

URGENCY ORDINANCE NO. 519-U

AN URGENCY ORDINANCE OF THE CITY OF NEWARK ENACTING A TEMPORARY MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT FOR RESIDENTIAL AND COMMERCIAL TENANTS WHERE THE FAILURE TO PAY RENT IS FROM INCOME LOSS RESULTING FROM THE NOVEL CORONAVIRUS (COVID-19)

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 January 30, 2020, the World Health Organization (“WHO”) declared COVID-19 a Public Health Emergency of International Concern; and

WHEREAS, on January 31, 2020, the Secretary of the United States Department of Health and Human Services declared a public health emergency for the entire United States to aid the nation’s healthcare community in responding to COVID-19; and

WHEREAS, on February 25, 2020, the Centers for Disease Control and Prevention (“CDC”) announced that community spread of COVID-19 is likely to occur in the United States; and

WHEREAS, on March 1, 2020, the Alameda County Health Officer declared a public health emergency throughout the County of Alameda; and

WHEREAS, on March 4, 2020, the Governor of California proclaimed a state of emergency exists in California after making determinations that:

1. The conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and
2. Local authority is inadequate to cope with the threat posed by COVID-19; and

WHEREAS, on March 10, 2020, the Alameda County Board of Supervisors ratified the Alameda County Health Officer’s declaration of a local health emergency; and

WHEREAS, on March 11, 2020, the WHO declared COVID-19 a pandemic; and

WHEREAS, on March 12, 2020, the Alameda County Department of Public Health confirmed evidence of community-acquired transmission; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national state of emergency in response to the spread of COVID-19 within the United States of America; and

WHEREAS, on March 16, 2020, the Alameda County Health Officer, along with six other health officers within six Bay Area counties, took a unified step to slow the spread of novel coronavirus (COVID-19) and preserve critical health care capacity across the region by issuing a legal order directing their respective residents to shelter at home beginning March 17, 2020 through April 7, 2020. The order in Alameda County limits activity, travel, and business functions to only the most essential needs. The guidance comes after substantial input from the CDC and best practices from other health officials around the world; and

WHEREAS, on March 16, 2020, due to an escalating increase in the number of COVID-19 cases in Alameda County, the City Manager, acting as Director of Emergency Services, found that the conditions related to the COVID-19 pandemic were of extreme peril to the safety of persons and property within the territorial limits of the City and thus proclaimed a local emergency pursuant to Newark Municipal Code Chapter 2.16 and Government Code Section 8558; and

WHEREAS, on March 17, 2020, at a special meeting the Newark City Council ratified the Director of Emergency Services' proclamation of a local emergency related to the COVID-19 pandemic; and

WHEREAS, on March 16, 2020, the Governor of California issued Executive Order N-28-20 ordering waiver of time limitations set forth in Penal Code section 396(f) concerning protections against residential evictions, and suspending any provision of state law that would preempt or otherwise restrict a local government's exercise of its police power to impose substantive limitations on residential or commercial evictions related to COVID-19. The order further suspended statutory causes of action for judicial foreclosure, including Code of Civil Procedure section 725a *et seq.* the statutory cause of action for unlawful detainer, Code of Civil Procedure section 1161 *et seq.*, and any other statutory cause of action that could be used to evict or otherwise eject a residential or commercial tenant or occupant of residential real property after foreclosure; and

WHEREAS, on March 19, 2020, the Governor of California issued Executive Order N-33-20 ordering all individuals within the State of California to stay home or at their place of residence, except as needed to maintain continuity of operation of the federal critical infrastructure sectors, critical government services, schools, childcare, and construction; and

WHEREAS, events of all sizes across the Bay Area and in Newark are cancelling or being postponed due to the County's and State's Orders and recommendations at all levels of government to cancel large gatherings are occurring amid concerns over spread of the virus. Additionally, as a result of the County's shelter at home order and the Governor's order for individuals to stay in their place of residence, many businesses are closing or dramatically limiting their operations. These developments are likely to result in significantly increased levels of unemployment and decreased incomes for many businesses and residents of Newark; and

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

WHEREAS, California Government Code Section 36937 authorizes the City Council to introduce and adopt an ordinance it declares to be necessary as an emergency measure to preserve the public peace, health, and safety at one and the same meeting if passed by at least four-fifths affirmative votes; and

WHEREAS, this Ordinance is a temporary moratorium intended to promote stability and fairness within the residential and commercial rental market in the City during the COVID-19 pandemic, and to prevent avoidable homelessness and evictions thereby serving the public peace, health, safety, and public welfare and to enable tenants in the City whose incomes and ability to work are affected by COVID-19 to remain in their homes; and

WHEREAS, displacement through eviction destabilizes the living situation of tenants and impacts the health of Newark residents and businesses by uprooting children from schools, disrupting the social ties and networks that are integral to citizens' welfare and the stability of communities within the City; and

WHEREAS, displacement through eviction creates undue hardship for tenants through additional relocation costs, and during the COVID-19 pandemic outbreak, affected tenants who have lost income due to impacts on the economy or their employment may be at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted; and

WHEREAS, housing instability threatens the public peace, health, and safety as eviction from one's home can lead to prolonged homelessness; strain on household finances due to the necessity of paying rental application fees and security deposits; stress and anxiety experienced by those displaced; interruption of the education of children in the home; and increased exposure to, and spreading of COVID-19, in contradiction to the Alameda County Health Officer and Governor's orders; and

WHEREAS, businesses are also affected by COVID-19 and may be unable to pay rent. If businesses are unable to pay rent, they may be evicted, which will negatively impact the local economy by laying off employees and ceasing to provide services to residents of the City, and negatively impacting local health by forcing persons out of their shelter-in-place locations to prepare for business eviction, increasing potential COVID-19 exposure, and reducing the number of retail and commercial spaces available to provide essential services, also increasing potential COVID-19 exposure as a result of less retail and commercial spaces available for residents and thus less space available for social distancing; and

WHEREAS, the City Council finds and determines that regulating the relations between residential and commercial landlords and tenants is essential to preventing the spread of COVID-19 in the City and thereby serve the public peace, health, and safety; 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 could result in the avoidable displacement or exposure to COVID-19 of the City's residents and community members.

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

SECTION 1. Findings

The City Council of the City of Newark finds that all of the above Recitals are true and correct and incorporated herein by reference. The provisions of the Governor's Executive Order N-28-20, including its recitals, are incorporated herein as if fully set forth.

SECTION 2. Urgency Findings

The City Council of the City of Newark hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency ordinance, which finding is based upon the facts stated in the recitals above, and in the staff report dated March 26, 2020, as well as any oral and written testimony at the March 26, 2020 City Council meeting. This Ordinance and any moratorium that may be established thereunder is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the City Council.

SECTION 3. Ordinance

The City Council hereby makes the findings contained herein and hereby adopts the uncodified Ordinance to read as follows.

COVID-19 Eviction Moratorium Ordinance

Section 1. Moratorium on Eviction for Nonpayment of Rent During the COVID-19 Emergency

A. During the term of this Eviction Moratorium, no landlord shall endeavor to evict a residential or commercial tenant for nonpayment of rent, including but not limited to any such provision under Civil Code sections 1940 *et. seq.* or 1954.25 *et. seq.*, if the tenant demonstrates that the inability to pay rent is:

1. Due to, or arising out of a substantial decrease in household or business income (including but not limited to the circumstances described in subsections (B) and (C)) or substantial out-of-pocket medical expenses; and
2. The decrease in household or business income, or out-of-pocket medical expenses, was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented in writing.

This Eviction Moratorium shall remain in effect until May 31, 2020 or the expiration of the local emergency or the Governor's proclamation of a state of emergency, whichever is later. This Ordinance shall expire one hundred eighty (180) days following the expiration of this Eviction Moratorium.

B. "Substantial decrease in household income" includes but is not limited to income loss caused by COVID-19 illness or caring for a household or family member with COVID-19 illness, work closures, layoffs, job loss, a reduction in the number of compensable hours or other economic or employer impacts of COVID-19, missing work due to a minor child's school closure, compliance with government health authority orders, or other similarly-caused reason resulting in loss of household income due to COVID-19, substantiated with written documentation or other objectively verifiable proof of same.

C. "Substantial decrease in business income" includes, but is not limited to, income loss caused by work closures, reduction in staff reporting to work, reduction in opening hours, or reduction in consumer demand, compliance with government health authority orders, or other similarly-caused reason resulting

in loss of business income due to COVID-19, substantiated with written documentation or other objectively verifiable proof of same.

D. A landlord 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 Code of Civil Procedure section 1161, 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.

E. A landlord knows of a tenant's inability to pay rent within the meaning of this Ordinance if the tenant, within 7 days after the date that rent is due, notifies the landlord in writing of tenant's inability to pay full rent due to a substantial decrease in household or business income or out-of-pocket medical expenses was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and provides documentation, within 15 days after the date that rent is due, to support the claim. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim.

F. Nothing in this Ordinance relieves the tenant of liability for the unpaid rent, which the landlord may seek after the expiration of the Eviction Moratorium, as specified in subsection (A) of this Ordinance, and the tenant must pay 25% of unpaid rent within forty-five (45) days of the date of expiration of the Eviction Moratorium, an additional 25% of unpaid rent within ninety (90) days of the date of expiration of the Eviction Moratorium, an additional 25% of unpaid rent within one hundred thirty-five (135) days of the date of expiration of the Eviction Moratorium, and the final 25% of unpaid rent within one hundred eighty (180) days of the date of expiration of the Eviction Moratorium, unless a state law or order is amended or adopted providing for a longer period, in which case this subsection shall be so superseded.

G. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance, nor may a landlord seek rent that is delayed for the reasons stated in this Ordinance through the eviction process, unless rent continues to remain unpaid after the expiration of the forty-five (45), ninety (90), one hundred thirty-five (135), or one hundred eighty (180) day periods described in subsection F above.

H. This Ordinance may be asserted as an affirmative defense in any unlawful detainer action or other action brought by an owner or landlord to recover possession. A tenant may bring a civil suit seeking owner or landlord compliance with any provisions of this Ordinance.

Section 2. Moratorium on Judicial Foreclosures During the COVID-19 Emergency

As provided for in Executive Order N-28-20 and consistent with the other provisions in this ordinance, the statutory cause of action for judicial foreclosure, Code of Civil Procedure section 725a *et seq.*; the statutory cause of action for unlawful detainer, Code of Civil Procedure section 1161 *et seq.*; and any other statutory cause of action that could be used to evict or otherwise eject a residential or commercial tenant or occupant of residential real property after foreclosure is hereby suspended as applied to any tenancy, or residential real property and any occupation thereof, to which a limitation on eviction is imposed pursuant to this Ordinance.

SECTION 4. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Newark hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 5. Effective Date

Following adoption by at least a four-fifths vote of the City Council, this Ordinance shall be effective immediately upon adoption pursuant to Newark Municipal Code Section 2.08.180. The City Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

I HEREBY CERTIFY this urgency ordinance was read at the special meeting of the Newark City Council held on March 26, 2020. Council Member Bucci moved that it be adopted and passed and ordered published within 15 days of the date of adoption in the Tri-City Voice, a newspaper of general circulation published and printed in the County of Alameda and circulated in the City of Newark, which motion was duly seconded, and said ordinance was passed and adopted by the following vote:

AYES: Council Members Bucci, Collazo, Hannon, and Mayor Nagy

NOS: None

ABSENT: None

RECUSED: Vice Mayor Freitas

SECONDED: Council Member Collazo

APPROVED:

ATTEST:

s/ALAN L. NAGY
Mayor

s/KATHLEEN L. SLAFTER
Deputy City Clerk

APPROVED AS TO FORM:

s/KRISTOPHER J. KOKOTAYLO
Interim City Attorney