



Office of the City Manager

3300 Capitol Avenue, Building A | P.O. Box 5006, Fremont, CA 94537-5006

510 284-4000 *ph* | 510 284-4001 *fax* | www.fremont.gov

**AN EXECUTIVE ORDER OF THE DIRECTOR OF EMERGENCY SERVICES
IMPOSING REGULATIONS RELATED TO EVICTIONS FROM ALL
RESIDENTIAL RENTAL UNITS DUE TO THE NOVEL CORONAVIRUS
(COVID-19) DECLARED EMERGENCY**

WHEREAS, international, national, state and local health and governmental authorities are responding on an urgent, emergency basis to an unprecedented outbreak of respiratory disease caused by as a novel coronavirus that emerged in 2019 (“COVID-19”); and

WHEREAS, on March 10, 2020, the County of Alameda (“County”) declared a public health emergency as a result of COVID-19; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic; and

WHEREAS, on March 12, 2020 the County Public Health Department recommended that all non-essential gatherings of more than 250 people should be cancelled or postponed, and smaller gatherings should be cancelled or postponed if held in spaces that do not allow social distancing of six feet per person resulting in adverse economic impacts to people affiliated with such events; and

WHEREAS, on March 16, 2020, the County of Alameda joined Contra Costa, Marin, San Francisco, San Mateo, Santa Clara counties and the City of Berkeley on a legal order directing their respective residents to shelter at home for three weeks beginning March 17, 2020 (“Shelter-in-Place Order”). The Shelter-in-Place Order also requires all businesses except essential businesses as described in the Order to cease all activities at facilities located within the County except minimum basic operations and prohibits all public and private gatherings of any number of people except for limited purposes as well as all non-essential travel; and

WHEREAS, on March 16, 2020, the Governor of the State of California issued Executive Order N-28-20, which suspended “[a]ny 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” of certain tenants affected by the COVID-19 pandemic; and

WHEREAS, on March 17, 2020, the Fremont City Council proclaimed the existence of a local emergency in response to the COVID-19 pandemic; and

WHEREAS, on March 18, 2020, the federal government announced temporary suspensions of certain foreclosures and related evictions to promote housing stability during the COVID-19 pandemic; and

WHEREAS, as the response to the public health emergency continues to escalate, many City residents and businesses will suffer adverse economic impacts from COVID-19, including, but not limited to lost business through the hospitality, retail, entertainment, and gig economies; and



WHEREAS, displacement through eviction destabilizes the living situation of tenants and homeowners and impacts the health of County residents by uprooting children from schools, disrupting the social ties and networks that are integral to citizens' welfare and the stability of communities. It also creates undue hardship for tenants and through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing; and

WHEREAS, COVID-19 poses a unique threat to people experiencing homelessness, who lack resources for sanitation, stay in overcrowded shelters, encampments, vehicles and other places, and already have a high rate of poorly treated chronic illnesses; and

WHEREAS, such displacement, destabilization and any increase in homelessness would increase the risk of transmission of COVID-19 throughout the County by rendering it difficult or impossible for individuals to shelter-in-place and to observe social distancing and hygiene practices that are recommended to reduce the transmission of COVID-19; and

WHEREAS, pursuant to Executive Order N-28-20 issued by the Governor of the State of California on March 16, 2020, the emergency consumer protections afforded by Penal Code section 396, subdivision (f) are in effect through May 31, 2020; accordingly, no new evictions of residential tenants may be pursued until May 31, 2020 at the earliest, as a matter of state law; and

WHEREAS, pursuant to Executive Order N-28-20 issued by the Governor of the State of California on March 16, 2020, any provision of state law that would preempt or otherwise restrict a local government's exercise of its policy power to impose substantive limitations on evictions due to specified financial burdens caused by COVID-19 are suspended; and

WHEREAS, the Governor of the State of California has stated that individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19 and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks; and

WHEREAS, because of these impacts, many employers have laid off or will need to lay off employees, working City residents with children may be compelled not to work in order to provide care for their child(ren), and many City residents who are working and become ill due to COVID-19, or who must self-quarantine due to COVID-19 because they have been exposed to COVID-19, do not have paid sick leave; and

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

WHEREAS, further economic impacts are anticipated, leaving tenants vulnerable to eviction; and

WHEREAS, pursuant to Government Code Section 8634 and Chapter 2 of the Fremont Municipal Code, including without limitation, Fremont Municipal Code Section 2.20.110, 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 the COVID-19 emergency; and

WHEREAS, in the interest of public peace, health, and safety as affected by the emergency caused by the spread of COVID-19, it is necessary to issue these regulations related to the protection of the public peace, health and safety.

NOW, THEREFORE, I HEREBY PROCLAIM AND ORDER, in my capacity as the City's Director of Emergency Services that regulations establishing a temporary moratorium on eviction of Residential Tenants impacted by the COVID-19 pandemic immediately shall be in effect as follows:

SECTION 1. DEFINITIONS

“Landlord” means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and/or occupancy of a Residential Unit and the agent, representative, or successor of any of the foregoing. Landlord includes, without limitation, a mobilehome park owner leasing spaces to a Mobilehome owner.

“Mobilehome” means a structure transportable in one or more sections, designed and equipped to contain no more than one dwelling unit, to be used with or without a foundation system and shall include, without limitation, structures meeting the definition set forth in California Health and Safety Code sections 18008.

“No-fault Eviction” means any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant, including but not limited to eviction notices served pursuant to Code of Civil Procedure sections 1161(1), 1161(5), or 1161c.

“Notice of Termination” shall mean the notice informing a Tenant of the termination of their right to occupy in accordance with applicable California law, including but not limited to a 3- or 30-day notice to pay or quit.

“Residential Tenant” (or “Tenant”) means a residential tenant, subtenant, lessee, sublessee, homeowner, or any other person entitled by written or oral rental, mortgage or other agreement, or by sufferance, to use or occupancy of a Residential Unit.

“Residential Unit” means a structure or Mobilehome or the portion thereof that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and for which person or household pays rent for the use and/or occupancy of the structure or Mobilehome, or the space where a Mobilehome is located, for periods of thirty (30) days or more whether or not the residential use is a conforming use permitted under the Fremont Municipal Code. For purposes of this Executive Order, any payments, including without limitation, mortgage payments, for the use and/or occupancy of a Mobilehome or the space where a Mobilehome is located shall be considered “rent.”

SECTION 2. RESIDENTIAL EVICTION MORATORIUM

The City hereby imposes a temporary moratorium on eviction of Residential Tenants impacted by the COVID-19 pandemic as follows:

- A. Eviction of Residential Tenants. During the period of local emergency declared in response to COVID-19, no landlord shall endeavor to evict a Residential Tenant in either of the following situations: (1) for nonpayment of rent if the Tenant demonstrates that the Tenant is unable to pay rent due to financial impacts related to COVID-19 as described in this Executive Order, or (2) for a no-fault eviction unless immediately necessary because of the existence of a hazardous condition affecting tenants or neighbors. For the purposes of this section, a hazardous condition shall not include the presence of individuals who have been infected by or exposed to COVID-19.
- B. Substantial COVID-19 Losses Affording Protection. To be afforded the protections established under this Executive Order, a Residential Tenant shall have demonstrated in accordance with the requirements of this Executive Order that his/her inability to pay rent is due to having suffered as a result of the COVID-19 outbreak and associated crisis due to, without limitation, (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (2) lay-off, loss of hours, or other income reduction resulting from business reduction or closure or other economic or employer impacts of COVID-19; (3) compliance with an order or directive from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (4) extraordinary out-of-pocket medical expenses; or (5) child care needs arising from school closures related to COVID-19.
- C. Delinquencies or Losses Unrelated To COVID-19 Not Covered. Notwithstanding any other provision herein, a Residential Tenant shall not be afforded the protections established under this Executive Order if, as of March 16, 2020, such Residential Tenant already was in default or had two (2) or more demonstrated delinquencies in rental payments over the prior twelve (12) month period prior to March 16, 2020.
- D. Procedures.
 1. To qualify for the protections of this Executive Order, upon receipt of a Notice of Termination, a Residential Tenant must notify Landlord, that he/she has substantial loss of income, significant out-of-pocket medical expenses, or extraordinary child care needs caused by COVID-19 as described in this Executive Order and must provide Landlord with the documentation described below. To the extent reasonably feasible, the Residential Tenant should notify their Landlord on or before the day rent payment is due of their potential inability to pay the rent because of COVID-19, but in no event must the Tenant provide such notice later than five (5) calendar days after the Residential Tenant is properly served with a Notice of Termination for non-payment of rent.

2. A Landlord must provide the following notice in at least 12-point font to affected Residential Tenants when serving such Residential Tenants with a Notice of Termination:

“NOTICE: THE CITY OF FREMONT HAS
ADOPTED A TEMPORARY MORATORIUM ON
EVICTIONS FOR NONPAYMENT OF RENT
PAYMENTS DUE TO COVID-19. UPDATED
INFORMATION MAY BE FOUND AT
www.Fremont.gov/Housing/EvictionMoratorium OR
CALL THE CITY’S HOUSING DIVISION AT 510-
494-4500.”

3. A Landlord who knows that a Residential Tenant cannot pay some or all of the rent temporarily for the reasons set forth above shall not serve a notice pursuant to California 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 for nonpayment of rent. A Landlord shall be deemed to know of a Tenant’s inability to pay rent within the meaning of this Executive Order if the Tenant notifies the Landlord in writing of lost income and inability to pay full rent due to financial impacts related to COVID-19, and provides documentation to support the claim as specified in Subsection E, below, of this Executive Order. For purposes of this Executive Order, “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. Any medical or financial information provided to the Landlord shall be held in confidence, and only used for evaluating the Tenant’s claim.

E. Documentation.

1. To qualify for the protections of this Executive Order, Residential Tenants must demonstrate, through documentation or other objectively verifiable means, a substantial hardship or inability to pay rent payments when due caused by COVID-19. Such Residential Tenants must show a substantial decrease in income, significant out-of-pocket medical expenses, or extraordinary childcare needs.
2. The following documents shall create a rebuttable presumption that the Residential Tenant has a substantial hardship or inability to pay rent payments when due caused by COVID-19:
 - a. Letter from employer or other source of income citing COVID-19 as a reason for reduced work hours, termination, or other significant reduction in pay;
 - b. Employer paycheck stubs showing a reduction in pay following the COVID-19 outbreak;

- c. Bank statements showing a reduction in income following the COVID-19 outbreak;
- d. Documentation showing payment of substantial out-of-pocket medical expenses caused by COVID-19;
- e. Documentation showing the closure of a school or childcare facility where a child in the Residential Tenant's care would otherwise be present during the Tenant's working hours.
- f. A Residential Tenant may provide other documentation to demonstrate a substantial hardship or inability to pay rent payments when due caused by COVID-19.

F. Retaliation Prohibited/No Utility or Service Shutoff. A Landlord shall not retaliate against a Residential Tenant for nonpayment of rent caused by COVID-19 or for exercising their rights under this Executive Order, including but not limited to, except for emergencies, by shutting off any utilities or reducing services or amenities to which the Residential Tenant would otherwise be entitled.

G. Tenant's Liability for Rent. During the period of local emergency declared in response to COVID-19, a Residential Tenant seeking protection under this Executive Order shall pay the portion of the rent that the Tenant is able to pay, as and when able. Nothing in this Executive Order shall relieve a Residential Tenant of liability for the unpaid rent, which the Landlord may seek after expiration of the local emergency. A Landlord shall not impose late fees or serve any notice for nonpayment of rent upon an affected Residential Tenant provided such Residential Tenant has within ninety (90) days following the expiration of the declared local emergency repaid fifty percent (50%) of any overdue rent and expenses, and, within one hundred-eighty (180) following the expiration of the declared local emergency, repaid all outstanding overdue rent and expenses accrued during the pendency of declared local emergency. A Landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Executive Order; nor may a landlord seek rent that is delayed for the reasons stated in this Executive Order through the eviction process.

H. Implementation of Temporary Moratorium. This Executive Order applies, without limitation, to nonpayment eviction notices, no-fault eviction notices, and unlawful detainer actions based on such notices, served or filed on or after the date on which the local emergency was proclaimed.

SECTION 3. VIOLATIONS

Violations of this Executive Order shall be punishable as set forth in Chapter 1.15 of the Fremont Municipal Code. In addition, this Executive Order grants a defense in the event that an unlawful detainer action is commenced in violation of this Executive Order. The remedies provided by this Executive Order are cumulative and in addition to any other remedies available at law or in equity.

SECTION 4. DURATION

This Executive Order shall be of no further force or effect one hundred and eighty (180) days from the expiration of the local emergency declared in response to the COVID-19 pandemic, together with any extensions adopted thereto, declared by the City of Fremont. The eviction moratorium established in this Executive Order, however, shall be of no further force and effect thirty (30) days from the expiration of the local emergency, together with any extensions adopted thereto.

SECTION 5. CEQA

Under Title 14 of the California Code of Regulations, Section 15061(b)(3) and Section 15378(b), each as a separate and independent basis this Executive Order is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

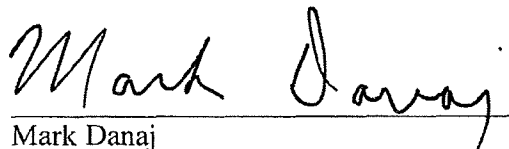
SECTION 6. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Executive Order is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Executive Order. The Director of Emergency Services hereby declares that he would have adopted passed this Executive Order and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 7. PUBLICATION

The City Clerk shall certify to the approval of this Executive Order and shall cause notice of it to be disseminated to the public and be given widespread publicity and notice.

APPROVED and ISSUED this ___ day of March 2020.



Mark Danaj
City Manager/Director of Emergency Services