April 7, 2020

Sent via Email

Merced County Board of Supervisors
Rodrigo Espinoza, District 1
Lee Lor, District 2
Daron McDaniel, District 3
Lloyd Pareira, District 4
Scott Silveira, District 5

RE: Merced County Actions Necessary to Protect Housing Stability, Public Health, and Local Democracy

Dear Merced County Board of Supervisors,

While COVID-19 cases spread throughout the United States and across the world, and as governments at all levels consider protective measures for their residents, housing stability -- especially for the most vulnerable among us -- must rank as a critical priority in our actions. Bold, decisive, and swift action to ensure that residents are able to remain in their homes during this time is necessary to minimize the spread of the virus, protect public health, and avoid potentially long-lasting and devastating consequences of the pandemic. We, the undersigned organizations working alongside residents in Merced County, urge you to take immediate action to adopt the recommendations outlined below.

On Monday, March 16th, Governor Gavin Newsom issued Executive Order N-28-20 acknowledging the authority of local governments to enact various measures to protect the housing stability of renters and homeowners across the state and encouraged local governments to act. Furthermore, on March 19th, the Governor issued Executive Order N-33-20, a mandatory Stay at Home Order.

On March 27th, Governor Newsom issued Executive Order N-37-20 addressing tenant protections, however, after thorough review and analysis the order falls short in protecting vulnerable residents from eviction. To start, the order does not adequately protect tenants, creates confusion and, despite rhetoric to the contrary, is not the moratorium that is urgently needed to protect public health and economic stability. Given the confusion created by this order, we anticipate evictions will occur now and after the 60 day extension is over. Our analysis identifies how the Executive Order falls short:
The order merely delays eviction proceedings for qualifying tenants;

- It does not bar evictions nor does it even provide tenants with a defense to evictions regardless of whether or not a tenant can’t pay rent due to COVID-19;
- Tenants will still need to file a response to a UD within 5 days and appear in order to assert their right to an extended 60 day timeline to file their response;
- Tenants are only eligible for this deadline extension if they comply with several onerous requirements. Where they must:
  - Be current on their rent as of the date of the order:
  - Notify their landlord in writing within seven days (at most) of when rent is due, that they need to delay all or some of the rent because of a COVID-19 related reason;
  - Retain documentation of the COVID-19 related loss of income. Tenants must know about these specific requirements in order to gain protection under the order. Many tenants will simply not be able to meet these requirements, such as tenants without bank accounts or in the informal economy.
- Landlords are under no obligation to accept the rent at a later date, enter into payment, or work with tenants to keep them in their homes.
- Landlords can still serve a three day notice if a tenant has told them they can’t pay the rent AND still file an eviction for nonpayment of rent or any other reason during this emergency.
- The order only prohibits sheriff departments from forcefully removing tenants from their home if the sheriff determines that tenants have met the notice and proof requirements listed above.

Lastly, as you may be aware, the California Judicial Council passed a rule on April 6, 2020 which would provide an additional delay to unlawful detainer hearings in Court. Though it delays evictions, this new rule does not provide a defense to tenants unable to pay rent right now due to COVID-19 related loss of income. This is why Merced County must still act. We call upon you now to go above and beyond the Governor’s Order and the Judicial Council Rule by adopting unprecedented measures to protect residents, reduce physical and social dislocation, and promote public health during these extraordinary times.

Residents throughout Merced County have struggled to pay their rent or their mortgage long before this current crisis. For instance, lack of access to safe and affordable housing along with consistent and affordable utility services is a common issue and are now exacerbated during this time. For instance, 71.5% of lower income Merced County
Residents who rent are cost-burdened, spending more than 30% of their income on housing, and nearly 40% of lower income renters are severely cost-burdened, spending more than 50% of their income on housing. For residents who already struggle to meet their housing costs in a normal month, the myriad of financial impacts of the coronavirus pandemic will simply make it impossible for many individuals and families to stay in their homes without robust protective measures in place.

Unfortunately, given the lack of existing protections and massive job lay-offs, many vulnerable and low-income communities across Merced County will face an extensive eviction crisis if we don’t act now. All community members, regardless of jurisdiction, will likely be impacted and meaningful action to prevent evictions is necessary to ensure residents are protected during these times. Without your swift and decisive action, this pandemic risks entrenching and compounding the housing crisis in all of Merced County, and deepening existing inequities in housing opportunity, possibly for decades to come, while also further exacerbating the pandemic itself.

We urge the Merced County Board of Supervisors to take action immediately to protect the housing and economic stability of residents, especially the most vulnerable populations, by enacting ordinances with the following measures:

- A prohibition on all residential evictions, including mobile home parks, and foreclosures during the state of emergency. This is necessary to ensure that all residents can remain in their homes during the pandemic, without the confusion and difficulty that would result from requiring residents to individually substantiate the personal impacts of the coronavirus on their lives as well as the necessity of tenants appearing in court as defendants during a time when public health officials urge social distancing. Note that a current prohibition on evictions does not mean erasing missed rent payments but rather that tenants will not face the harsh and dangerous consequence of losing their homes in the midst of a global pandemic.
- A prohibition on assessing late fees or other charges associated with non-payment of rent or mortgage for the duration of the moratorium.
- A requirement that all residential landlords extend expiring leases until at least three months after the last day the emergency declaration is in effect.
- A requirement that all landlords and residential mortgage holders develop and implement payment plans to allow financially impacted tenants and homeowners a reasonable amount of time to become current on rent or mortgage payments.

---

● A response and protocol for the protection of undocumented individuals who may need health services or public assistance and ensure there are no legal consequences in the present and future for receiving such assistance.

● A protocol that ensures counties and cities are enforcing California’s Sanctuary Law SB54, that makes California a "sanctuary state". This law prohibits local and state agencies from cooperating with ICE regarding undocumented criminals who have committed misdemeanors.

● A protocol to enforce protective measures and education for all owners of farms and farmworkers in the County to ensure workers’ public health is prioritized.

● Remove any requirement that a tenant must “provide documentation to support the claim” of being financially impacted by COVID-19. The requirement to show documentation may cause an undue challenge for many residents, especially at this uncertain time. Ensuring the proposed ordinance will benefit all tenants - especially and including the most vulnerable - is critical to promoting the health and economic stability of residents in Merced County.

● A comprehensive financial recovery plan for tenants that includes emergency rental and mortgage assistance to support tenants, including those in the informal economy, who will not have access to resources made available by state and federal economic relief benefits.

● A protocol for emergency housing services for vulnerable residents, especially providing assistance to residents who are undocumented and have little to no access to federal assistance, unemployment benefits, and other available, yet restrictive public assistance.

● Provide and enhance your educational support, labor and income assistance, and health services for farmworkers and their families. Farmworkers and farmworker communities are one of the most vulnerable populations during this time. As essential workers, farmworkers are not able to effectively protect themselves from exposure, but are also facing other economic and access issues. Merced County needs to provide additional assistance and resources for this frontline community.

● A requirement that this ordinance shall apply in equal force to all areas of Merced County, including all incorporated cities. Marin County adopted an ordinance applicable to all cities within their jurisdiction. We have attached their staff report and ordinance for your convenience.

Additionally, Merced County must ensure that COVID-19 does not exacerbate existing disparities in access to safe drinking water. Many Merced residents lack access to safe and affordable drinking water, either because of water contamination or disconnection of service due to nonpayment. On Thursday April 2, Governor Newsom signed Executive
Order N-42-20, placing a moratorium on water shut offs and requiring households disconnected from water service since March 4 to be reconnected. This was a necessary step to ensure that Californians could shelter in place with safe water for drinking, cooking and sanitary purposes. However, more must be done for those whose water was shut off prior to March 4, and for those who have unsafe water coming from their taps.

In particular, we ask that Merced County require that it and/or all local jurisdictions and special districts within its boundaries take the following steps to ensure that all residents have access to safe drinking water while they shelter in place:

- Quickly and safely implement Executive Order N-42-20 by immediately ending all disconnections of water service for nonpayment and restoring service to all those who had water service disconnected since March 4, 2020.
- Ensure that all Merced residents have running water in their households by requiring reconnection of water service for any residence disconnected for nonpayment prior to March 4, 2020.
- Waive all late fees and penalties for water, trash and wastewater service during the COVID-19 emergency, and discontinue the use of liens.
- Utilize federal, state and County resources and funds to ensure that all Merced residents with unsafe tap water have access to emergency bottled water supplies during the COVID-19 crisis. This step is necessary given the bottled water shortage in stores and the economic impact of the current emergency. No one should be forced to contemplate using contaminated tap water because they are either unable to find, or unable to afford, bottled water during the emergency.

* * * * *

Thank you for your consideration of these recommendations and for your prompt action to protect all households in Merced County. While this is an unprecedented and worrisome time, it is also a historic opportunity for you to collectively lead and keep families safe. If you have any questions, or would like to discuss this further, please contact Sheng Xiong at smxiong@leadershipcounsel.org or (209) 756-5214.

In community,
Sheng Xiong, Policy Advocate, Leadership Counsel for Justice and Accountability
Jovana Morales, Policy Advocate, Leadership Counsel for Justice and Accountability
Claudia Corchado, Program Manager, Cultiva la Salud
Tsia Xiong, Chapter Director, Faith in the Valley - Merced
Blanca Ojeda, Community Organizer, Faith in the Valley - Merced
Gloria Sandoval, California Central Valley Journey for Justice
Patricia Chavez, Director of Policy, Parent Institute for Quality Education
Blanca Alvarado, Associate Director, Parent Institute for Quality Education
Crisantema Gallardo, Director, 99 Rootz
Jasmine Leiva, Senior Organizer, 99 Rootz
Loretta Spence, Love, Faith & Hope
Marilyn Mochel, Health Equity Project
Palee Moua, Health Equity Project
Ana Padilla, Civic Capacity Research Initiative at University of California Merced
Jesse Ornelas, Program Manager, Youth Leadership Institute
Alyssa Castro, Program Coordinator, Youth Leadership Institute
Sol Rivas, Hub Manager, Building Healthy Communities
Brenda Gutierrez, Communications Specialist, Building Healthy Communities
Monica Gomez, Project Assistant, Building Healthy Communities
ORDINANCE NO. -N.S.

URGENCY ORDINANCE TO THE CITY OR COUNTY CODE TITLE ___ THE COVID-19 EMERGENCY RESPONSE ORDINANCE

BE IT ORDAINED by the Council / Board of the CITY OR COUNTY OF ____________ as follows:

Section 1. The ____________ Code Chapter 13.110 is added to read as follows:

Chapter _________
COVID-19 EMERGENCY RESPONSE ORDINANCE

Sections:
XX.XXX.010 Findings and Purpose
XX.XXX.020 Prohibited Conduct
XX.XXX.030 Definitions
XX.XXX.040 Collection of Back Rent
XX.XXX.050 Application
XX.XXX.060 Implementing Regulations
XX.XXX.080 Remedies
XX.XXX.090 Severability

13.110.010 Findings and Purpose

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named “SARS-CoV-2.” The disease it causes has been named “coronavirus disease 2019,” abbreviated as COVID-19, (“COVID-19”). In response to this emergency, on DATE, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as “the State of Emergency”), which the [CITY] City Council or Board subsequently ratified on DATE. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.
On March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for renters and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing substantial income loss as a result of business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, we must take measures to preserve and increase housing security and access to essential services including safe water for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would provide.

Maintaining and restoring access to an adequate supply of safe water for drinking, cooking and sanitary purposes is essential to health and safety, including prevention of the spread of COVID-19, while Californians are practicing social distancing, self-quarantine, and self-isolation during this state of emergency.

California Government Code sections 8630 and 8634 and [insert local ordinance] authorize the [insert governing body] to proclaim a local emergency, as defined by Government Code section 8558, and promulgate orders and regulations necessary to provide for the protection of life and property.

During this State of Emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness, and to ensure safe water is available to all residents practicing social distancing, self-quarantine and self-isolation.

Accordingly, the City of [NAME] is adopting the following.

**XX.XXXXX.XX Prohibited Conduct**

A. During the State of Emergency, no landlord shall evict or attempt to evict a tenant for any reason except for imminent threat to the health and safety of other tenants or neighbors. Such imminent threat must be a stated cause for the eviction in the termination notice and a basis upon which the landlord bases the unlawful detainer action.

B. Upon the conclusion of the State of Emergency the following defense to an eviction shall apply:
1. It shall be a defense to any unlawful detainer action filed under _________ Municipal Code ______ that the landlord thwarted the tenant’s effort to pay rent by refusing to accept rent paid on behalf of the tenant by a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party.

2. It shall be a defense to any unlawful detainer action filed under Civil Code section 1946.2 that the unpaid rent accrued during the State of Emergency declared by the Governor and said rent was unpaid due to a reduction in household income resulting from the Coronavirus pandemic. This includes, but is not limited to, where, as a result of the Coronavirus pandemic, the tenant suffered a loss of income, employment or a reduction in hours; or was unable to work because their children were out of school; or was unable to work because they were sick with COVID-19 or caring for a household or family member who was sick with COVID-19; or was complying with a recommendation from a government agency to self-quarantine. Nothing in this section shall relieve the tenant of liability for the unpaid rent but it may not be the basis of an eviction.

C. Except where the basis for the unlawful detainer action is that the tenant poses an imminent threat to the health or safety of other tenants at the property, as stated in the termination notice underlying the unlawful detainer action, it shall be an absolute defense to any unlawful detainer action filed under JURISDICTION Code _______ that the notice was served or expired, or that the action was filed or served, during the Local Emergency declared by the City manager and ratified by ________COUNCIL/ BOARD on _________.

D. Whether during or upon the conclusion of the State of Emergency, no landlord shall assess late fees to a tenant for failure to pay rent during the State of Emergency.

E. If a tenant fails to pay any portion of his or her rent during the State of Emergency due to a reduction in household income resulting from the Coronavirus pandemic, as defined in paragraph (2) of subdivision (B), the landlord shall make a diligent effort to establish a payment plan that allows the tenant a reasonable time to come current on rent.

F. No foreclosure action against a property owner shall be initiated or proceed during the State of Emergency. Nothing in this order shall relieve the mortgagor of liability for any unpaid mortgage payments. If a mortgagor fails to pay any portion of his or her mortgage during the State of Emergency, the mortgagee shall make a diligent effort to establish a payment plan that allows the
mortgagor a reasonable time to come current on rent which shall not be less than 180 days. No other legal remedies available to parties to any foreclosure proceeding are affected by this ordinance.

G. Owners of rental property shall serve all residential tenants with written notice of the provisions of this sub-division. Written notice shall be provided in English and any other language in which the rental agreement was negotiated or the landlord has reason to know is the primary language of the tenant.

H. All water systems in the [insert name of jurisdiction] providing residential service, as defined by Health & Safety Code § 116902(c), including without limitation public water systems and state and local small water systems, shall immediately take all necessary steps to restore all residential water service. Proactive measures should be taken to ensure that restoring residential service does not increase the risk of spreading the COVID-19 virus.

I. No water system in the [insert name of jurisdiction] providing residential service, as defined by Health & Safety Code § 116902(c), including without limitation public water systems and state and local small water systems, shall shut off residential service or charge late fees during the term of the State of Emergency. Water systems shall implement plans for reduced or deferred payments after the State of Emergency has ended for those who fall behind on payments during the State of Emergency.

J. City staff shall promptly take all reasonable steps, and identify resources needed, to ensure that emergency water supplies, including bottled water, are made available to residents who currently lack access to safe water due to contaminated tap water or homelessness. Proactive measures should be taken to ensure that water distribution does not increase the risk of spreading the COVID-19 virus.

XX.XXXX Definitions

An “imminent threat to the health and safety of other tenants at the property” shall include violent criminal activity, sale of narcotics, or damage to rental property that requires it to be immediately vacated. Non-compliance with building and housing codes shall not be considered an imminent threat where the condition created would not result in a notice to immediately vacate or “red-tag” by a local code enforcement agency.
“Covered Reason for Delayed Payment” includes, but is not limited to, any of the following:

1. Tenant lost household income as a result of being sick with COVID-19, or caring for a household or family member who is sick with COVID-19, or self-quarantining per the recommendation of a medical professional due to suspected exposure to COVID-19;

2. Tenant lost household income as a result of a lay-off, loss of hours, or other income reduction resulting from COVID-19 or the State of Emergency, including for a reduction in freelance or contract work;

3. Tenant lost household income as a result of school closures due to COVID-19;

4. Tenant lost household income due to compliance with a recommendation from a government agency or medical professional to stay home, self-quarantine, or avoid congregating with others during the State of Emergency; or

5. Tenant incurred expenses directly related to COVID-19, emergency measures put in place because of COVID-19, or other incidental effects of any government agency action or interruption of any business due to COVID-19.

XXXXXXX Collection of Back Rent

Nothing in this Chapter shall relieve the tenant of liability for unpaid rent that has accrued during this period, which the landlord may seek after expiration of the State of Emergency. The rent may be collected as any other debt owed but not through the unlawful detainer process. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants. A landlord may not charge or collect a late fee for rent that is delayed for any of the reasons stated in this Chapter.

XXXXXXX Application

This Chapter applies to eviction notices and unlawful detainer actions served or filed on or after the effective date of the Declaration of a State of Emergency in California. With respect to delayed payment covered by this Ordinance, a landlord may seek such rent
after the expiration of the State of Emergency, but may not file an action pursuant to Code of Civil Procedure sections 1161(1) et seq. based on the failure to pay rent.

This Chapter also applies to the provision of residential water service and emergency water supplies.

Implementing Regulations

The JURISDICTION may promulgate implementing regulations to effectuate this Ordinance.

Remedies

In the event of a violation of this Ordinance, an aggrieved tenant may institute a civil proceeding for injunctive relief, and money damages as specified below, and whatever other relief the court deems appropriate. Money damages shall only be awarded if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of this Ordinance. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the tenant under local, state or federal law. In addition, this Ordinance grants a defense to eviction in the event that an unlawful detainer action is commenced in violation of this Ordinance.

Severability

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of _____ hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Vote Required, Immediately Effective

Based on the findings and evidence in Section XXXXX of this Urgency Ordinance, the Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article ____ Section ___ of the
Charter of the City of________and must therefore go into effect immediately. This Ordinance shall go into effect immediately upon a seven-ninths vote of the City Council, in satisfaction of the Charter of the City of_________.

[AW1]Insert paragraph with details regarding any declarations of a local state of emergency, shelter in place order, or business closures, before or after this paragraph so they are in chronological order.