

ORDINANCE NO. 4210

AN EMERGENCY ORDINANCE OF THE CITY OF HUNTINGTON BEACH ADDING
CHAPTER 3.58 TO THE HUNTINGTON BEACH MUNICIPAL CODE ESTABLISHING A
TEMPORARY BAN ON CERTAIN TENANT EVICTIONS FOR NON-PAYMENT OF RENT
AS A RESULT OF COVID-19 RELATED FINANCIAL STRAIN

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Findings.

Whereas, on March 4, 2020, Governor Newsom declared a State of Emergency due to the widespread, vast, and substantial health and safety threat posed by the Coronavirus pandemic (COVID-19) to the broad population of Californians;

Whereas, on March 16, 2020, Governor Newsom issued Executive Order N 28-20, finding in part, that despite sustained efforts, COVID-19 remains a threat and further efforts to control the spread of the virus to reduce and minimize the risk of infection and otherwise mitigate the effects of COVID-19 are needed;

Whereas the State and Counties and Cities have instituted extreme social distancing measures designed to prevent any gathering of any number of individuals in both public and private places, including in California businesses, mandating the sudden closure of colleges, high schools, grade schools, public institutions, and non-essential private-sector businesses throughout the State of California related to COVID-19;

Whereas these extreme social distancing requirements and private-sector business closures have left thousands of Californians out of work, on unpaid leave, substantial reduction in work or hours worked, laid off, or otherwise suddenly without requisite financial means to maintain their households and pay rents and mortgages related to COVID-19 and related State and County actions;

Whereas, to date, the substantial adverse economic impacts of COVID-19 on the population and businesses of California have been significant, and could threaten to undermine Californians' housing security and the stability of the California economy;

Whereas, pursuant to Governor Newsom's Executive Order N 28-20, local jurisdictions are no longer preempted by State Law from imposing certain temporary regulatory laws that restrict the ability of Landlords to effectuate certain tenant evictions;

Whereas, this Ordinance is adopted pursuant to Huntington Beach Charter Section 103, which authorizes the City Council "to make and enforce all laws and regulations in respect to Municipal Affairs, subject only to such restrictions and limitations as may be provided in this Charter or in the Constitution of the State of California" as well as Executive Order N 28-20;

Whereas, the City Council adopts this Emergency Ordinance pursuant to Charter Section 501 as an emergency measure for the immediate preservation of the public peace, health, and safety, by eliminating any uncertainty regarding evictions during the COVID-19 virus pandemic. This Emergency Ordinance shall remain in effect for no longer than 120 days from the date of adoption;

Whereas, this Emergency Ordinance adds Chapter 3.58 to the Huntington Beach Municipal Code ("HBMC") establishing a "Temporary ban on certain tenant evictions for non-payment of rent resulting from COVID-19 related financial concerns."

THEREFORE, the City Council of the City of Huntington Beach does hereby ordain and approve as follows:

SECTION 2. Chapter 3.58 is hereby added to the Huntington Beach Municipal Code to read as follows:

"3.58.010 Purpose"

The purpose of this Chapter is to prevent the eviction for a period of 120 days or until the City Council repeals this Emergency Ordinance, of certain residential and commercial tenants, who sufficiently demonstrate they cannot pay rent as a direct result of COVID-19-related substantial losses of income as a result of business closures, dramatic downturn of the economy, the substantial loss of working hours or wages, or layoffs specifically related to COVID-19 and related State and County actions.

Nothing in this Chapter shall ban, prevent, or prohibit a Landlord, real property owner, or person(s) with control over real property, from taking action against a tenant, including possible eviction, for other non-COVID-19-related reasons, such as damage being done to property, threat to safety and security of property, etc.

"3.58.020 Definitions"

Unless otherwise defined in this Chapter, all terms contained herein shall have the same meaning as defined in the Huntington Beach Municipal Code, or State law.

"Stay of Eviction" means the temporary moratorium on residential or commercial tenant(s) this Chapter has to offer, related to COVID-19 and related State and County actions.

"3.58.030 COVID-19 Tenant Protections"

In accordance with the Governor's Executive Order N 28-20, no Landlord, real property owner, or person(s) with control over real property, shall evict a residential or commercial tenant when the City Manager, in consultation with the City Attorney, establishes through documented evidence provided by the tenant and Landlord to the City that:

(i) The basis for the proposed eviction is for nonpayment of rent arising directly from a substantial decrease in household or business income (including, but not limited to, a substantial decrease in household income caused by layoffs or a substantial 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, demonstrably directly related to COVID-19 and related State and County actions; and

(ii) The decrease in household or business income or the out-of-pocket medical expenses described in subparagraph (i) above was directly caused by the COVID-19 pandemic, or by any local, State, or Federal government response to COVID-19.

The City Manager shall make a determination as to the efficacy of a Stay of Eviction within 5 days after receipt of documented evidence provided by the tenant and Landlord. In the event a tenant disputes the determination, he or she shall provide, in writing, a request that the matter be appealed to a hearing officer. Said appeal hearing will be conducted by a City-appointed hearing officers, and will take place within 20 days, if practicable.

In accordance with the Governor's Executive Order N 28-20, the statutory cause of action for judicial foreclosure (Code of Civil Procedure section 725(a), *et seq.*); 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 suspended to the extent of the limitation imposed by the City as to residential tenants.

While certain *evictions* are stopped by operation of this Emergency Ordinance, nothing in this Chapter shall relieve any tenant of the obligation to pay rent, rent owed, or rent held in arrears, nor shall it restrict a Landlord's ability to recover owed rent, or rent in arrears, at a later date after the date this Emergency Ordinance is no longer in effect. The protections in this Chapter shall be in effect for 120 days, unless this Emergency Ordinance is extended.

The City may engage with financial institutions to identify tools to be used to afford citizens of Huntington Beach relief from the threat of residential foreclosure and displacement, and to otherwise promote housing security and stability during this declaration of a State of Emergency, in furtherance of the objectives of this Chapter.

Nothing in this Chapter shall ban, prevent, or prohibit a Landlord, real property owner, or person(s) with control over real property, from taking action against a tenant, including possible eviction, for other non-COVID-19-related reasons, such as damage being done to property, threat to safety and security of property, etc.

It shall also be a violation of this Chapter for a residential or commercial tenant(s) to seek the relief this Chapter has to offer, where the tenant actually *has the ability to pay rent(s)* and has not suffered the harms contemplated by this Emergency Ordinance or by

related Governor's Executive Orders, including fraudulently claiming either that the tenant(s) cannot pay rents when they actually can, or that a Landlord is evicting in violation of this Chapter when the Landlord is not.

"3.58.040 Penalties"

- A. Violations of this Chapter shall be subject to Administrative Citation pursuant to Chapter 1.18, except that notwithstanding Section 1.18.070; and
- B. Any violation of this Chapter shall be assessed administrative fines in the following amounts:
 - 1. An administrative fine not exceeding one thousand dollars (\$1,000) for a first violation.
 - 2. An administrative fine not exceeding two thousand dollars (\$2,000) for a second violation within one (1) year of the first violation.
 - 3. An administrative fine not exceeding five thousand dollars (\$5,000) for each additional violation within one (1) year of the first violation.

None of the aforementioned administrative penalties, if/when assessed and imposed by the City, shall preclude any interested party from also seeking civil or criminal relief pursuant to other applicable laws and/or Statutes.

SECTION 3. The recitals provided in this Ordinance are true and correct and are incorporated into the substantive portion of this Ordinance.

SECTION 4. Nothing in this Ordinance is intended to conflict with or otherwise supersede any provision of the Huntington Beach Charter, in particular Charter Section 803.

SECTION 5. The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 6. If any section, subsection, sentence, clause, phrase, part, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part, or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts, or portions be declared invalid or unconstitutional.

SECTION 7. The City Council adopts this Ordinance pursuant to Charter Section 501 as an emergency measure and shall become effective immediately upon its adoption for the immediate preservation of the public peace, health, and safety. This Ordinance shall remain in effect for no longer than 120 days.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the 22nd day of January 2019.
ATTEST:

City Clerk

Mayor

REVIEWED AND APPROVED:



City Manager

APPROVED AS TO FORM:



City Attorney

INITIATED AND APPROVED:

Director of Finance