

ORDINANCE NO. 2020-XX

**AN URGENCY ORDINANCE OF THE CITY OF FULLERTON,
CALIFORNIA, RELATING TO A TEMPORARY MORATORIUM
ON EVICTING TENANTS AND DECLARING THE ORDINANCE
TO BE AN EMERGENCY MEASURE TO TAKE EFFECT
IMMEDIATELY UPON ADOPTION**

WHEREAS, on March 4, 2020, the Governor declared a State of Emergency in California due to the threat of Coronavirus Disease 2019 (“COVID-19”). On February 26, 2020, the Orange County Board of Supervisors and Department of Public Health declared a public health emergency in Orange County due to COVID-19. On March 16, 2020, the City Manager signed a formal Proclamation of Local Emergency. The City Council ratified the declaration at its March 17, 2020 City Council meeting. Due to directives from federal, state and local health officials, residents have been advised to avoid public gatherings and stay at home to prevent the spread of this disease.

WHEREAS, on March 16, 2020, the Governor issued Executive Order N-28-20. The order suspends any state law that would preempt or otherwise restrict the City’s exercise of its police power to impose substantive limitations on evictions based on nonpayment of rent resulting from the impacts of COVID-19.

WHEREAS, the City has been impacted by the health crisis of this global pandemic. Sporting events, concerts, plays and conferences have been cancelled. School closures have occurred and may continue. Employees have been advised to work at home. As a result, restaurant and retail business has significantly declined and workers have been impacted by lost wages and layoffs. Parents have had to miss work to care for home-bound school-age children. As the virus spreads, workers may have to stay home for extended periods.

WHEREAS, many tenants have experienced sudden income loss and further income impacts are anticipated. The loss of wages caused by the effects of COVID-19 may impact tenants’ ability to pay rent when due, leaving tenants vulnerable to eviction.

WHEREAS, providing tenants with a short-term protection from eviction due to the inability to pay rent will help avoid increasing the homeless population and stabilize the rental housing market by reducing displacement.

WHEREAS, during this state of emergency, and in the interests of protecting the public health and preventing transmission of the coronavirus, it is essential to avoid unnecessary displacement of tenants. Prohibiting evictions on a temporary basis is needed until the spread of the virus can be minimized and the emergency restrictions lifted.

WHEREAS, nothing in this ordinance waives a tenant’s obligations to pay back rent owed once this ordinance is no longer effective.

WHEREAS, the City Council has the authority to adopt this ordinance under Government Code Section 8630, and also its authority under California Constitution Article XI, Section 7 and pursuant to the Governor’s Order N-28-20.

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

SECTION 1. Moratorium on evictions due to nonpayment of rent during the COVID-19 emergency.

- A. Term. This Section 1 remains in effect until the expiration of the Governor’s Executive Order N-28-20, including any extensions (the “Term”).
- B. Scope. This ordinance applies to all residential and commercial tenants within the City of Fullerton.
- C. Evictions. No landlord shall seek to evict a residential or commercial tenant if both of the following are true:
 - 1. Decreased Income or Increased Medical Expenses. The basis for the eviction is nonpayment of rent, or a foreclosure, 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 operating hours or consumer demand) or substantial out-of-pocket medical expenses (collectively, the “COVID-19-Related Financial Impacts”); and
 - 2. Cause is COVID-19. The decrease in household or business income or the out-of-pocket medical expenses described in subsection (1), above, was caused by the COVID-19 pandemic, or by any local, state or federal government response to COVID-19 and the income loss and the increased expenses are documented.
- D. Tenant to Notify Landlord. To qualify, the tenant must, within 30 days after the rent is due: (1) notify the landlord “in writing” of the substantial COVID-19-Related Financial Impacts and (2) provide documentation “in writing” establishing such substantial COVID-19-Related Financial Impacts.
- E. When Landlord Shall Not Evict. The landlord shall not serve a notice pursuant to CCP 1161(2), 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 during the period during the Term if either: (1) rent is overdue for a period of 30 days or less and the tenant notified the landlord

as required in subsection (1) of subsection (D), above or (2) rent is overdue for a period of 31 days or more and the tenant complied with both requirements of subsection (D), above.

- F. Definition of "In Writing." 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.

- G. Repayment of Rent Required. Nothing in this ordinance shall relieve the tenant of liability for any unpaid rent. The landlord may seek the unpaid rent after the expiration of the Term and the tenant must pay it as soon as possible, but in no event, unless agreed to in writing by the landlord and tenant, later than 120 days from the expiration of the Term. A landlord may not charge or collect penalties or a late fee for rent that is delayed for the reasons stated in this Ordinance nor may a landlord, during the period the local emergency is in effect, seek rent that is delayed for the reasons stated in this Ordinance through the eviction process.

SECTION 2. Emergency Declaration / Effective Date. The City Council declares this ordinance to be an emergency measure, to take effect immediately upon adoption pursuant to California Government Code Section 36934. The facts constituting the emergency are as follows: The directives from health officials to contain the spread of COVID-19 has resulted in loss of business, furloughs, loss of wages and lack of work for employees. To protect the public health, safety and welfare, the City must act to prevent eviction of tenants who are unable to pay rent due to wage losses caused by the effects of COVID-19. An emergency measure is necessary to protect tenants from eviction for a temporary period.

SECTION 3. Future Governor's Order. If the Governor issues an executive order which prohibits residential and commercial evictions throughout the state relating due to COVID-19 related impacts, then that order shall control, and this ordinance shall no longer be in effect. Otherwise, this ordinance shall remain in full effect and landlords shall meet the requirements of both this ordinance and the Governor's Order.

SECTION 4. Severability. If any portion of this ordinance is found to be unenforceable, each such provision shall be severed and all remaining portions of this ordinance shall be enforced to the maximum extent legally permissible.

SECTION 5. Certification. The City Clerk shall certify to the passage and adoption of this ordinance as required by law.

PASSED, APPROVED AND ADOPTED this ___th day of _____2020 by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

Jennifer Fitzgerald, Mayor

ATTEST:

Lucinda Williams, City Clerk

APPROVED AS TO FORM

Richard D. Jones, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF FULLERTON)

I, LUCINDA WILLIAMS, City Clerk of the City of Fullerton, DO HEREBY CERTIFY that the above and foregoing Urgency Ordinance No. 2020-__ was duly adopted at a special meeting of the City Council of the City of Fullerton held on the 26th day of March, 2020, by the following roll call vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Fullerton this 26th day of March, 2020.

Lucinda Williams, City Clerk