

ORDINANCE NO. 20-017

Urgency Ordinance Of The City Council Of The City Of Emeryville Enacting A Temporary Moratorium On Residential Evictions; And A Temporary Moratorium On Commercial Evictions Due To Nonpayment Of Rent; And A Temporary Moratorium On Residential Evictions By Homeowners Associations; CEQA Determination: Exempt Pursuant To California Public Resources Code Section 21080(b)(4) And State CEQA Guidelines Section 15269(c) And 15061(b)

WHEREAS, the United States of America has confirmed cases of individuals who have a severe acute respiratory illness caused by a novel (new) corona virus ("COVID-19" or "the virus") first detected in Wuhan, Hubei Province, People's Republic of China ("China"). The virus was first reported in China on December 31, 2019. As of March 2, 2020, the World Health Organization ("WHO") has reported more than 3,000 deaths stemming from over 100,000 confirmed cases of COVID-19 and the virus is present in 100 countries. The number of confirmed cases has continued to escalate dramatically over a short period of time; and

WHEREAS, WHO officials now report that sustained human-to-human transmission of the virus is occurring. Transmission from asymptomatic individuals has been documented. Suspected community transmission of the virus is occurring in the United States. Although the majority of individuals infected with COVID-19 recover from the disease without special treatment, there is significant potential for serious infection and death; and

WHEREAS, on January 30, 2020, WHO declared the COVID-19 outbreak a public health emergency of international concern, and on January 31, 2020, the U.S. Department of Health and Human Services declared a Public Health Emergency for the United States of America; and

WHEREAS, the United States Centers for Disease Control and Prevention (CDC) has determined that the virus presents a serious public health threat, requiring coordination among state and local health departments to ensure readiness for potential health threats associated with the virus; and

WHEREAS, on March 4, 2020, the Governor of California proclaimed a state of emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS, on March 7, 2020, the California Department of Public Health issued its "Mass Gatherings Guidance on Novel Coronavirus or COVID-19" followed by a March 12, 2020 recommendation that certain gatherings in California be postponed or canceled for the remainder of March; and

WHEREAS, on March 12, 2020, the Governor of the State of California issued Executive Order N-25-20 which, among other things, orders that all California residents are to ". . . heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19"; and

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WHEREAS, on March 16, 2016, the California Department of Public Health issued a directive that all individuals who are 65 or older, who have serious chronic medical conditions or who have a compromised immune system should self-isolate during the COVID-19 pandemic as these individuals are particularly at risk of encountering medical complications due to the virus; and

WHEREAS, on March 16, 2020, based on evidence of increasing occurrence of COVID-19 within Alameda County and throughout the Bay Area, the Alameda County Health Officer, along with Health Officers in five other Bay Area counties, issued order 20-03 “directing all individuals living in the County to shelter at their place of residence...directing all businesses and governmental agencies to cease non-essential operations at physical locations in the County; prohibiting all non-essential gatherings of any number of individuals; and ordering cessation of all non-essential travel”; and

WHEREAS, on March 16, 2020 the Alameda County Director of Emergency Services declared a local emergency based on conditions of extreme peril to the safety of persons and property within the County from the introduction of a novel coronavirus (named COVID-19) in the County; and

WHEREAS, on March 16, 2020, the Governor of the State of California issued Executive Order N-28-20, suspending any state law that would preempt a local government’s authority to impose a moratorium on residential evictions; and

WHEREAS, on March 17, 2020, following the directive of the Alameda County Health Officer, the City of Emeryville closed all City facilities and assigned many employees to work remotely if possible, while maintaining public safety and some public works operations as “Essential Governmental Functions”; and

WHEREAS, on March 17, 2020, in light of actual or threatened conditions of disaster or extreme peril to the safety of persons and property have arisen within the City of Emeryville caused by the introduction COVID-19, as to which there is no known natural immunity and for which there is currently no vaccine, which has become a pandemic, and which is contributing to a shortage of essential health care supplies, pursuant to section 4-2.08(a)(1) of the Emeryville Municipal Code, the City Manager declared an emergency; and

WHEREAS, on March 19, 2020, at a special meeting, the City Council for the City of Emeryville ratified the City Manager’s said declaration of an emergency; and

WHEREAS, on March 19, 2020, at a special meeting, the City Council for the City of Emeryville adopted Urgency Ordinance 20-002, enacting a temporary moratorium on Residential and Commercial Evictions due to failure to pay rent resulting from income loss due to COVID-19 until May 31, 2020; and

WHEREAS, on March 31, 2020, based on evidence of continuing and increasing occurrence of COVID-19 within Alameda County and throughout the Bay Area, the

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Alameda County Health Officer, issued order 20-04 "directing all individuals living in the County to shelter at their place of residence ... directing all businesses and governmental agencies to cease non-essential operations at physical locations in the County; prohibiting all non-essential gatherings of any number of individuals; and ordering cessation of all non-essential travel", which clarifies and supersedes order 20-03 from March 16, 2020; and

WHEREAS, on April 7, 2020, and on April 21, 2020, the City Council for the City of Emeryville adopted an urgency ordinance (Ordinance No. 20-008), and a non-urgency ordinance (Ordinance No. 20-007) to repeal and replace Ordinance No. 20-002, and to continue to impose a moratorium on residential evictions for tenants who were impacted by COVID-19 until June 30, 2020; and

WHEREAS, on April 29, 2020, based on evidence of continuing and increasing occurrence of COVID-19 within Alameda County and throughout the Bay Area, the Alameda County Health Officer, issued order 20-10 "directing all individuals living in the County to shelter at their place of residence ... directing all businesses and governmental agencies to cease non-essential operations at physical locations in the County; prohibiting all non-essential gatherings of any number of individuals; and ordering cessation of all non-essential travel", which clarifies and supersedes order 20-04 from March 31, 2020; and

WHEREAS, on May 18, 2020, based on evidence of continuing and increasing occurrence of COVID-19 within Alameda County and throughout the Bay Area, the Alameda County Health Officer, issued order 20-11 "directing all individuals living in the County to shelter at their place of residence ... directing all businesses and governmental agencies to cease non-essential operations at physical locations in the County; prohibiting all non-essential gatherings of any number of individuals; and ordering cessation of all non-essential travel", which clarifies and supersedes order 20-10 from April 29, 2020; and

WHEREAS, on May 29, 2020, the Governor of the State of California issued Executive Order N-66-20, extending Executive Order N-28-20 for 60 days; and

WHEREAS, on June 18, 2020, based on evidence of continuing and increasing occurrence of COVID-19 within Alameda County and throughout the Bay Area, but at a stable rate, the Alameda County Health Officer, issued order 20-14 directing all individuals living within the County to shelter at their place of residence, leaving only for Essential Activities, Outdoor Activities, Essential Governmental Functions, Essential Travel or to work for Essential Businesses, and allowed Other Activities, which supersedes order 20-11 from May 18, 2020, is in effect until further notice; and

WHEREAS, on June 30, 2020, the Governor of the State of California issued Executive Order N-71-20, extending Executive Order N-28-20 until September 30, 2020; and

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WHEREAS, during this time of shelter in place, self-isolation, and other social distancing, many individuals are not able to work, and will not be able to earn income to pay rent; and

WHEREAS, the vast majority of housing in Emeryville consists of multi-unit family structures, either as residential rental units or residential condominium units, and displacement of these residents through eviction for failure to pay rent or foreclosure for failure to pay association assessments destabilizes the living situation of these residents, and impacts the health of the community by removing the location where these residents may be sheltering in place, self-isolating or practicing other social distancing measures; and

WHEREAS, the City Council of Emeryville desires to create stability for the impacted residents and to ensure that all residents can comply with federal, local and state directives to practice social distancing which is the interest of the public peace, health, safety and welfare; and

WHEREAS, the City Council of Emeryville desires to maintain economic infrastructure so that essential businesses as that term is defined in the Alameda County Department of Health Order dated June 18, 2020, may remain open and continue operations uninterrupted in support of residents who are sheltering in place, and so that all businesses have the ability to recover from the impacts of the virus and continue to provide employment and generate tax revenue and so that economic recovery is possible after the emergency is over, all of which are in the interest of the public peace, health, safety and welfare.

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

SECTION ONE. TITLE

This Ordinance shall be known as the “COVID-19 Rental Eviction Moratorium Urgency Ordinance (July 2020).”

SECTION TWO. POLICY AND PURPOSES DECLARATION

The purposes of this Ordinance are to promote housing stability during the COVID-19 pandemic, to prevent avoidable homelessness, and to preserve economic infrastructure to ensure delivery of essential services and promote economic recovery. This Ordinance is immediately necessary for the immediate preservation of the public peace, health or safety to allow for individuals to shelter in place, to self-isolate, to self-quarantine, and to practice social distancing as ordered by federal, state and local authorities to mitigate the impacts from the COVID-19 pandemic. It is intended to enable residential tenants affected by the pandemic to be temporarily exempt from eviction; and owners of residential condominium units in the City whose health, safety, employment, or income have been affected by the COVID-19 pandemic to be temporarily exempt from eviction for non-payment of rent or homeowner association fees, and to remain in their residences thereby

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allowing them to shelter in place, self-isolate, self-quarantine, and to practice social distancing, and to reduce the risk of anxiety, stress, and potential homelessness for the affected City residents and

their communities, thereby serving the public peace, health, safety, and public welfare. It is also intended to enable commercial tenants whose business income have been affected by the COVID-19 pandemic to be temporarily exempt from eviction for non-payment of rent to preserve economic infrastructure, thereby serving the public peace, health, safety, and public welfare. The temporary moratorium on evictions for non-payment imposed by this Ordinance is created pursuant to the City's general police powers and the California Governor's Executive Order N-28-20, as extended, in addition to any rights or obligations under state and federal law.

SECTION THREE. TERM, EXPIRATION.

This Ordinance is effective immediately and shall expire upon the expiration of the California Governor's Executive Order N-28-20, currently set to expire on September 30, 2020, or as it may be extended by the Governor of California.

SECTION FOUR. DEFINITIONS

- A. "Affected Commercial Tenant" shall mean a Commercial Tenant, who has a valid City of Emeryville business license as required by Emeryville Municipal Code section 3-1.101 and with annual Gross Receipts below \$7,500,000, who has experienced a substantial decrease in Gross Receipts, which includes, but is not limited to, a substantial decrease in Gross Receipts caused by a reduction in opening hours or consumer demand, and the Commercial Tenant claims the decrease in Gross Receipts is caused by the COVID-19 pandemic or by any local, state, or federal government response to COVID-19.
- B. "Affected Residential Homeowner" shall mean a Residential Homeowner, who has, as a result of the COVID-19 pandemic, or declaration of the Alameda County Public Health Officer, or other local, state, or federal authority, been instructed to shelter-in-place in their home.
- C. "Affected Residential Tenant" shall mean a Residential Tenant or Residential Tenant Household, who has, as a result of the COVID-19 pandemic, or declaration of the Alameda County Public Health Officer, or other local, state, or federal authority, been instructed to shelter-in-place in their home.
- D. "Commercial Unit" means a structure or part of a structure that is used as a place of business, and which the Commercial Tenant pays rent for the use and occupancy for periods in excess of 29 days.
- E. "Commercial Tenant" means any business as defined in Emeryville Municipal Code section 3-1.02(a) entitled by written or oral agreement, or by sufferance, to use or to occupy a Commercial Unit.

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- F. "Gross Receipts" shall have the same meaning as defined in Emeryville Municipal Code section 3-1.02(d).
- G. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of either a Residential Unit or a Commercial Unit, and the agent, representative, or successor of the foregoing. "Landlord" includes, but is not limited to, "Landlord" as defined in Emeryville Municipal Code section 5-40.02(d).
- H. "HOA" or "Homeowner's Association" means an association as defined in California Civil Code section 4080.
- I. "Residential Unit" means a structure or part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which household pays rent for the use and occupancy for periods in excess of seven days whether or not the residential use is a conforming use permitted under the Emeryville Municipal Code. Residential Unit includes, but is not limited to, a "Covered unit" as that term is defined in Emeryville Municipal Code section 5-40.02(a).
- J. "Residential Tenant" means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral agreement, or by sufferance, to use or to occupy a Rental Unit.
- K. "Residential Tenant Household" means one or more Residential Tenant(s) who occupy any individual Residential Unit, including each dependent of any Residential Tenant whose primary residence is the Residential Unit.

SECTION FIVE. SCOPE

This Ordinance applies to Affected Residential Tenants, Affected Residential Homeowners, and Affected Commercial Tenants and their respective Landlords, and HOAs.

SECTION SIX. MORATORIUM ON EVICTIONS FROM RENTAL RESIDENTIAL UNITS

During the term of this Ordinance, a Landlord may not terminate the tenancy of a Residential Tenant or Residential Tenant Household except upon a showing by the Landlord that termination of a tenancy is necessary to protect health, safety or welfare. Failure by the Landlord to comply with any part of this Section may be asserted as an affirmative defense to any action for possession or civil judgment by the Residential Tenant or Residential Tenant Household. The moratorium described herein shall not relieve an Affected Residential Tenant from any legal obligation to pay rent for the Residential Unit.

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SECTION SEVEN. MORATORIUM ON EVICTIONS FROM COMMERCIAL RENTAL UNITS FOR FAILURE TO PAY RENT

During the term of this Ordinance, a Landlord may not terminate the tenancy of a Commercial Tenant for failure to pay rent if the Commercial Tenant has notified the Landlord that the Commercial Tenant qualifies as an Affected Commercial Tenant prior to the expiration of the notice of termination that the Landlord is required to provide under applicable lease and/or contract provisions and/or state law. This Section applies to any notice of termination where the notice of period has not expired, even if the notice of termination was delivered prior to the Effective Date of this Ordinance. Upon the Landlord's request, an Affected Commercial Tenant shall provide reasonable written documentation of

their status as an Affected Commercial Tenant to the Landlord as soon as practical. The moratorium described herein shall not relieve an Affected Commercial Tenant from any legal obligation to pay rent for the Commercial Unit.

SECTION EIGHT. MORATORIUM ON HOMEOWNER ASSOCIATION FORECLOSURES FOR A RESIDENTIAL UNIT OWNER'S FAILURE TO PAY HOMEOWNER ASSOCIATION ASSESSMENTS

During the term of this Ordinance, a HOA shall not vote to initiate foreclosure on any Affected Residential Homeowner pursuant to California Civil Code section 5705(c) if the basis for the foreclosure arises out of a substantial decrease in household income, including but not limited to, a substantial decrease in household income caused by a layoff or a reduction in the number of compensable hours of work, or substantial out-of-pocket medical expenses, and the decrease in household income or substantial out-of-pocket medical expenses are caused by the COVID-19 pandemic or by any local, state, or federal government response to COVID-19 and is documented by the Affected Residential Homeowner.

SECTION NINE. ENFORCEMENT

Landlord's failure to comply with this Ordinance may be asserted as an affirmative defense by an Affected Residential Tenant in any unlawful detainer or other eviction action, or any other civil action seeking restitution for nonpayment of rent. HOA's failure to comply with this Ordinance may be asserted as an affirmative defense by an Affected Residential Homeowner in a non-judicial or judicial foreclosure.

SECTION TEN. CEQA DETERMINATION

The City Council finds that adoption of this Urgency Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 21080(b)(4) of the California Public Resources Code and Section 15269(c) of the State CEQA Guidelines because adoption of this ordinance is to mitigate an emergency and under Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Urgency Ordinance may have a significant effect on the environment.

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SECTION ELEVEN. SEVERABILITY

Every section, paragraph, clause, and phrase of this Interim Ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses or phrases.

SECTION TWELVE. EFFECTIVE DATE


Pursuant to Government Code section 36937, this Ordinance shall take effect immediately.

SECTION THIRTEEN. CODIFICATION

This Ordinance shall NOT be codified.

This Urgency Ordinance was introduced and passed and adopted by the City Council of the City of Emeryville at a regular meeting held on Tuesday, July 21, 2020, by the following vote:

AYES:	<u>5</u>	Mayor Patz, Vice Mayor Martinez, and Council Members Bauters, Donahue, and Medina
NOES:	<u>0</u>	_____
ABSTAIN:	<u>0</u>	_____
ABSENT:	<u>0</u>	_____

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 MAYOR

ATTEST:

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 CITY CLERK

APPROVED AS TO FORM:



 CITY ATTORNEY