

RESOLUTION NO. 74-20

FOURTH SUPPLEMENTAL ORDER BY THE DIRECTOR OF EMERGENCY SERVICES AMENDING RESOLUTION NO. 46-20 BY EXTENDING TIMELINES TO CERTAIN EVICTION ISSUES RELATED TO COVID-19 UNTIL THE CITY COUNCIL TAKES ACTION TO EXTEND THIS ORDER TO A DATE CERTAIN OR TERMINATES OR DECLINES TO EXTEND THE ORDER

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 March 4, 2020, the Governor of the State of California 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 broader spread of COVID-19; and

WHEREAS, on March 10, 2020, the Contra Costa County Board of Supervisors and Contra Costa Health Services declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to 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 13, 2020, to respond to the unique and continuing public health and safety challenges presented by COVID-19, the Contra Costa County Superior Court closed all locations beginning Monday, March 16, 2020; and

WHEREAS, on March 16, 2020, Governor Gavin Newsom issued Executive Order N-28-20, which authorizes local jurisdictions to suspend the evictions of residential and commercial tenants for the non-payment of rent if the non-payment is the result of the COVID-19 pandemic. The protections in Executive Order N-28-20 extend through May 31, 2020; and

WHEREAS, on March 16, 2020, the Health Officer of Contra Costa County issued an Order through April 7, 2020 that directed all individuals living in the county to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities and work for essential businesses and governmental services; and

WHEREAS, on March 31, 2020, the County Health Officer extended the shelter-in-place order through May 3, 2020 and clarified and strengthened its requirements; and

WHEREAS, on March 17, 2020, the City Manager, in her role as the Director of Emergency Services, proclaimed the existence of a local emergency pursuant to Chapter 2.20 of the Richmond Municipal Code to ensure the availability of mutual aid and an effective the City’s response to the novel coronavirus (“COVID-19”); and

WHEREAS, the Centers for Disease Control and Prevention, the California Department of Health, and the Contra Costa County Department of Public Health have all issued recommendations including but not limited to social distancing, staying home if sick, canceling or postponing large group events, working from home, and other precautions to protect public health and prevent the transmission of this communicable disease; and

WHEREAS, on March 19, 2020, Governor Gavin Newsom issued Executive Order N-33-20, which directs residents of California to follow state public health directives to stay home or at their place of residence to preserve the public health and safety and capabilities of the healthcare delivery system; and

WHEREAS, on March 27, 2020, Governor Gavin Newsom issued Executive Order N-37-20, which extends the tenant's time to respond to a summons and complaint where the tenant notifies the landlord in writing and retains verifiable documentation supporting changed financial circumstances due to COVID-19; and

WHEREAS, on April 21, 2020, the Contra Costa County Board of Supervisors voted unanimously to enact an urgency ordinance that temporarily prohibits evictions of tenants in Contra Costa County impacted by COVID-19; and

WHEREAS, as a result of the public health emergency and the precautions recommended by health authorities, many tenants in Richmond have experienced or expect soon to experience sudden and unexpected income loss; and

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

WHEREAS, the COVID-19 pandemic and associated public health orders have resulted in the closure of many local businesses until at least May 3, 2020, and have imposed extreme restrictions on other local businesses until then, and possibly thereafter; and

WHEREAS, the Governor of the State of California 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 individuals directly affected by COVID-19 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, further economic impacts are anticipated, leaving tenants vulnerable to eviction; and

WHEREAS, many of the City's renters are rent-burdened, paying over 30 percent of their income on rent, and some renters are severely rent-burdened, paying over 50 percent of their income on rent, which leaves less money for families to spend on other necessities like food, healthcare, transportation, and education; and

WHEREAS, during this local emergency, and in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement, to protect the City's affordable housing stock, and to prevent housed individuals from falling into homelessness; and

WHEREAS, because homelessness can exacerbate vulnerability to COVID-19, the City must take measures to preserve and increase housing security for City residents to protect public health; and

WHEREAS, loss of income as a result of COVID-19 may inhibit City residents and businesses from fulfilling their financial obligations, including public utility payments such as water and sewage charges and parking penalties; and

WHEREAS, housing displacement due to rent increase and evictions occurring during the local emergency would hinder individuals from complying with state and local directives to shelter in place, and would lead to increased spread of COVID-19, overburdening the healthcare delivery system and potentially resulting in greater loss of life; and

WHEREAS, there is an urgent need for the City to enact substantive limitations on evictions and enact a moratorium on rent increases to protect the health, safety and welfare of its residents in light of the emergency declared regarding the COVID-19 pandemic, including the need for keep residents in their homes during the time that they need to shelter-in-place; 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 exercise my authority to issue this regulation related to the protection of life and property; and

WHEREAS, on April 6, 2020, the Judicial Council of California adopted temporary emergency rules, effectively suspending action on or entry of default in eviction cases, and suspending judicial foreclosures, except where necessary to protect public health and safety through 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council; and

WHEREAS, on April 21, 2020, the Alameda County Board of Supervisors amended its previous eviction moratorium ordinance and adopted Ordinance No. 2020-23, which bans all evictions anywhere in the County with some exceptions. The ordinance also allows tenants twelve (12) months to repay rent and remains in effect for 90 days unless extended by the Board of Supervisors;

WHEREAS, on April 27, 2020, the Director of Emergency Services issued a Second Supplemental Order (Resolution 34-20) that extends the prohibition on certain types of evictions to commercial tenants and also prohibits rent increases on residential properties through May 31, 2020 or any extension provided by the Director of Emergency Services based on the existence of a continuing City or County local emergency or shelter-in-place order; and

WHEREAS, on May 5, 2020, the Richmond City Council ratified the Director of Emergency Services' Second Supplemental Order (Resolution No. 41-20) that adds

protections for commercial properties for evictions and freezes residential rent increases through May 31, 2020 or to a date as determined by the Director of Emergency Services if Contra Costa County's Urgency Ordinance No. 2020-14 is extended; and

WHEREAS, on May 18, 2020, the Contra Costa County Health Officer extended the shelter-in place order. The order continues to restrict many activity, travel and business functions, but in light of progress achieved in slowing the spread of COVID-19 in Contra Costa County, the order allows a limited number of additional businesses to resume operating; and

WHEREAS, on May 19, 2020, the Richmond City Council adopted Resolution No. 44-20, which amended Resolution No. 41-20 by extending the grace period to pay back rent for residential and commercial tenants financially impacted by COVID-19 to up to twelve months after the expiration of the Second Supplemental Order or any subsequent orders; and

WHEREAS, on May 26, 2020, the Contra Costa County Board of Supervisors adopted Urgency Ordinance No. 2020-16, which extends the prohibition on residential and certain commercial evictions through July 15, 2020; and

WHEREAS, this action is deemed not a project under the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(b)(5): Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. If deemed a project, then this action is deemed exempt from CEQA pursuant to the following separate and independent basis: Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that this action has no potential to cause a significant effect on the environment; and Section 15269(c) because this action is to prevent or mitigate an emergency; and

WHEREAS, on May 26, 2020, the Director of Emergency Services for the City of Richmond advised the City of Richmond City Council that she would extend the timelines in Resolution 44-20 to July 15, 2020 per the City Council's prior authorization that the Director of Emergency Services do so should Contra Costa County extend Urgency Ordinance No. 20-14; and

WHEREAS, on May 26, 2020, the County Board of Supervisors approved Ordinance No. 2020-16, which continued and modified the temporary prohibition on tenant evictions, and continued and modified a residential rent moratorium; and

WHEREAS, on May 29, 2020, the Director of Emergency Services for the City of Richmond issued a Third Supplemental Order (Resolution No. 46-20) which extended timelines to July 15, 2020 and any subsequent extensions authorized by the Director of Emergency Services for certain eviction issues related to COVID-19; and

NOW, THEREFORE, I, Laura Snideman, the Director of Emergency Services for the City of Richmond, per prior authorization by the City Council, do hereby issue the following order to become effective immediately:

IT IS HEREBY ORDERED THAT:

A. Prohibitions on Residential and Commercial Evictions

Until the City Council takes action to extend this Order to a date certain, or terminates or declines to extend the Order, an owner of residential real property or commercial real property shall not terminate a tenancy for the following reasons: (1) for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19 or (2) for a no-fault eviction unless necessary for the health and safety of tenants, neighbors, or the landlord. An owner who 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 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. An owner knows 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 of lost income and inability to pay full rent due to financial impacts related to COVID-19, and maintains documentation to support the claim.

- a. 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. Documentation is not limited to medical or financial information; however, where a tenant provides medical and/or financial information, the landlord shall hold such information in confidence, and may only use said information for evaluating the tenant's claim.
- b. For purposes of this Order, "financial impacts related to COVID-19" include, but are not limited to, tenant lost household or business income for commercial or residential tenants as a result of any of the following: (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (2) lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19; (3) compliance with a recommendation from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (4) extraordinary out-of-pocket medical expenses; or (5) child care needs arising from school closures related to COVID-19.
- c. For purposes of this Order, "no-fault eviction" refers to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant, including but not limited to eviction notices served pursuant to Code of Civil Procedure sections 1161(1), 1161(5), or 1161c, Civil Code 1946, or Richmond Municipal Code Section 11.100.020(a)(5), 11.100.050(a)(6), 11.100.050(a)(7), or 11.100.050(a)(8).
- d. For purposes of this Order, "owner" is defined as any natural person, partnership, corporate or fictitious entity, acting as a lessor or sublessor, whether as a principal or through an agent, who receives or is entitled to receive rent in exchange for the use or occupancy of any residential or commercial real property for rent.

B. Late Fees

An owner may not charge or collect a late fee for rent that is delayed for the reasons stated in this Order; nor may a landlord seek rent that is delayed for the reasons stated in this Order through the eviction process.

C. Grace Period

If the tenant meets the requirements of Section A above and is unable to timely pay all rent due each month due to financial impacts related to COVID-19, the tenant must pay the remaining balance due within twelve months after the expiration date of this Order as set forth in Section L. Notwithstanding the foregoing, tenant shall attempt to pay the past due rent that the tenant is able to pay during the twelve-month period. Nothing in this section precludes the owner and tenant from agreeing to a longer rental repayment period. This section does not relieve a tenant of the obligation to pay rent, and does not restrict an owner's ability to recover rent due. The remedies available to the tenant are limited to those outlined in section F of this Order.

D. Moratorium on Residential Rent Increases

An owner may not increase residential real property rent until the City Council takes action to extend this Order to a date certain, or terminates or declines to extend the Order. Residential real property that is exempt from rent control provisions under Richmond Municipal section 11.100, et.seq, is exempt from this section to the extent that such properties' rent may not be regulated under federal or state law.

E. Applicability of Order

This Order applies to nonpayment eviction notices, no-fault eviction notices, and unlawful detainer actions based on such notices, served or filed on or after March 17, 2020.

F. Remedies

- a. The provisions of this Order may be asserted as an affirmative defense in an unlawful detainer action.
- b. If an owner attempts to recover possession or recovers possession of residential real property or commercial real property in violation of this Order, retaliates against tenant for the exercise of any rights under this Order, or attempts to prevent a tenant from acquiring any rights under this Order, the tenant may institute a civil proceeding for injunctive relief, money damages of not more than three times actual damages (including damages for mental or emotional distress), and whatever other relief a court deems appropriate. If damages are awarded for mental or emotional distress, the award shall only be trebled if the trier of fact finds that the owner acted in knowing violation of or reckless disregard of the provisions of this Order. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to an order of the court.

G. Enforcement

This Order shall be punishable as set forth in Richmond Municipal Code Chapter 2.20.100.

- H. This Order shall be superseded by a duly enacted Ordinance of the City Council or a further Order by the Director of Emergency Services adopted during the local emergency that expressly supersedes this Order.
- I. This Order has the full force and effect as a local regulation during the period of local emergency.
- J. To the extent the County promulgates rules or regulations that provide additional protections to Richmond tenants, those County provisions apply and nothing in this order shall preempt application of those additional protections.
- K. This Order supersedes and replaces the Third Supplemental Order Declaring a Temporary Moratorium on No-Fault and Non-Payment of Rent evictions.
- L. This Order shall become effective immediately and shall remain in effect until the City Council takes action to extend this Order to a date certain, or terminates or declines to extend the Order.

Dated: 7/14/20

By: Jawa Snidegrman
Director of Emergency Services
City of Richmond
JP:cc

Attest: 7/14/2020

By: Jabunior Yurdy, Assistant for
City Clerk Pamela Christian