businesses have been ordered to close and cease operations during the effective period of Executive Order N-33-20; and

WHEREAS, with the mandatory closure of so many businesses and commercial establishments, such businesses will be unable to conduct business which may render them unable to pay rent; and

WHEREAS, commercial evictions due to a tenant's inability to pay rent have the likelihood of resulting in business owners and individuals engaging in activities which do not constitute critical infrastructure sectors thereby increasing the likelihood of the spread of COVID-19, leading to further health and safety risks to the community; and

WHEREAS, on March 17, 2020, the Governor issued Executive Order N-28-20, which suspended any provisions 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, including but not limited to Civil Code Sections 1940 *et seq.* or 1954.25 *et seq.*, until May 31, 2020, unless extended; and

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary to issue and implement this Order to protect life, property and civil order.

NOW, THEREFORE, THE DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF BENICIA DOES HEREBY ORDER AS FOLLOWS:

SECTION 1. A temporary moratorium on eviction for non-payment of rent by residential or commercial tenants, including mobile home tenants impacted by the COVID-19 crisis is imposed as set forth herein.

SECTION 2. During the period of local emergency declared in response to COVID-19, no landlord shall endeavor to evict a tenant for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to Financial Impacts related to COVID-19.

SECTION 3. A landlord who knows that a tenant cannot pay some or all of the rent temporarily for the reasons set forth above in Section 2 shall not serve a notice pursuant to CCP 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for nonpayment of rent.

SECTION 4. A landlord shall be deemed to know of a tenant's inability to pay rent within the meaning of this Order if the tenant, within 30 days after the date that rent is due, notifies the landlord in writing and provides documentation that the tenant is unable to pay rent due to Financial Impacts related to COVID-19. For purposes of this Order, "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, as

well as traditional written communication. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim.

SECTION 5. Nothing in this Order shall relieve the tenant of liability for the unpaid rent, nor restrict a landlord's ability to recover rent due. A tenant shall not be deemed in default of rent payment obligations unless the Tenant fails to tender rent payments which were unpaid due to Financial Impacts related to COVID-19, within 60 days of May 31, 2020, or within 60 days of the date upon which an extension of this Order expires, whichever is later. A Landlord shall not impose, charge, or collect a late fee or equivalent surcharge for any rent payments which were unpaid due to Financial Impacts related to COVID-19. Any three-day notices to pay or quit or No-Fault eviction notices served prior to the effective date of this Order, but not yet expired, are automatically deemed served upon the conclusion of the Moratorium Period.

SECTION 6. For purposes of this Order, "Financial Impacts related to COVID-19" ("Financial Impact") include nonpayment of rent, arising out of a substantial decrease in household or business income (including, but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or a substantial decrease in business income caused by a reduction in opening hours or consumer demand), or substantial out-of-pocket medical expenses, or a Tenant's lost household income as a result of caring for minor children affected by school, pre-school and/or childcare closures; *provided that*, the Financial Impact was caused by the COVID-19 pandemic, or by any local, state or federal government response to COVID-19, and is documented.

SECTION 7. This Order applies to terminations of tenancies for nonpayment of rent, including eviction notices, no-fault eviction notices as defined herein, and unlawful detainer actions based on such notices, served or filed during the effective period of this Order. For purposes of this Order, "no-fault eviction notices" refer to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant.

SECTION 8. In the event of a violation of this Order, this Order grants a defense where an unlawful detainer action is commenced in violation of this Order. Additionally, an aggrieved tenant may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages, and whatever other relief the court deems appropriate. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the tenant under local, state or federal law. This Order grants a defense to eviction to any unlawful detainer actions in violation of this Order.

SECTION 9. This Order shall be in force and effect until May 31, 2020, until and unless superseded by a duly enacted Order or Resolution of the City Council of the City of Henicia or a further Order by the Director of Emergency Services adopted during the local emergency that expressly supersedes this Order. Should the Governor extend Executive Order N-28-20, this Order will continue automatically beyond May 31, 2020 to the date of the Governor's extension, unless superseded.

SECTION 10. The City Clerk shall certify the adoption of this Order and shall cause a certified Order to be filed in the Office of the City Clerk.

PASSED and ADOPTED this 22nd day of March 2020.

Attest:




Lisa Wolfe, City Clerk



Lone Tinfow, Director of Emergency Services/City Manager

Approved as to Form:



Benjamin Stock, City Attorney