

ORDINANCE NO. _____

**URGENCY ORDINANCE OF THE COUNTY OF MENDOCINO, STATE OF CALIFORNIA,
ENACTING TEMPORARY RESTRICTIONS ON COVID-19 PANDEMIC RELATED
COMMERCIAL AND RESIDENTIAL EVICTIONS**

WHEREAS, on March 4, 2020, Governor Newsom issued a Proclamation of a State of Emergency in the State of California related to the COVID-19 pandemic; and

WHEREAS, the County of Mendocino Health Officer declared a local health emergency related to the COVID-19 on March 4, 2020; and

WHEREAS, the County of Mendocino Director of Emergency Services proclaimed the existence of a local emergency related to COVID-19 on March 4, 2020; and

WHEREAS, on March 10, 2020, the Board of Supervisors of the County of Mendocino ratified the local emergency related to COVID-19 as proclaimed by the Chief Executive Officer/Director of Emergency Services and Ratifying the Existence of a local emergency as proclaimed by the Health Officer; and

WHEREAS, in light of the COVID-19 pandemic and Governor Newsom's state of emergency proclamation on March 16, 2020, the Governor issued Executive Order N-28-20, suspending provisions of state law prohibiting a local government from exercising its police power to impose substantive limitations on residential or commercial evictions under certain circumstances through May 31, 2020; and

WHEREAS, a copy of the Governor's executive order is attached hereto as Exhibit 1; and

WHEREAS, the Governor issued subsequent Executive Orders, including EO N-66-20 and EO N-71-20, which collectively extended the effect of paragraph 2 of EO N-28-20, which gives local governments the ability to exercise their police powers to impose substantive limitations on residential or commercial evictions under certain circumstances through September 30, 2020; and

WHEREAS, the Health Official of the County of Mendocino issued a shelter in place order on March 18, 2020, which has been revised and updated most recently on August 13, 2020; and

WHEREAS, on March 24, 2020, the Board of Supervisors of the County of Mendocino enacted Urgency Ordinance No. 4460, which provided eviction protections to the people of Mendocino, as permitted by Executive Order N-28-20, through May 31, 2020; and

WHEREAS, on April 6, 2020, the California Rules of Court were amended to add Emergencies Rules 1 & 2 of Appendix I, which severely restricted the court actions for the purpose of evicting or judicially foreclosing during the COVID-19 Pandemic; and

WHEREAS, the restrictions in Emergency Rules 1 & 2 of Appendix I of the California Rules of Court have protections for the people of Mendocino from evictions and judicial foreclosures by severely limiting the ability to initiate and litigate eviction and foreclosure actions; and

WHEREAS, Emergency Rules 1 & 2 of Appendix I of the California Rules of Court are set to end on September 1, 2020; and

WHEREAS, in the absence of the protections of Ordinance No. 4460, which expired on May 31, 2020, and in the absence of Emergency Rules 1 & 2 of Appendix I after September 1, 2020, the people of Mendocino would no longer benefit from the protections against eviction proceedings as permitted by Executive Order N-28-20; and

WHEREAS, evictions resulting from the conditions identified in Executive Order N-28-20 continue to present an immediate threat to the public peace, health and safety, as described in Government Code section 25123(d) in that they will potentially cause the irregular and increased displacement of residents and commercial businesses, contribute to an increase in the homeless population in Mendocino County, and make it more difficult for the County to enforce the shelter-in-place order designed to promote public health through social distancing to combat the negative effects of the COVID-19 pandemic; and

WHEREAS, there is an urgent need for the County of Mendocino to enact such substantive limitations on residential and commercial evictions to address the immediate threat to the public peace, health and safety that the COVID-19 pandemic related evictions will create;

NOW, THEREFORE, The Board of Supervisors of the County of Mendocino ordains as follows:

SECTION 1. The provisions of the Governor's Executive Order N-28-20, including its recitals, are incorporated as if fully set forth herein.

SECTION 2. The above recitals, and the recitals in the Governor's Executive Order N-28-20, are true and correct.

SECTION 3. Findings and purpose.

In order to address the immediate threat to the public peace, health and safety, this ordinance temporarily prohibits evictions throughout the unincorporated areas of the County of Mendocino related to the existence of the COVID-19 pandemic emergency to the extent permitted by the Governor's Executive Order N-28-20, extended by EO N-66-20 and EO N-71-20, and as indicated below.

SECTION 4. Applicability.

This ordinance applies in the unincorporated areas of the County of Mendocino, from the Effective Date of this Ordinance until paragraph two (2) of the Governor's Executive Order N-28-20 is no longer effective, which is either September 30, 2020, or a later date based on an extension by the Governor of California.

SECTION 5. Eviction Restrictions and Repayment of Rent.

- a. Pursuant to the general police power of the County to protect the health, safety and welfare of its citizens, the commencement and prosecution of all causes of action that could be used to evict or otherwise eject a residential or commercial tenant, or occupant of a residential real property after foreclosure, including but not limited to

judicial foreclosure, Code of Civil Procedure section 725a et seq., or unlawful detainer, Code of Civil Procedure section 1161 et seq., is suspended, but only if the following conditions apply:

1. The basis of the eviction is non-payment 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 describe in subparagraph (1) was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and
3. The tenant, or occupant of a residential real property after foreclosure, provides adequate documentation that the failure to pay rent is due to a decrease in household or business income or out-of-pocket medical expense related to the COVID-19 pandemic or any local, state, or federal government response to COVID-19.

b. For the purpose of this Ordinance, the following definitions apply:

1. "Substantial out-of-pocket medical expenses" means expenses not reimbursed or covered by insurance or any other program, which exceed 10% of the monthly take-home pay of the tenant or occupant responsible for the medical expenses.
2. "Substantial loss of income" means a reduction of income due to any of the following: (A) job loss or temporary layoff, (B) a reduction in the number of compensable hours of work, (C) a store, restaurant, office, or business closure, (D) a decrease in business income caused by a reduction in operating hours or consumer demand, or (E) the need to miss work to care for a minor due to school closure, or to care for a quarantined family member.
3. "Adequate documentation" includes, but is not limited to, letters from employers citing COVID-19 pandemic or related government action as the basis for termination of employment or reduced work; employer paycheck stubs; bank statements; letters or notifications from schools or childcare facilities in which the tenant has a dependent enrolled regarding COVID-19 related closures that substantially affected the tenant's income; or a sworn statement by the tenant, or occupant of a residential real property after foreclosure, made under the penalty of perjury, attesting to the lost income or out-of-pocket medical expenses, including facts sufficient to demonstrate that loss, and attesting to their inability to gather the documentation described herein.

c. Nothing in this resolution shall relieve a tenant of the obligation to pay rent, nor restrict a landlord's ability to recover rent due.

- d. This prohibition does not apply to all eviction or ejection actions.
1. Remaining actions not prohibited by this Ordinance include those based on conditions other than the conditions specified in this section under subparagraph (a), including but not limited to eviction or ejection actions such as forcible entry or forcible detainer, Code of Civil Procedure sections 1159 & 1160.
 2. Except as provided in subsection 5(e), the restrictions in this Ordinance shall not apply to a landlord, or other entity in the position to pursue an eviction or foreclosure action, under the following conditions:
 - A. A fifteen day notice is provided to the tenant, or occupant, stating:
 - i. That rent is past due, and must be paid within fifteen (15) days to avoid an eviction action, unless adequate documentation is provided;
 - ii. That the tenant, or occupant, has the ability to provide adequate documentation, pursuant to this Ordinance, within fifteen (15) days of notice, and provides the means by which such adequate documentation can be delivered, which at a minimum must include a mailing address; and
 - iii. That the tenant and landlord, or other entity in the position to pursue an eviction action, may agree to a payment plan for past due rent.
 - B. Good faith attempt by the landlord, or other entity in the position to pursue an eviction action, to negotiate a payment plan with the tenant.
 - C. The tenant, or occupant, fails to do any of the following:
 - i. To pay the full amount of rent due;
 - ii. To vacate the property;
 - iii. To provide adequate documentation to the landlord, entity that provided the notice, within fifteen (15) days after notice is provide pursuant to subsection (d)(2)(A); or
 - iv. To enter into a payment plan, within twenty (20) days, that is agreeable to the landlord, or other entity in the position to pursue an eviction action.
- e. The restrictions in this Ordinance shall apply, notwithstanding subsection 5(d)(2), if a court has not yet issued a final judgment in an action permitted by subsection 5(d)(2), and the tenant or occupant files a declaration with the court attesting to their inability to pay, which conforms to the circumstances under subsection (5)(a), attaches adequate documentation to such declaration, and demonstrates good

cause for why they were unable to provide the adequate documentation within fifteen (15) days as required by subsection 5(d)(2)(ii), if applicable, and demonstrates a good faith attempt to negotiate a payment plan. If good cause is shown, a court may issue any appropriate orders in accordance with the restrictions of this Ordinance.

- f. Landlords and tenants are encouraged to enter into payment plans. Payment plans provide financial security to landlords, especially those who are experiencing hardship during the COVID-19 pandemic, provides structured and realistic payments that are workable by tenants, reduces stress on the courts, and provides an opportunity to create a tailored solution to each unique situation.

SECTION 6. Other provisions.

- a. All public housing authorities in the County are requested to extend deadlines for housing assistance recipients or applicants to deliver records or documents related to their eligibility for programs, to the extent that those deadlines are within the discretion of the housing authority.
- b. Financial institutions in the County holding home or commercial mortgages, including banks, credit unions, government-sponsored enterprises, and institutional investors, are requested 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.
- c. This ordinance shall be liberally construed to provide the broadest possible protection for the citizens of the County.
- d. The County Executive Officer, the County Counsel, and all other County officers and department heads, are authorized and directed to take such other and further actions as may be necessary or appropriate to implement the intent and purposes of this resolution.
- e. Tenants may use the protections afforded in this ordinance as an affirmative defense in an eviction action, including but not limited to an action for unlawful detainer.
- f. This ordinance may be enforced as stated in the provisions of this ordinance, as a violation of County Code, as a nuisance, or by any other available and legal enforcement mechanism.

SECTION 7. Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, 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 8. Effective date.

This ordinance shall take effect immediately as an urgency ordinance, and shall be applicable as of September 1, 2020, the date of approval of this ordinance. This is based on the Board of Supervisors finding that this ordinance is adopted in compliance with Government Code section 25123, that it is necessary for the protection of the public peace, health and safety.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of _____, 2020, by the following roll call vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

Deputy

APPROVED AS TO FORM:
CHRISTIAN M. CURTIS, County Counsel

JOHN HASCHAK, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy