

ORDINANCE NO. 2021-32 **DRAFT**

AN URGENCY ORDINANCE CONTINUING A TEMPORARY PROHIBITION ON CERTAIN EVICTIONS OF RESIDENTIAL TENANTS IN CONTRA COSTA COUNTY

The Contra Costa County Board of Supervisors ordains as follows:

**Section 1. Findings.**

- A. On January 30, 2020, the World Health Organization declared the outbreak of a novel coronavirus that causes the disease named coronavirus disease 2019 (“COVID-19”), a public health emergency of international concern.
- B. On January 31, 2020, as the result of confirmed cases of COVID-19, the U.S. Secretary of Health and Human Services declared a public health emergency nationwide.
- C. On March 3, 2020, Contra Costa Health Services announced the first case of local transmission of the virus causing COVID-19 in Contra Costa County.
- D. On March 4, 2020, Governor Gavin Newsom proclaimed the existence of a state of emergency in California under the California Emergency Services Act, Gov. Code § 8550 et seq.
- E. On March 10, 2020, the Board of Supervisors found that due to the introduction of COVID-19 in the County, conditions of disaster or extreme peril to the safety of persons and property had arisen, commencing on March 3, 2020. Based on these conditions, pursuant to Government Code section 8630, the Board adopted Resolution No. 2020/92, proclaiming the existence of a local emergency throughout the County.
- F. The legislative bodies of a number of cities in Contra Costa County also adopted local emergency proclamations due to COVID-19 pursuant to Government Code section 8630.
- G. On March 16, 2020, the County Health Officer issued an order requiring County residents to shelter at their places of residence in order to slow community transmission of COVID-19, subject to exceptions for the provision and receipt of essential services while complying with social distancing requirements to the maximum extent possible. The County Health Officer extended the order on March 31, 2020, and on April 29, 2020.
- H. On May 18, 2020, the County Health Officer extended the shelter-in-place order, continuing restrictions on many activity, travel, and business functions but allowing a limited number of additional businesses to resume operating. On June 2, June 5, and June 16, 2020, the County Health Officer issued orders allowing additional businesses to resume operating. On July 11, 2020, in response to an increase in community transmission and illness caused by the virus that causes COVID-19, the County Health Officer issued an order amending the June 16, 2020, order, increasing the restrictions on certain business and activities presenting a high risk for disease transmission.

- I. On August 26, 2020, September 4, 2020, and September 14, 2020, the County Health Officer issued orders allowing a limited number of additional businesses to resume operating. The County Health Officer issued orders amending the September 14, 2020, order on October 27, 2020, and November 4, 2020. The State implemented its Regional Stay at Home Order on December 17, 2020, and lifted the order on January 25, 2021.
- J. On June 15, 2021, the State of California eliminated its Blueprint for a Safer Economy, a COVID-19 recovery plan that reopened sectors of the economy and loosed restrictions on gatherings under a series of tiers based on case and testing positivity rates and other factors.
- K. On March 16, 2020, the Governor issued Executive Order N-28-20, which authorized local jurisdictions to suspend the evictions of residential and commercial tenants for the non-payment of rent if the non-payment was a result of the COVID-19 pandemic.
- L. On June 30, 2020, the Governor issued Executive Order N-71-20, which extended the authority of local jurisdictions to suspend the evictions of residential and commercial tenants for the non-payment of rent if the non-payment was a result of the COVID-19 pandemic through September 30, 2020.
- M. On April 6, 2020, the Judicial Council of California adopted Emergency Rule 1, effectively suspending action on or entry of default in eviction cases, and suspending judicial foreclosures, except where necessary to protect public health and safety.
- N. On April 21, 2020, the Board of Supervisors adopted Ordinance No. 2020-14, an urgency ordinance temporarily prohibiting evictions of residential and commercial real property tenants in the County impacted by the COVID-19 pandemic and establishing a moratorium on certain rent increases.
- O. On May 26, 2020, the Board of Supervisors adopted Ordinance No. 2020-16, an urgency ordinance continuing and modifying a temporary prohibition on evictions of tenants in Contra Costa County impacted by the COVID-19 pandemic, and continuing and modifying a residential rent increase moratorium.
- P. On July 14, 2020, the Board of Supervisors adopted Ordinance No. 2020-20, an urgency ordinance continuing a temporary prohibition on evictions of residential and certain commercial real property tenants in Contra Costa County impacted by the COVID-19 pandemic, and continuing a moratorium on certain residential rent increases.
- Q. The Judicial Council voted on August 14, 2020, to terminate the eviction protections in its Emergency Rule 1. This rule terminated September 1, 2020.
- R. On August 31, 2020, the Governor signed Assembly Bill 3088, the COVID-19 Tenant Relief Act of 2020 (the Act). The Act established statewide eviction protections for residential tenants, including mobilehome tenants, who are experiencing a financial hardship related to COVID-19. The Act was amended by Senate Bill 91 on January 29, 2021, and by Assembly Bill 832 on June 28, 2021.

- S. The Act prohibits residential tenants from being evicted for failure to pay rent because of a COVID-19-related hardship occurring between March 1, 2020, and August 31, 2020, as long as the tenant provides the landlord with a written declaration of hardship. Residential tenants who experienced a new COVID-19-related hardship between September 1, 2020, and January 31, 2021, and were served with an eviction notice before February 1, 2021, are also protected from eviction as long as they pay 25 percent of the rent due by January 31, 2021. Residential tenants who experienced a new COVID-19-related hardship between September 1, 2020, and September 30, 2021, and were served with an eviction notice on or after February 1, 2021, are also protected from eviction as long as they pay 25 percent of the rent due by September 30, 2021.
- T. In addition, under the Act, as amended by Assembly Bill 832, from October 1, 2021, through March 31, 2022, a court may not issue a summons in an unlawful detainer case based on nonpayment of rental debt that accumulated due to COVID hardship unless the landlord can show that they applied for rental assistance and the application was denied. This requirement does not apply to new tenancies created after October 1, 2021. If a landlord does not make this showing within 60 days, the court must dismiss the case. Also, starting October 1, 2021, a tenant in an unlawful detainer case who has an approved rental assistance application can ask the court to stop the eviction until the funding is received. The case will be dismissed if that payment resolves the unpaid rent that is the basis of the unlawful detainer.
- U. The COVID-19 pandemic and associated state and local public health orders resulted and continue to result in a loss of income to a widespread portion of the local population that depend on wages or business income, hindering their ability to pay rent and leaving them vulnerable to eviction, and in higher medical expenses for certain Contra Costa County residents.
- V. Contra Costa County and the cities within the County are also experiencing a housing affordability crisis, which is driving homelessness and displacement of residents.
- W. Many of the County's renters are rent-burdened, paying over 30 percent of their income on rent, and some renters are severely rent-burdened, paying over 50 percent of their income on rent, which leaves less money for families to spend on other necessities like food, healthcare, transportation, and education.
- X. Housing displacement due to evictions occurring during the local emergency could lead to increased spread of COVID-19, including new variants of the virus, overburdening the healthcare delivery system and potentially resulting in greater loss of life.
- Y. There is an urgent need for the County to continue a temporary prohibition on certain residential evictions to protect the health, safety, and welfare of its residents in light of the emergency declared regarding the COVID-19 pandemic.
- Z. The Act authorizes local jurisdictions to amend existing urgency ordinances to continue prohibitions on certain types of residential evictions, including no-fault evictions.

Without local protections in addition to statewide eviction protection for residential renters, eviction notices are likely to increase in light of the COVID-19 pandemic.

- AA. On September 22, 2020, the Board adopted Ordinance No. 2020-25, which prohibits a landlord from terminating a residential tenancy for a no-fault reason; prohibits a landlord from terminating a residential tenancy on the basis that a tenant allowed an unauthorized occupant to live in the dwelling unit, if the occupant is the tenant's immediate family member living in the dwelling unit as a result of the COVID-19 pandemic; and prohibits a landlord from increasing rent on a residential real property.
- BB. On September 29, 2020, the Board adopted Ordinance No. 2020-26, which prohibits a landlord from terminating specified residential tenancies, prohibits a landlord from increasing rent on a residential real property, and authorizes a temporary prohibition on evictions of certain commercial tenants impacted by the COVID-19 pandemic.
- CC. On November 17, 2020, the Board adopted Ordinance No. 2020-29, which continued, through January 31, 2021, the prohibitions on specified residential and small-business commercial evictions that were included in Ordinance Nos. 2020-25 and 2020-26.
- DD. On February 2, 2021, the Board adopted Ordinance No. 2021-04, which continued, through June 30, 2021, the prohibitions on specified residential evictions that were included in Ordinance No. 2020-29; and continued, through March 31, 2021, the prohibitions on specified small-business commercial evictions that were included in Ordinance No. 2020-29.
- EE. On March 23, 2021, the Board adopted Ordinance No. 2021-11, which continued, through June 30, 2021, the prohibitions on specified residential and small-business commercial evictions that were included in Ordinance No. 2021-04.
- FF. On June 22, 2021, the Board adopted Ordinance No. 2021-20, which continued, through September 30, 2021, the prohibitions on specified residential and small-business commercial evictions that were included in Ordinance No. 2021-11.
- GG. As authorized by the Act, the residential eviction protections in Ordinance No. 2021-20 continue to remain in effect through \_\_\_\_\_. The Board finds, pursuant to Civil Code section 1946.2 and Code of Civil Procedure section 1179.05(b), that: the just cause for termination of a residential tenancy under this urgency ordinance is consistent with Civil Code section 1946.2; this urgency ordinance, by prohibiting a landlord from terminating a residential tenancy on the basis that a tenant allowed an unauthorized occupant to live in the dwelling unit if the occupant is the tenant's immediate family member living in the dwelling unit as a result of the COVID-19 pandemic, provides additional tenant protections that are not prohibited by any other provision of law; and this urgency ordinance is more protective than the provisions of Civil Code section 1946.2.

**Section 2. Definitions.** For purposes of this ordinance, the following words and phrases have the following meanings:

- (a) “Immediate family” means a person’s spouse, domestic partner, children, grandchildren, parents, or grandparents.
- (b) “No fault cause for eviction” means any eviction for which the notice of termination of tenancy is not based on an alleged fault of the tenant.
- (c) “Residential real property” includes a mobilehome park and a mobilehome park space or lot.
- (d) “Tenancy” means the lawful occupancy of residential real property by agreement on a month-to-month basis or for a fixed term in excess of 30 days.

**Section 3. Prohibitions on Certain Residential Evictions.**

- (a) Through \_\_\_\_\_, a landlord shall not terminate a residential tenancy for any no fault cause for eviction.
- (b) Through \_\_\_\_\_, a landlord shall not terminate a residential tenancy on the basis of a tenant allowing an unauthorized occupant to live in the dwelling unit, if the occupant is a member of the tenant’s immediate family living in the dwelling unit as a result of the COVID-19 pandemic.
- (c) Notwithstanding the foregoing, nothing in this section limits a landlord’s ability to terminate a residential tenancy for any of the following reasons:
  - (1) The termination is necessary to protect the landlord’s health or safety or any other tenant’s health or safety.
  - (2) The termination is necessary where the owner or a member of the landlord’s immediate family intends to occupy the residential real property.
  - (3) The termination is to remove the residential real property from the rental market, but only when authorized by Government Code section 7060 et seq.
- (d) To the extent state law is more protective of a residential tenancy than this section, those state law provisions shall apply to the residential tenancy. Nothing in this section shall be construed to supersede any applicable requirements in Civil Code section 1946.2 pertaining to relocation assistance or rent waiver.

**Section 4. Remedies.**

- (a) The provisions of this ordinance may be asserted as an affirmative defense in an unlawful detainer action.
- (b) If a landlord attempts to recover possession or recovers possession of residential real property or commercial real property in violation of this ordinance, retaliates against a tenant for the exercise of any rights under this ordinance, or attempts to prevent a tenant

from acquiring any rights under this ordinance, the tenant may institute a civil proceeding for injunctive relief, money damages of not more than three times actual damages (including damages for mental or emotional distress), and whatever other relief a court deems appropriate. If damages are awarded for mental or emotional distress, the award shall only be trebled if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of the provisions of this ordinance. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.

**Section 5. Supersedes.** This ordinance supersedes Ordinance No. 2021-20. Ordinance No. 2020-14 applies to eviction notices, and unlawful detainer actions based on those notices, served or filed between March 16, 2020, and May 25, 2020. Ordinance No. 2020-16 applies to eviction notices, and unlawful detainer actions based on those notices, served or filed between May 26, 2020, and July 13, 2020. Ordinance No. 2020-20 applies to eviction notices for residential real property, and unlawful detainer actions based on those notices, served or filed between July 14, 2020, and August 31, 2020. Ordinance No. 2020-20 applies to eviction notices for commercial real property (as defined in Ordinance No. 2020-20), and unlawful detainer actions based on those notices, served or filed between July 14, 2020, and September 30, 2020. Ordinance No. 2020-26 applies to eviction notices for residential real property, and unlawful detainer actions based on those notices, served or filed between September 1, 2020, and November 16, 2020. Ordinance No. 2020-26 applies to eviction notices for commercial real property, and unlawful detainer actions based on those notices, served or filed between October 1, 2020, and November 16, 2020. Ordinance No. 2020-29 applies to eviction notices, and unlawful detainer actions based on those notices, served or filed between November 17, 2020, and January 31, 2021. Ordinance No. 2021-04 applies to eviction notices, and unlawful detainer actions based on those notices, served or filed between February 1, 2021, and March 22, 2021. Ordinance No. 2021-11 applies to eviction notices, and unlawful detainer actions based on those notices, served or filed between March 23, 2021, and June 30, 2021. Ordinance No. 2021-20 applies to eviction notices, and unlawful detainer actions based on those notices, served or filed between July 1, 2021, and September 30, 2021.

**Section 6. Applicability.** Government Code section 8634 authorizes the Board of Supervisors to promulgate countywide orders and regulations necessary to provide for the protection of life and property during a local emergency. Pursuant to Government Code section 8634, the regulations in this ordinance shall apply to cities within Contra Costa County and unincorporated Contra Costa County. To the extent that the governing body of a city enacts an ordinance or adopts a regulation that governs the subject matter of this ordinance, that city ordinance or regulation shall supersede this ordinance within that jurisdiction.

**Section 7. Severability.** If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other ordinance provisions or clauses or applications thereof that can be implemented without the invalid provision or clause or application, and to this end the provisions and clauses are declared to be severable. The Board of Supervisors hereby declares that it would have adopted this ordinance and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional, or otherwise unenforceable.

**Section 8. Declaration of Urgency.** This ordinance is hereby declared to be an urgency ordinance necessary for the immediate preservation of the public peace, health, and safety of the County. The facts constituting the urgency of this ordinance’s adoption are set forth in Section 1.

**Section 9. Effective Date.** This ordinance becomes effective immediately upon passage by four-fifths vote of the Board of Supervisors. This ordinance shall expire and be repealed as of \_\_\_\_\_, unless shortened or extended by the Board of Supervisors based on the existence of a local emergency.

**Section 10. Publication.** Within 15 days after passage, this ordinance shall be published once with the names of the supervisors voting for and against it in the East Bay Times, a newspaper published in this County.

PASSED ON September 21, 2021, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST: MONICA NINO,  
Clerk of the Board of Supervisors  
and County Administrator

\_\_\_\_\_  
Board Chair

By: \_\_\_\_\_  
Deputy

[SEAL]