

ORDINANCE NO. 02-21 N.S.

**AN URGENCY ORDINANCE OF THE RICHMOND CITY COUNCIL ENACTING A
TEMPORARY MORATORIUM ON CERTAIN EVICTIONS OF RESIDENTIAL
TENANTS IN RICHMOND IMPACTED BY THE COVID-19 PANDEMIC THROUGH
THE STATE OF THE LOCAL EMERGENCY AND SIXTY DAYS THEREAFTER**

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

WHEREAS, COVID-19 is a respiratory disease that has spread across the globe, with 3,600,000 confirmed cases in California,, including 63,493 cases in Contra Costa County as of March 9, 2021; and

WHEREAS, many Richmond residents are experiencing substantial losses of income as a result of business closures, the loss of hours or wages, or layoffs related to COVID-19, hindering their ability to keep up with rent payments; and

WHEREAS, many Richmond businesses are suffering economic losses related to COVID-19, in particular since the March 16, 2020 Shelter in Place Order and extensions thereof; and

WHEREAS, those residents financially impacted due to COVID-19 may not be able to make timely rent payments or may be forced to choose between making rent payments and having sufficient funds for food, medical care or other necessities for themselves and their families; and

WHEREAS, without sufficient and long-term eviction protections, many tenants “self-evict” and move out even without adequate replacement housing, rather than face future legal eviction that could impact their ability to find new housing; and

WHEREAS, tenants who are forced to move out of their housing without adequate replacement housing may move into overcrowded living situations or become homeless; and

WHEREAS, many Landlords charge late fees which can operate as unfair penalties if a tenant is unable to pay rent due to reasons related to COVID-19; and

WHEREAS, because homelessness can exacerbate vulnerability to COVID-19, it is necessary to take measures to preserve and increase housing security for Richmond residents; and

WHEREAS, during this current state of emergency, and in the interest of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness; and

WHEREAS, an emergency ordinance restricting evictions during the COVID-19 crisis provides even greater eviction protections to Richmond tenants than the protections currently in place and helps to ensure that residents stay safely housed during the pandemic, thereby reducing opportunities for further transmission of the virus; 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 assist the City's response to COVID-19, which was approved by Council through Resolution 18-20; and

WHEREAS, on March 17, 2020, the Director of Emergency Services also issued a First Supplemental Order (Resolution 20-20) by declaring a temporary moratorium on no-fault

evictions and non-payment of rent by residential tenants impacted by COVID-19, which was approved by City Council on April 7, 2020; and

WHEREAS, on April 27, 2020, the Director of Emergency Services issued a Second Supplemental Order (Resolution 34-20) that extended the prohibition on certain types of evictions to commercial tenants and also prohibited 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 added 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 was extended; and

WHEREAS, on May 26, 2020, the Board of Supervisors passed Urgency Ordinance No. 2020-16 that continued an eviction moratorium for residential properties through July 15, 2020. The Urgency Ordinance also continued a temporary rent freeze for certain residential properties through July 15, 2020; 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 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 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

WHEREAS, on September 29, 2020, the Contra Costa County Board of Supervisors passed Urgency Ordinance No. 2020-26, which authorizes a temporary prohibition on evictions of certain residential tenants impacted by the COVID-19 pandemic. The Ordinance superseded Ordinance No. 2020-25 and provided additional eviction protections for certain residential tenants through January 31, 2021, including all Richmond residential tenants; and

WHEREAS, on September 30, 2020, the City of Richmond's Third Supplemental Order lapsed and Contra Costa County's Urgency Ordinance 2020-26 applied to all Richmond tenants and landlords. This Urgency Ordinance provided certain eviction protections to residential tenants by extending the moratorium on certain residential evictions through January 31, 2021; and

WHEREAS, on November 16, 2020, Governor Gavin Newsom announced that California was experiencing its fastest increase in COVID-19 cases to date; and

WHEREAS, on December 3, 2020 and December 6, 2020, Governor Gavin Newsom signed regional stay-at-home orders that further expanded local shelter in place orders in regions where intensive care unit (ICU) capacity dropped below fifteen percent; and

WHEREAS, on February 2, 2021, the Contra Costa County Board of Supervisors passed Urgency Ordinance No. 2021-04, which extends a temporary eviction moratorium on certain residential tenants and a moratorium on certain residential rent increases through June 30, 2021 and is retroactive to February 1, 2021; and

WHEREAS, as of February 5, 2021, due to its COVID-19 case rate and positivity rate, Contra Costa County was restricted to the “purple” tier of the California Blueprint for a Safer Economy, the most restrictive statewide tier of COVID-19 restrictions; and

WHEREAS, on August 31, 2020, Governor Gavin Newsom signed into law Assembly Bill 3088, the COVID-19 Tenant Relief Act of 2020 (the Act). The Act extends eviction protections for residential tenants, including mobile home tenants, who are experiencing financial hardship related to COVID-19; and

WHEREAS, the Act, codified in Code of Civil Procedure sections 1179.01 through 1179.07, prohibits residential tenants from being evicted for failure to pay rent because of a COVID-19 related hardship occurring between March 1 and August 31, 2020, as long as the tenant provides the landlord with a written declaration of hardship. Under the Act, residential tenants who experience a new COVID-19-related hardship between September 1, 2020 and January 21, 2021, were also protected from eviction for nonpayment of rent through this date as long as they paid 25 percent of the rent due by January 31, 2021; and

WHEREAS, Senate Bill 91 extended these protections of the Act through June 30, 2021; and

WHEREAS, the Act only regulates rent-related evictions and leaves certain residential tenants unprotected from eviction, such as tenants who were unable to pay rent before the COVID-19 pandemic and tenants who are facing eviction for certain reasons other than nonpayment of rent; and

WHEREAS, the Contra Costa Superior Court continues to process new eviction filings, hold hearings on existing eviction cases, and enter eviction judgments during the City’s Local Emergency due to COVID-19; and

WHEREAS, following the entry of such judgments, the Contra Costa Sheriff’s Department has continued to physically evict tenants from their homes during the COVID-19 emergency; and

WHEREAS, a January 27, 2021 article from KQED reported that from March 19, 2020 to December 31, 2021, Contra Costa County had the second-highest number of sheriff evictions during the COVID-19 pandemic out of the nine Bay Area Counties and had more than fifteen times the number of evictions of Alameda County; and

WHEREAS, the January 27, 2021 KQED article also reported that from March 19, 2020 to December 31, 2021, 22 residential evictions took place in Richmond and 135 took place in Costa County, while during that same time period only 4 residential evictions occurred in Oakland and only 8 total throughout Alameda County; and

WHEREAS, the January 27, 2021 KQED article highlighted that from March 19, 2020 to December 31, 2021, Richmond had 28 times more evictions than Oakland, with 118.2 evictions per 100,000 rental households in Richmond and only 4.2 evictions per 100,000 rental households in Oakland; and

WHEREAS, from April 2020 through January 2021, Richmond tenants have received 249 Notices of Termination for nonpayment of rent, 39 Notices of Termination based on breach of lease, 36 Notices of Termination based on nuisance and 8 Notices of Termination for owner move-ins; and

WHEREAS, the January 27, 2021 KQED article also reported that from March 19, 2020 to December 31, 2021, Black residential renters in the Bay Area were evicted at double the rate of other renters; and

WHEREAS, in Contra Costa County, African American and Latino residents have been disproportionately impacted by the COVID-19 pandemic, and according to the Contra Costa County Health Department, the County's African American and Latino residents have contracted COVID-19 at a higher rate than other racial and ethnic groups; and

WHEREAS, there is an urgent need for the City to temporarily prohibit certain residential evictions to prevent an increase in the number of unhoused Richmond residents and to avoid a further increase in COVID-19 rates due to residential tenants who lack housing; and

WHEREAS, this Urgency Ordinance will serve justice and promote racial and ethnic equity for African American and Latino renters who are otherwise more likely to be evicted and/or contract COVID-19; and

WHEREAS, the California Constitution, Article XI, Section 7, provides cities with the authority to enact ordinances to protect the health, safety and general welfare of their citizens; and

WHEREAS, Government Code Section 8550, the California Emergency Services Act, authorizes the governing bodies of cities, towns, and counties in the state of California to declare a state of emergency in order to "mitigate the effects of natural, manmade, or war-caused emergencies that result in conditions of disaster or in extreme peril to life, property, and the resources of the state, and generally to protect the health and safety and preserve the lives and property of the people"; and

WHEREAS, additionally, pursuant to Richmond Municipal Code Section 2.08.010, the City Council may introduce and adopt an emergency ordinance at the same meeting in cases of emergency; 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 of Richmond residents from their homes or increase the City's residents and community members exposure to COVID-19; and

WHEREAS, it is deleterious to human life and society at large to allow the displacement of Richmond tenants during the pendency of the of the City's local emergency and 60 days thereafter and it is within the Council's basic police powers to implement and enforce this ordinance; and

WHEREAS, even after the State, County and City lift their states of emergency and other regulations are lifted, Richmond tenants will still need temporary additional protections from evictions because of the magnitude of their financial losses sustained as a result of the COVID-19 pandemic.

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

SECTION 1. Recitals. The City Council finds the foregoing recitals to be true and correct and hereby incorporates such findings into this ordinance.

SECTION 2. Purpose and Intent. The purpose and intent of this ordinance is to prevent displacement, reduce the transmission of COVID-19, respond adequately to the local emergency declared by the City of Richmond due to COVID-19, and to promote the stability and the health and safety of residential tenants.

SECTION 3. Definitions.

"Landlord" includes owners, lessors, or sublessors of residential rental property, and the agent, representative, or successor of any of the foregoing.

“Local Emergency” includes any period of local emergency declared by the City of Richmond in response to the COVID-19 pandemic.

“Residential unit” is a unit that is occupied by a tenant as their place of residence, including but not limited to apartments, houses, rooms, and residential hotels. A unit is considered a residential unit if it is used for residential occupation regardless of its permitting status.

"Tenant" includes a tenant, subtenant, lessee, sublessee, or any other person entitled to use or occupancy of residential property, including occupants who are holding over after the expiration of the term of a written or oral lease and current occupants who occupied the property with the current or prior consent of the property’s landlord or a prior owner. This shall also include a prior homeowner residing in a residential unit post-foreclosure.

SECTION 4. Residential Eviction Moratorium.

(A) During the Local Emergency and continuing for sixty (60) days afterward, except as set forth in subsections (B) and (C) below, no Landlord may lawfully engage in any of the following behaviors with respect to a Tenant of a Residential unit:

(1) Evict a Tenant or require a Tenant to vacate a Residential unit, including by seeking the entry of an eviction judgment or by causing or permitting a writ of possession to be executed. This section does not apply to any writ of possession that was entered before this Ordinance took effect; or

(2) Represent to a Tenant that the Tenant is required by law to move out of their unit.

(B) Nothing in subsection (A) above shall limit a Landlord from using the procedures outlined in Code of Civil Procedure sections 1179.01 through 1179.07 and any subsequent state statute regarding evictions related to a Tenant’s failure to pay rent.

(C) The prohibitions set forth in subsection (A)(1-2) above do not apply where the sole grounds for eviction stated in the termination notice are: (1) A nuisance poses an imminent health or safety threat, (2) the Tenant has failed to pay rent that came due between March 1, 2020 and June, 30, 2021 pursuant to Code of Civil Procedure Section 1161(2), and/or (3) the termination is to remove the residential real property from the rental market, but only when authorized by Government Code section 7060 *et seq.* and performed consistent with Richmond Rent Board Regulation Chapter 5.

(D) A nuisance that creates an imminent health and safety threat within the meaning of subsection (C)(1) above cannot be the Tenant’s COVID-19-related illness or exposure to COVID-19, whether actual or suspected.

(E) Nothing in this section shall be construed to reduce or eliminate a Landlord’s duty to make reasonable accommodations for those with disabilities, including any duty to reinstate a terminated tenancy for failing to provide such reasonable accommodations.

(F) To the extent state law affords greater protections to Tenants than this Section 4, those state law provisions shall apply rather than the provisions of this Section 4. Nothing in this section shall be construed to supersede any applicable requirements in Civil Code section 1946.2 pertaining to Tenant relocation assistance or rent waiver.

(G) Notice Requirements.

(1) Except as set forth in subsection G(2) below, any notice of termination of tenancy served on a tenant with respect to a Residential unit during the Local Emergency and sixty (60) days afterward shall include the following statement in bold underlined 12-point font: “**An Emergency Eviction Moratorium is currently in effect. Other than for failure to pay rent, an imminent health or safety threat or to remove the residential real property from the rental market, but only when authorized by Government Code section 7060 et**

seq., residential evictions are restricted during the Local COVID-19 Emergency declared by the City of Richmond. Residential tenants who are being evicted for failure to pay rent may have additional protections under California law. You may contact the Richmond Rent Program at (510) 234-RENT (7368) for additional information and referrals or visit www.richmondrent.org."

- (2) The requirement of subsection (G)(1) shall not apply in cases of eviction for nonpayment of rent that came due between March 1, 2020 and June, 30, 2021.

SECTION 5. Additional Notice Requirements and Eviction Protections.

Obligatory notice statements required by this ordinance shall be written in all languages that the Landlord and/or the Landlord's agents normally use for verbal communications with the Tenant as well as the language in which the lease or agreement was originally negotiated.

SECTION 6. No Waiver of Rights.

Any agreement to waive any rights under this ordinance, including a stipulation, settlement agreement, or lease agreement, shall be void as contrary to public policy.

SECTION 7. Remedies.

(A) In any action brought to recover possession of a Residential unit where the notice of termination was served during the Local Emergency or sixty (60) days after, a Landlord must allege and prove strict compliance with Section (4) and Section (5) of this Ordinance. Failure to do so shall result in the Landlord having failed to establish its prima facie case.

(B) Failure to strictly comply with any section of this Ordinance, including but not limited to Section (4), may be asserted as an affirmative defense in any action brought to recover possession of a Residential unit where the notice of termination was served during the Local Emergency or sixty (60) days after.

(C) In the event of a violation of this Ordinance, an aggrieved Tenant may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages (including damages for mental or emotional distress as specified below), and whatever other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the Landlord acted in knowing violation of or in reckless disregard of this ordinance. An aggrieved tenant who prevails shall be entitled to reasonable attorney's fees and costs pursuant to order of the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the Tenant under local, state or federal law.

SECTION 8. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 9. Effective Date. This ordinance shall become effective immediately if adopted with at least five affirmative votes of members of the City Council.

First introduced and adopted at a regular meeting of the City Council of the City of Richmond held March 23, 2021, by the following vote:

AYES: Councilmembers Jimenez, Martinez, McLaughlin, Willis, and Vice Mayor Johnson III.

NOES: Councilmember Bates and Mayor Butt.

ABSTENTIONS: None.

ABSENT: None.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:
TOM BUTT
Mayor

Approved as to form:
TERESA STRICKER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of urgency **Ordinance No. 02-21 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on March 23, 2021.



Pamela Christian, City Clerk of the City of Richmond