

ORDINANCE NO. 2020-1316

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DELANO
TEMPORARILY PROHIBITING EVICTIONS OF RESIDENTIAL TENANTS ARISING
FROM INCOME LOSS OR SUBSTANTIAL MEDICAL EXPENSES RELATED TO THE
COVID-19 PANDEMIC**

WHEREAS, the City of Delano ("City") is authorized by Article XI, Section 7 of the California Constitution to make and enforce all regulations and ordinances using its police powers;

WHEREAS, Government Code sections 36934 and 36937 authorize ordinances to take effect immediately if they are for the immediate preservation of the public peace, health or safety, contain a declaration of the facts constituting the urgency, and are passed by a four-fifths vote of the City Council;

WHEREAS, the State of California, including the City of Delano, is experiencing an unprecedented and critical emergency related to the novel coronavirus ("COVID-19") pandemic;

WHEREAS, states of emergency have recently been proclaimed at the state, and federal government levels related to the COVID-19 pandemic;

WHEREAS, the City Council of the City of Delano adopted an emergency proclamation on March 16, 2020, related to the COVID-19 pandemic;

WHEREAS, the COVID-19 pandemic and associated public health orders are expected to result in the closure of many local businesses, and result in extreme restrictions on other local businesses until then, and possibly thereafter;

WHEREAS, the COVID-19 pandemic and associated public health orders are expected to result in a severe loss of income to a widespread portion of the local population that depend on wages or business income to pay rent and result in substantial medical expenses for certain City residents;

WHEREAS, on March 16, 2020, Governor Gavin Newsom issued Executive Order N-28-20, which authorizes local jurisdictions to suspend the evictions of tenants for the non-payment of rent if the non-payment is a result of the COVID-19;

WHEREAS, on March 19, 2020, Governor Gavin Newsom issued a shelter in place order for the entire State of California;

WHEREAS, in order to comply with the shelter in place order, and for their own safety, City residents must have access to permanent housing;

WHEREAS, without local protection, eviction notices for failure to pay rent are likely to surge as residents and businesses are unable to earn income due to the pandemic, or are forced to pay substantial medical expenses associated with the pandemic;

WHEREAS, particularly given the high cost of housing, evictions of tenants, particularly low income tenants, could lead to long term or permanent displacement, impacting the health and safety of these tenants, as well as the City of Delano;

WHEREAS, the City Council is concerned that, during the COVID-19 pandemic, eviction notices and threats of eviction will surge;

WHEREAS, the City Council has determined that it is appropriate to temporarily prohibit evictions until the authorization to suspend evictions under Executive Order N-28-20 terminates or the City Council declares an end to the local emergency, whichever occurs first, for any residential tenant who can demonstrate that they are being evicted for the failure to pay rent and that such failure is a direct impact of the COVID-19 pandemic, as provided in Governor Newsom's Executive Order N-28-20.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DELANO AS FOLLOWS:

Section 1: Interim Urgency Ordinance. The City Council of the City of Delano incorporates the findings above by reference and adopts the Urgency Ordinance attached hereto as Attachment A.

Section 2: Effective Date. This Ordinance shall take effect and be in force immediately upon an affirmative vote of four-fifths of the City Council.

Section 3: Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 4: Codification. This urgency ordinance shall not be codified in the Delano Municipal Code.

Section 5: CEQA. The City Council hereby finds that the action to adopt this Ordinance will not result in any change in the environment and thus is not a project subject to the requirements of CEQA. Further, even if the action to adopt this Ordinance was deemed to be a project subject to CEQA, the City Council finds the proposed Ordinance is exempt from CEQA under the common sense exemption set forth in Section 15061(b)(3), which provides that CEQA only applies to projects which have the potential for causing a significant effect on the environment, and thus where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Section 6: Authority Pursuant to the California Emergency Services Act and Delano Municipal Code. Pursuant to Cal. Gov. Code Section 8610, the City, while in a state of emergency as declared by the City Council, may establish rules and regulations for dealing with the local emergency. Pursuant to Delano Municipal Code Section 2.44.060, the Director of Emergency Services, who is the City Manager, has the authority to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, so long as such rules and regulations must be confirmed at the earliest practicable time by the city council. The City Council also thus finds and determines that it has the authority to enact this ordinance pursuant to the California Emergency Services Act, the Delano Municipal Code and the declaration of local emergency issued by the Delano City Council on March 16, 2020.

Section 7: Urgency Clause. The City Council finds and declares that this ordinance is required for the immediate protection of the public peace, health and safety. Without it, City of Delano tenants would suffer potentially irreversible displacement of tenants resulting from evictions arising from the COVID-19 pandemic. The Council, therefore, adopts this ordinance to become effective immediately, pursuant to California Government Code Section 36937. **Section 8. Publication.** The City Clerk is directed to certify this urgency ordinance and cause it to be published in the manner required by law.

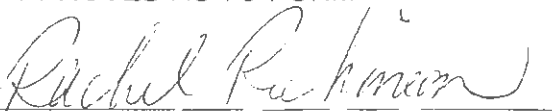
PASSED, APPROVED, AND ADOPTED March 26, 2020.


LIZ MORRIS, Mayor

ATTEST:


RICARDO G. CHAVEZ, City Clerk

APPROVED AS TO FORM


RACHEL RICHMAN, City Attorney

I, Ricardo Chavez, City Clerk of the City of Delano, certify Urgency Ordinance No. 2020-1316 was adopted by the City Council at a special meeting held March 26, 2020, by the following vote:

AYES: Morris/Aguirre/Osorio/Vallejo
NOES: None
ABSENT: None
ABSTAIN: Alindajao


Ricardo G. Chavez, City Clerk

ATTACHMENT A

SECTION 1: PURPOSE.

This Ordinance temporarily prohibits evictions of residential tenants until the authorization to suspend evictions under Executive Order N-28-20 terminates or the City Council declares an end to the local emergency, whichever occurs first, of residential tenants who can demonstrate that they have received a notice of eviction for failure to pay rent, and that such failure is related to a substantial loss of income or substantial out-of-pocket medical expenses resulting from the 2020 novel coronavirus (COVID-19) pandemic or any local, state, or federal government response to the pandemic.

SECTION 2: DEFINITIONS.

The following words and phrases, whenever used in this section, shall be construed as follows:

1. "Dwelling Unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one or more persons who maintain a household or common household.
2. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Dwelling Unit or portion thereof.
3. "Owner" means any person, acting as principal or through an agent, offering residential real property for rent, and includes a predecessor in interest to the owner.
4. "Pandemic" means the 2020 novel coronavirus (COVID-19) pandemic.
5. "Tenant" means any person entitled by written or oral agreement, or by sufferance, to the use or occupancy of a Dwelling Unit.

SECTION 3: PROHIBITION ON EVICTIONS.

A. A landlord of any Dwelling Unit or Dwelling Units shall not terminate or attempt to terminate a lawful tenancy for failure to pay rent if the tenant demonstrates that the failure to pay rent is directly related to a substantial loss of income or substantial out-of-pocket medical expenses associated with the coronavirus pandemic or any local, state, or federal government response to the pandemic.

B. This section shall also apply to a landlord's action that constitutes constructive eviction under California law. Terminations that are required to comply with an order issued by a government agency or court requiring that the real property be vacated are excepted from this prohibition.

C. To take advantage of the protections afforded under this section, a tenant must do all the following:

1. Notify the landlord in writing (which can also be sent by email or text if that is a manner in which the parties have previously communicated) before the day rent is due that the tenant has a covered reason for delayed payment.

2. Pay the portion of rent that the tenant is able to pay.

3. Demonstrate through documentation or other objectively verifiable means that the tenant has experienced:

(a) Substantial loss of income from (a) job loss; (b) layoffs; (c) a reduction in the number of compensable hours of work; (d) a store, restaurant, office, or business closure; (e) a substantial decrease in business income caused by a reduction in opening hours or consumer demand; (f) the need to miss work to care for a home-bound school-age child or a family member infected with coronavirus; or (g) other similarly-caused loss of income that resulted from the pandemic; or

(b) Substantial out-of-pocket medical expenses related to COVID-19.

D. Tenants who were afforded eviction protection under this section shall have up to 180 days after the termination of this ordinance to pay their landlord all unpaid rent.

E. Nothing in this section waives a tenant's obligations to pay back rent owed once this ordinance is no longer effective; provided, however, that a landlord may not file an unlawful detainer action based on the failure to pay rent while this ordinance is in effect unless the tenant fails to pay rent when due under Section C of this ordinance.

F. Nothing in this section shall relieve a tenant of the obligation to pay rent, nor restrict a landlord's ability to recover rent due.

G. This section shall not apply to any of the following circumstances:

1. Transient and tourist hotel occupancy as defined in subdivision (b) of Section 1940 of the California Civil Code.

2. Housing accommodations in a nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or an adult residential facility, as defined in Chapter 6 of Division 6 of Title 22 of the Manual of Policies and Procedures published by the State Department of Social Services.

SECTION 4: ENFORCEMENT.

A. In the event of a violation of this Ordinance, a Tenant who has been improperly served with notice of an eviction or an unlawful detainer action may institute a civil proceeding for an injunction, and the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs if so ordered by the court.

B. This Ordinance may be asserted as an affirmative defense in an unlawful detainer action.

C. A landlord's failure to comply with this Ordinance does not constitute a criminal offense but may subject an owner to civil fines and penalties as set forth in the Delano Municipal Code.

D. The remedies provided in this Section are in addition to any other existing remedies that may be available to a Tenant under local, state, or federal law or equity and in no way limit such existing remedies, if any.

SECTION 5: WAIVER.

A Landlord may request that this Ordinance's requirements be waived or modified based on a showing that applying the requirements would have an unconstitutional application to the Landlord's property. A Landlord shall bear the burden of presenting evidence to support any such request for waiver or modification and shall set forth in detail the factual and legal basis for the claim, including all supporting documentation, for consideration by the City Council.

SECTION 6: EFFECTIVE DATES.

This Ordinance applies to eviction notices and unlawful detainer actions based on notices served or filed on or after the effective date of this Ordinance. The prohibitions on evictions shall continue to apply until the authorization to suspend evictions under Executive Order N-28-20 terminates or the City Council declares an end to the local emergency, whichever occurs first.