

ORDINANCE NO. 3623 C.S.

**AN URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY
TO TEMPORARILY PROHIBIT RESIDENTIAL EVICTIONS AND RESIDENTIAL RENT
INCREASES RELATED TO COVID-19**

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

SECTION 1:

WHEREAS, on October 8, 2019, Governor Newsom signed into law the Tenant Protection Act of 2019, which became effective January 1, 2020. This law, among other things and with certain exceptions, provides that a landlord must not terminate a tenancy without just cause where the tenant has continuously and lawfully occupied residential real property for 12 months. (Civil Code section 1946.2(a);

WHEREAS, on March 13, 2020, the City Manager as the Director of Emergency Services of the City of Monterey, proclaimed the existence of a local emergency based on the following related to the COVID-19 pandemic: (1) on January 30, 2020, the World Health Organization declared a public health emergency of international concern; (2) on January 31, 2020, the U.S. Department of Health and Human Services declared a Public Health Emergency in the United States; (3) on March 4, 2020, the State of California proclaimed a state of emergency; and (4) on March 10, 2020 the County of Monterey declared a local emergency;

WHEREAS, on March 17, 2020, the City Council adopted Resolution No. 20-033 and ratified said Proclamation;

WHEREAS, the County of Monterey Health Officer, on March 17, 2020 ordered a shelter in place order, which was amended on April 3, 2020, April 28, 2020, May 1, 2020, and May 8, 2020;

WHEREAS, on March 19, 2020, the Governor of the State of California issued Executive Order N-33-20, ordering all individuals in the State of California to stay home or at their place of residence, except as outlined by the California Department of Public Health, during the COVID-19 pandemic for the preservation of public health and safety throughout California and to ensure that the healthcare delivery systems is capable of serving all, including those at higher risk and the most vulnerable. Executive Order N-33-20 requires all Californians to heed the state public health directives;

WHEREAS, according to the Monterey County Daily Situation Report dated August 16, 2020, there were 5,890 confirmed cases of COVID-19, 382 hospitalizations, 41 fatalities, 3,746 recovered, and 14,538 contacts in the County;

WHEREAS, on March 16, 2020 California Governor Gavin Newsom issued Executive Order N-28-20, temporarily suspending any provision of state law prohibiting a local government from exercising its police power to impose substantive limitations on residential or commercial evictions through May 31, 2020;

WHEREAS, consistent with Governor Newsom's Executive Order N-28-20, on March 25, 2020, the City Council adopted Ordinance 3614 to temporarily prohibit residential and commercial evictions for non-payment of rent related to COVID-19 through May 31, 2020;

WHEREAS, on March 27, 2020, Governor Newsom issued Executive Order N-37-20 to temporarily prohibit residential evictions for the non-payment of rent statewide through May 31, 2020;

WHEREAS, on May 29, 2020, Governor Newsom issued Executive Order N-66-20, extending the temporary suspension of any provision of state law prohibiting a local government from exercising its police power to impose substantive limitations on residential or commercial evictions through July 28, 2020, which was again extended until September 30, 2020 pursuant to Governor Newsom's Executive Order N-71-20;

WHEREAS, on April 6, 2020, the Judicial Council of California adopted a temporary emergency rule that prohibited the issuance of a summons or entering a default in an eviction action unless the case involved public health and safety issues. On August 13, 2020, the Judicial Council of California voted to sunset that rule on September 1, 2020;

WHEREAS, with Governor Newsom's statewide emergency protections order expiring on May 31, 2020, and the Judicial Council of California's emergency rule expiring on September 1, 2020, tenants in the City of Monterey will not have any protections other than those available under state law. With the passing of this emergency ordinance, the City Council intends to prevent the displacement of City of Monterey tenants due to COVID-19 and to exercise the powers granted to it under Executive Order N-28-20, as extended by N-66-20 and N-71-20;

WHEREAS, in a recent poll conducted from October 31, 2019 – November 7, 2019 by Fairbank, Maslin, Maulin, Metz & Associates, 76% of Monterey residents ranked the cost of housing as a very seriously problem facing the City, and 74% ranked homelessness as a very serious problem facing the City;

WHEREAS, the City of Monterey has approximately 6,335 multi-family units in the City, or 46.4% of its housing stock. (Monterey County Analysis of Impediments to Fair Housing Choice (2019), p.48.) According to the 2010 Census, 64.2% of units in the City are occupied by renters. (Id. at p. 56.) The percentage of renter households reporting housing problems such as cost-burden and substandard housing conditions is 51.8%. (Id. at p. 57.)

WHEREAS, the Charter requires a four-fifths (4/5) vote of the City Council to enact an urgency ordinance, which becomes effective immediately. In order to enact an urgency ordinance, Charter section 4.4 requires the City Council to declare that there is a need for "the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency."

WHEREAS, an urgency ordinance that is effective immediately is necessary to avoid the immediate threat to public peace, health, and safety, as further economic impacts of COVID-19 are anticipated, leaving tenants vulnerable to eviction. This ordinance is intended to prevent avoidable homelessness and to enable tenants in the City whose income and ability to work is affected due to COVID-19 to remain in their homes;

WHEREAS, the period of this rent moratorium is of limited duration while the City contemplates a more extensive rent control program;

WHEREAS, the City of Monterey Planning Office determined the project is exempt from the California Environmental Quality Act (CEQA) Guidelines 15061(b)(3) because there is no possibility that the implementation of this ordinance may have significant effects on the environment. This ordinance will apply tenant protections to existing residential units for a limited period of time. This is solely an administrative process resulting in no physical changes to the environment. Furthermore, the project does not qualify for any of the exceptions to the categorical exemptions found at CEQA Guidelines Section 15300.2.

Exception a - Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. The proposed ordinance is temporary and applies to existing residential units. There is no physical change to the environment.

Exception b - Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant. The proposed ordinance will not result in a cumulative impact as the ordinance is temporary and there is no physical change to the environment.

Exception c - Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. No significant impact is anticipated as the ordinance is temporary and applicable to existing residential unit only. There is no physical change to the environment.

Exception d - Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified Environmental Impact Report (EIR). There is no physical change to the environment. The ordinance does not enable activity on the City's officially designated state scenic highways.

Exception e - Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code. There is no physical change to the environment. The ordinance provides temporary protections to residential tenants.

Exception f - Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. The ordinance provides temporary protections to residential tenants. As a result, no substantial adverse change is anticipated. There is no physical change to the environment, therefore, no impacts to archaeological or historical resources will occur.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONTEREY that it hereby declares, determines, and orders as follows:

SECTION 2: The above recitals are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

SECTION 3: Definitions

- a. Documentation includes, but is not limited to, employer letter of work layoff or termination, letter of approval for State unemployment, pay stubs showing reduced hours or other documents that support a decrease in gross monthly pay, bank statements, doctor's note, inability to work due to child care needs arising from school closures or other circumstances, together with a written description of how such decrease in gross income was caused by the COVID-19 pandemic, or any other documentation the landlord deems sufficient.
- b. Late Fees means late fees, charges, penalties, or interest for failure to pay rent when due.
- c. Landlord means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of residential real property.
- d. Local Emergency means the proclamation of a local emergency approved by the Monterey County Board of Supervisors on March 10, 2020.
- e. Substantial Decrease in Household Income means a decrease in a tenant's household's gross income of 15% or more due to COVID-19 when that monthly gross income is compared to the tenant's average gross monthly income during calendar year 2019.
- f. Substantial Medical Expenses means the cost of medical treatment related to COVID-19 that is not paid for by insurance.

SECTION 4. Term.

This Ordinance is effective immediately and shall expire on September 30, 2020, concurrent with Executive Order N-28-20, however this Ordinance shall be automatically extended if Executive Order N-28-20 is extended, or if the tenant protections therein are extended pursuant to another Governor's Executive Order.

SECTION 5. Eviction Moratorium

- a. Moratorium. During the term of this Ordinance, a landlord shall not serve a notice pursuant to Code of Civil Procedure section 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict any residential tenant when the basis for the eviction is nonpayment of rent arising out of a Substantial Decrease in Household Income, or Substantial Medical Expenses. This Ordinance does not prohibit a landlord from evicting a tenant for any other lawful reason.
- b. Obligation to Pay Rent. The tenant shall pay partial rent to the extent the tenant is able.

Nothing in this Ordinance shall relieve the tenant of liability for the unpaid rent, which the landlord may seek after expiration of the Local Emergency, and the tenant must pay within 120 days of the expiration of the Local Emergency.

- c. Late Fees Prohibited. Unless exempted under Section 7, below, a landlord may not charge or collect a Late Fee for rent that is delayed for the reasons stated in this Ordinance.
- d. Documentation. Any financial or medical information shall be held in confidence, and only used for evaluating the Tenant's claim.
- e. Notice. The tenant, within seven days after the date rent is due, must notify the landlord in writing of lost income and inability to pay full rent due to a Substantial Decrease in Household Income or Substantial Medical Expenses.
- f. A landlord's failure to comply with any requirement of this Ordinance is an affirmative defense in an unlawful detainer or other action brought by the landlord to recover possession of the rental until. A landlord's failure to comply with this ordinance does not constitute a criminal offense.

SECTION 6. Residential Rent Increase Moratorium

- a. Moratorium. During the term of this Ordinance, a landlord shall not increase rent for residential tenants with a Substantial Decrease in Household Income or Substantial Medical Expenses.
- b. Exceptions. See Section 7, below.

SECTION 7: Exceptions.

The moratorium on Late Fees under Section 5(c), and the moratorium on Residential Rent Increases under Section 6, shall not apply to the following:

- (a) A tenancy for residential real property that was issued a certificate of occupancy after February 1, 1995.
- (b) A tenancy for residential real property that is alienable separate from the title to any other dwelling unit (e.g., single family residence). This exception does not apply to a landlord who has converted a single family residence into a multi-unit dwelling by renting a separate room to a tenant. (See Owens v. City of Oakland Housing, Residential Rent and Relocation Board (2020) 49 Cal.App.5th 739.)
- (c) Subdivided interests in a subdivision, as specified in subdivision (b), (d), or (f) of Section 11004.5 of the Business and Professions Code (e.g., condominiums).

SECTION 8. Legislative Intent. This Ordinance shall be liberally construed to provide the broadest possible protection for the residents of the City of Monterey as may be limited by Governor Newsom's Executive Order N-28-20, the Costa-Hawkins Rental Housing Act (Civil Code section 1954.50 et. seq.), and Ellis Act (Government Code section 7060 et seq.).

SECTION 9. Severability. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 10: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 19th day of August 2020 by the following vote:

AYES:	4	COUNCILMEMBERS:	Albert, Haffa, Williamson, Roberson
NOES:	1	COUNCILMEMBERS:	Smith
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:

DocuSigned by:

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 Mayor of said City

DocuSigned by:

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 City Clerk thereof