

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

ORDINANCE NO. 2020-002

AN ORDINANCE TEMPORARILY PROHIBITING EVICTIONS OF TENANTS ARISING FROM INCOME LOSS OR SUBSTANTIAL MEDICAL EXPENSES RELATED TO THE CORONAVIRUS PANDEMIC

WHEREAS, the City of Carmel-by-the-Sea ("City") is authorized by Article XI, Section 7 of the California Constitution to make and enforce all regulations and ordinances using its police powers; and

WHEREAS, the California Emergency Services Act (California Government Code Section 8550, et. seq.) defines a local emergency as the existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a city, caused by conditions such as an epidemic, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of a city, and require the combined forces of other political subdivisions to combat; and

WHEREAS, Section 2.64.020 of the City Municipal Code defines "emergency" as the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within this City caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, earthquake, or other conditions, including conditions resulting from war or imminent threat of war, but other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of this City, requiring the combined forces of other political subdivisions to combat (Emphasis Added); and

WHEREAS, in December 2019 and January 2020, reports began spreading worldwide of a flu-like virus first found in China, that was more deadly than the flu generally, with the virus becoming known as the Coronavirus ("COVID-19"); and

WHEREAS, on or about March 4, 2020, as part of the State of California's response to address the global COVID-19 outbreak, 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 broader spread of COVID-19; and

WHEREAS, on March 6, 2020, the County Administrative Officer of Monterey County ("County CAO") proclaimed a Local Emergency due to the threat of COVID-19 in the County; and

WHEREAS, on March 11, 2020, the World Health Organization ("WHO") classified the spread of COVID-19 internationally as a global pandemic; and

WHEREAS, on March 12, 2020, based on said events, the City Administrator of the City of Carmel-by-the-Sea, acting in his capacity as the Director of Emergency Services for the City, declared the existence of a local emergency within the City; and

WHEREAS, on March 13, 2020, the City Council adopted Resolution No. 2020-021 ratifying the City Administrator's Proclamation of the Existence of a Local Emergency Due to the Worldwide Spread of the Coronavirus ("COVID-19"); and

WHEREAS, on March 16, 2020, Governor Gavin Newsom issued Executive Order N-28-20, that authorizes local jurisdictions to suspend the evictions of tenants for the non-payment of rent if the non-payment is a result of the COVID-19 pandemic, encourages financial institutions to slow foreclosures, and protects renters and homeowners against utility shutoffs for Californians affected by COVID-19; and

WHEREAS, on March 17, 2020, the County of Monterey Health Officer issued a "Shelter in Place" Order requiring, among other things, that people self-isolate in their places of residence; and

WHEREAS, on March 19, 2020, Governor Gavin Newsom issued a shelter in place order for the entire State of California; and

WHEREAS, on March 23, 2020, City Administrator Chip Rerig, acting in his capacity as the Director of Emergency Services for the City, issued Order No. 20-1 Staying Evictions in the City of Carmel-by-the-Sea; and

WHEREAS, on March 25, 2020, the California Department of Business Oversight secured support from national banks, state banks and credit unions for temporary delays in mortgage payments and foreclosure sales and evictions for homeowners who have economic impacts from COVID-19 with the objective of maximizing consistency and minimizing hurdles potentially faced by borrowers; and

WHEREAS, on March 27, 2020, Governor Newsom issued Executive Order N-37-20, which suspended the deadline specified in Code of Civil Procedure section 1167 for 60 days, by which a complaint for eviction must usually be served on a tenant within 5 days, in cases during the COVID-19 pandemic where a tenant is unable to pay rent; and

WHEREAS, on March 30, 2020, the City Council adopted Resolution No. 2020-022 Ratifying Director of Emergency Services Order No. 20-1; and

WHEREAS, on April 3, 2020, the County of Monterey Health Officer issued a further "Shelter in Place" Order to supersede the prior Orders of the Health Officer; and

WHEREAS, in order to comply with the shelter in place orders, and for their own safety, City residents must have access to permanent housing; and

WHEREAS, the COVID-19 pandemic and associated public health and shelter in place orders are expected to result in the closure of most local businesses for the foreseeable future, and result in extreme restrictions on other local businesses, resulting in commercial tenants suffering a significant decrease in income; and

WHEREAS, without local protection, eviction notices for failure to pay rent are likely to surge as residents and businesses are unable to earn income due to the pandemic, or are forced to pay substantial medical expenses associated with the pandemic; and

WHEREAS, particularly given the high cost of housing, evictions of tenants could lead to long term or permanent displacement of tenants impacting the health and safety of these tenants as well as the City.

WHEREAS, the City Council is concerned that, during the COVID-19 pandemic, eviction notices and threats of eviction will surge; and

WHEREAS, the City has determined that it is appropriate to temporarily prohibit evictions until the authorization to suspend evictions under Executive Order N-28-20 and Executive Order N-37-20 terminates or the City Council declares an end to the local emergency, whichever occurs first, for any tenant who can demonstrate that they are being evicted for the failure to pay rent and that such failure is a direct impact of the COVID-19 pandemic, as provided in Governor Newsom's Executive Order N-28-20, issued March 16, 2020, and Executive Order N-37-20, issued March 27, 2020.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARMEL- BY-THE-SEA DOES ORDAIN AS FOLLOWS:

Section 1: Incorporation of Findings. The City Council of the City of Carmel- by-the-Sea incorporates the findings above by reference as though fully set forth here.

Section 2: Codification. This Ordinance shall not be codified in the Carmel-by-the-Sea Municipal Code.

Section 3: CEQA. The City Council hereby finds that the action to adopt this Ordinance will not result in any change in the environment and thus is not a project subject to the requirements of CEQA. Further, even if the action to adopt this Ordinance was deemed to be a project subject to CEQA, the City Council finds the proposed Ordinance is exempt from CEQA under the common sense exemption set forth in Section 15061(b)(3), which provides that CEQA only applies to projects which have the potential for causing a significant effect on the environment, and thus where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Section 4: Authority Pursuant to Applicable Law. Pursuant to Cal. Gov. Code Section 8610, the City, while in a state of emergency proclaimed by the Director of Emergency Services and ratified by the City Council, may establish rules and regulations for dealing with the local emergency. Pursuant to City Municipal Code Section 2.64.060, the Director of Emergency Services has the authority to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, so long as such rules and regulations must be confirmed at the earliest practicable time by the city council. The City Council also thus finds and determines that it has the authority to enact this ordinance pursuant to all applicable laws including, but not limited to, the California Emergency Services Act, the City Municipal Code and the declaration of local emergency issued by the City Council on March 13, 2020.

Section 5. Director of Emergency Services Order 20-1. On March 23, 2020, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, the City Administrator, in his capacity as the Director of Emergency Services, issued Order No. 20-1 staying evictions in the City to protect life, property and civil order. On March 30, 2020, the City Council adopted a Resolution ratifying Order No. 20-1. This Ordinance is intended to provide support in addition to Order 20-1 for the staying of evictions according to the terms of this Ordinance.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL BY-THE-SEA this 2nd day of June, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

ATTACHMENT A

SECTION 1: PURPOSE.

This Ordinance ("Ordinance") temporarily prohibits evictions until the authorization to suspend evictions under Executive Order N-28-20 and Executive Order N-37-20 terminates, or the City Council declares an end to the local emergency, whichever occurs first, of residential tenants, commercial tenants and non-residential tenants, who can demonstrate that they have received a notice of eviction for failure to pay rent, and that such failure is related to a substantial loss of income or substantial out-of-pocket medical expenses resulting from the 2020 novel coronavirus (COVID-19) pandemic or any local, state, or federal government response to the pandemic.

SECTION 2: ORDERS BY GOVERNOR AND CITY DIRECTOR OF EMERGENCY SERVICES STAYING EVICTIONS.

A. Executive Order N-28-20, issued March 16, 2020, is attached as Exhibit A and incorporated by reference.

B. City Director of Emergency Services Order No. 20-1, issued on March 26, 2020 and ratified by the City Council on March 30, 2020 with the adoption of Resolution No. 2020-022, is attached as Exhibit B and incorporated by reference. If there are any inconsistencies between Exhibit B and this Ordinance, this Ordinance is controlling.

C. Executive Order N-37-20, issued March 27, 2020, is attached as Exhibit C and incorporated by reference.

SECTION 3: DEFINITIONS.

The following words and phrases, whenever used in this Ordinance, shall be construed as follows:

A. "Dwelling Unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one or more persons who maintain a household or common household.

B. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Dwelling Unit or portion thereof or any building or structure of any kind which a business occupies to conduct its business.

C. "Eviction" means a termination of an agreement that preexists the COVID-19 pandemic, due to both of the following:

1. 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 opening hours or consumer demand), or substantial out-of-pocket medical expenses; and

2. The decrease in household or business income or the out-of-pocket medical expenses referenced in the last subparagraph was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented.

D. “Owner” means any person, acting as principal or through an agent, offering a Dwelling Unit for rent, and includes a predecessor in interest to the owner.

E. “Pandemic” means the 2020 novel coronavirus (COVID-19) pandemic.

F. “Tenant” means any person entitled by written or oral agreement, or by sufferance, to the use or occupancy of a Dwelling Unit or any person or business entitled by written or oral agreement, or by sufferance, to use or occupy a building or structure to conduct its business.

SECTION 4: PROHIBITION ON EVICTIONS.

A. A landlord of any Dwelling Unit or Dwelling Units or of any building or structure occupied by a business shall not terminate or attempt to terminate a lawful tenancy for failure to pay rent if the tenant demonstrates that the failure to pay rent is directly related to a substantial loss of income or substantial out-of-pocket medical expenses associated with the coronavirus pandemic or any local, state, or federal government response to the pandemic.

B. This Ordinance shall also apply to a landlord’s action that constitutes constructive eviction under California law. Terminations that are required to comply with an order issued by a government agency or court requiring that the real property be vacated are excepted from this prohibition.

C. To take advantage of the protections afforded under this Ordinance, a tenant must do all of the following:

1. Notify the landlord in writing before the day rent is due that the tenant has a covered reason for delayed payment. For purposes of this Ordinance, “writing” shall include emails, text messages, or other forms of electronic communication with landlord or landlord’s representative.

2. Pay the portion of rent that the tenant is able to pay.

3. Demonstrate through documentation or other objectively verifiable means that the tenant has experienced:

a. Substantial loss of income from: (1) job loss; (2) layoffs; (3) a reduction in the number of compensable hours of work; (4) a store, restaurant, office, or business closure; (5) a substantial decrease in

business income caused by a reduction in opening hours or consumer demand; (6) the need to miss work to care for a home-bound school-age child or a family member infected with coronavirus; or (7) other similarly-caused loss of income that resulted from the COVID-19 pandemic; or

b. Substantial out-of-pocket medical expenses related to the COVID-19 pandemic.

D. Tenants who were afforded eviction protection under this Ordinance shall have up to sixty (60) days after the termination of this Ordinance to pay their landlord all unpaid rent.

E. Nothing in this Ordinance waives a tenant's obligations to pay back rent owed once this Ordinance is no longer effective; provided, however, that a landlord may not file an unlawful detainer action based on the failure to pay rent while this Ordinance is in effect unless the tenant fails to pay rent when due under Section 3 D of this Ordinance.

F. Nothing in this Ordinance shall relieve a tenant of the obligation to pay rent, nor restrict a landlord's ability to recover rent due once this Ordinance is no longer effective.

G. This Ordinance shall not apply to any of the following circumstances:

1. Transient and tourist hotel occupancy as defined in subdivision (b) of Section 1940 of the California Civil Code.

2. Housing accommodations in a nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or an adult residential facility, as defined in Chapter 6 of Division 6 of Title 22 of the Manual of Policies and Procedures published by the State Department of Social Services.

3. Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school.

H. The City Council urges financial institutions holding home or commercial mortgages, including banks, credit unions, government-sponsored enterprises, and institutional investors, to implement an immediate moratorium on foreclosures and related evictions when the foreclosure or foreclosure-related eviction arises out of a substantial decrease in household or business income, or substantial out-of-pocket medical expenses, which were caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

SECTION 5: ENFORCEMENT.

A. In the event of a violation of this Ordinance, a Tenant who has been improperly served with notice of an eviction or an unlawful detainer action may institute a civil proceeding for an injunction, and the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs if so ordered by the court.

B. This Ordinance may be asserted as an affirmative defense in an unlawful detainer action.

C. A landlord's failure to comply with this Ordinance does not constitute a criminal offense but may subject an owner to civil fines and penalties as set forth in the Carmel-by-the-Sea Municipal Code.

D. The remedies provided in this Ordinance are in addition to any other existing remedies that may be available to a Tenant under local, state, or federal law or equity and in no way limit such existing remedies, if any.

SECTION 6: WAIVER.

A Landlord may request that the requirements of this Ordinance be waived or modified based on a showing that applying the requirements would have an unconstitutional application to the Landlord's property. A Landlord shall bear the burden of presenting evidence to support any such request for waiver or modification and shall set forth in detail the factual and legal basis for the claim, including all supporting documentation, for consideration by the City Council.

SECTION 7: EFFECTIVE DATES.

This Ordinance applies to eviction notices and unlawful detainer actions based on notices served or filed on or after the effective date of this Ordinance. The prohibitions on evictions shall continue to apply until the authorization to suspend evictions under Executive Order N-28-20 and Executive Order N-37-20, attached hereto, terminate or the City Council declares an end to the local emergency, whichever occurs first.

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 a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.