

URGENCY ORDINANCE NO. 2020-03

AN URGENCY ORDINANCE OF THE CITY OF EL CERRITO 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 (COVID-19)

WHEREAS, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2," and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"); and

WHEREAS, on January 30, 2020, the World Health Organization ("WHO") declared COVID-19 a Public Health Emergency of International Concern, and on January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency; and

WHEREAS, on March 10, 2020, the Contra Costa County Board of Supervisors adopted a resolution for proclamation of a state of emergency in the County of Contra Costa to deal with the potential spread of novel coronavirus or COVID-19; and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for a broader spread of COVID-19. The proclamation comes as the number of positive California cases rises and following one official COVID-19 death; and

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; and

WHEREAS, on March 13, 2020, due to an escalating increase in the number of cases in Contra Costa County, under El Cerrito Municipal Code Section 2.28.030, the City Council of the City of El Cerrito adopted a resolution proclaiming a local emergency related to the Novel Coronavirus 2019 (COVID-19); and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, on March 16, 2020, seven health officers within six Bay Area counties, including Contra Costa County, took a unified step to slow the spread of novel coronavirus (COVID-19) and preserve critical health care capacity across the region by issuing a legal order directing their respective residents to shelter at home for three weeks beginning March 17, 2020. The order limits activity, travel and business functions to only the most essential needs. The guidance comes after substantial input from the U.S. Centers for Disease Control and Prevention (CDC) and best practices from other health officials around the world; and

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 COVID-19. 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; and

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; and

WHEREAS, both large and smaller events across the Bay Area and in El Cerrito are cancelling or being postponed due to the County's and State's Orders and recommendations at all levels of government to cancel large gatherings amid concerns over spread of the virus. These cancellations and postponements cause loss in revenue for the event, as well as surrounding local businesses that rely on such events to bring in patrons to their businesses; and

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; and

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; and

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 COVID-19 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 COVID-19 to remain in their homes; and

WHEREAS, displacement through eviction destabilizes the living situation of tenants and impacts the health of El Cerrito residents and businesses by uprooting children from schools, disrupting the social ties and networks that are integral to citizens' welfare and the stability of communities within the City; and

WHEREAS, displacement through eviction creates undue hardship for tenants through additional relocation costs, and during the COVID-19 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; and

WHEREAS, housing instability threatens the public peace, health, and safety as eviction from one's home can lead to prolonged homelessness; strain on household finances due to the necessity of paying rental application fees and security deposits; stress and anxiety experienced by those displaced; interruption of the education of children in the home; and increased exposure to, and spreading of COVID-19, in contradiction to the Health Officer's orders; and

WHEREAS, businesses are also affected by COVID-19 and may be unable to pay rent and if businesses are unable to pay rent, they may be evicted and negatively impact the local economy by laying off employees and ceasing to provide services to residents of the City, and negatively impacting local health by forcing persons out of their shelter-in-place locations to prepare for business eviction, increasing potential COVID-19 exposure, and reducing the number of retail and commercial spaces available to provide essential services, also increasing potential COVID-19 exposure as a result of less retail and commercial spaces available for residents and thus less space available for social distancing; and

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 COVID-19 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 COVID-19 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 EL CERRITO, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Incorporation of Recitals. The City Council of the City of El Cerrito finds that all Recitals are true and correct and incorporated herein by reference. The provisions of the Governor's issued Executive Order N-28-20, including its recitals, are incorporated herein as if fully set forth.

Section 2. Urgency Findings. The City Council of the City of El Cerrito 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, which finding is based upon the facts stated in the Recitals above, and in the staff report dated March 25, 2020, as well any oral and written testimony at the March 25, 2020 City Council meeting.

This Ordinance and any moratorium that may be established thereunder 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 demonstrates that the inability to pay rent is:

1. Due to, or arising 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, and is documented in writing.

B. “Substantial decrease in household income” includes but is not limited to income loss 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, missing work due to a minor child’s school closure, compliance with government health authority orders, or other similarly-caused reason resulting in loss of household income due to COVID-19, substantiated with written documentation or other objectively verifiable proof of same.

C. “Substantial decrease in business income” includes, but is not limited to, income loss 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 that knows of a tenant’s inability to pay rent within the meaning of this Ordinance if the tenant, within 30 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, and the tenant must pay within six (6) months of the date of expiration of this Ordinance, unless a state law or

order is amended or adopted providing for a longer repayment period, in which case the repayment period provided by the state law or order shall apply under this Ordinance.

G. A landlord may not charge or collect a late fee 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 §§ 21000 *et 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 effectively immediate upon its adoption 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 25, 2020 and passed by the following vote:

AYES: Mayor Lyman, Mayor Pro Tem Fadelli, Councilmembers Abelson, Pardue-Okimoto and Quinto  
NOES: None  
ABSENT: None  
ABSTAIN: None

APPROVED:

\_\_\_\_\_  
Gregory B. Lyman, Mayor

ATTEST:

\_\_\_\_\_  
Holly M. Charléty, City Clerk

### ORDINANCE CERTIFICATION

I, Holly M. Charléty, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2020-03 of the City of El Cerrito; that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the 25<sup>th</sup> Day of March, 2020; and that said Ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this \_\_\_\_ day of March, 2020.

\_\_\_\_\_  
Holly M. Charléty, City Clerk

CERTIFICATION  
I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN OFFICIAL DOCUMENT OF THE CITY OF EL CERRITO, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA.  
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CITY CLERK OF CITY OF EL CERRITO