

ORDER 20210730-031

BY

THE MAYOR OF THE CITY OF AUSTIN

WHEREAS, on March 6, 2020, a Declaration of Local Disaster was issued to allow the City of Austin to take measures to reduce the possibility of exposure to COVID-19 (also referred to as the pandemic) and promote the health and safety of Austin residents; and

WHEREAS, on March 13, 2020, a Declaration of State of Disaster was issued by Governor Greg Abbott due to the COVID-19 pandemic and has since issued numerous Executive Orders related to the pandemic, including Executive Orders GA-29 on July 2, 2020, GA-31 on September 17, 2020, and GA-32 on October 7, 2020; and

WHEREAS, the COVID-19 virus is contagious and spreads through person-to-person contact, especially in group settings; and

WHEREAS, beginning on March 26, 2020, Mayor Steve Adler issued Order Nos. 20200326-008, 20200507-010, 20200724-18, 20200815-19, 20200930-20, 20201217-022, 20210128-025, 20210330-028; 20210430-029; and 20210527-30 that prohibited certain actions by landlords in order to reduce the spread of COVID-19 and to decrease opportunities for person-to-person contact; and

WHEREAS, on March 27, 2020, President Trump signed the *Coronavirus Aid, Relief and Economic Security Act* (CARES Act) (Public Law 116-136) that provides forbearance opportunities for property owners with a federally backed mortgage loan or federally backed multi-family mortgage loan; and

WHEREAS, on September 4, 2020, the Centers for Disease Control (CDC) issued an order that prohibits residential evictions under certain circumstances ("CDC Order") effective through December 31, 2020 and thereafter extended the deadline through January 21, 2021, and requiring the filing of a declaration related to inability to pay rent; and

WHEREAS, on January 20, 2021, the CDC Department of Health and Human Services announced that it would extend the CDC Order, through at least March 31, 2021, and requiring the filing of a declaration related to inability to pay rent; and

WHEREAS, to comply with the Health Authority's recommendations and other COVID-related health protocols; and to avoid person-to-person contact, individuals may be unable to work, which will impact a tenant's ability to pay rent, fees, or other charges associated with the tenant's lease; and

WHEREAS, Austin City Council Resolution No. 20200917-062 (Resolution No. 20200917-062) recognized that the following industries: childcare, live-music venues, arts

venues, and restaurants/bars were among the industries first detrimentally impacted by the pandemic and are expected to be the last to recover from the pandemic; and

WHEREAS, the health and safety of individuals and recovery of the industries described in Resolution No. 20200917-062 are vital to Austin's recovery from the pandemic; and

WHEREAS, since the Declaration of Local Disaster was issued, the City has made or will make available approximately \$49,000,000 in rental assistance; and

WHEREAS, Austin-Travis County's overall COVID-19 positivity rate was 13.7% for the week ending July 24, 2021, and the Austin Metro Service Area's 7-day moving average of new hospital admissions is more than 40; and

WHEREAS, COVID-19 continues to menace the health of Austin residents and the Austin economy, and the local Health Authority has advised on the need for continued vigilance by individuals and Austin businesses in complying with health measures; and

WHEREAS, the local Health Authority continues to encourage people to stay home except when necessary, and to wear face coverings to provide for the safety of the public while businesses are reopening and when individuals are outside their household; and

WHEREAS, providing a notice to vacate, as the first step to an eviction proceeding, during the disaster period will destabilize the economy and will contribute to additional person-to-person contact; and

WHEREAS, removing a tenant's property or excluding a tenant during the disaster period will contribute to additional person-to-person contact.

NOW THEREFORE, I, MAYOR OF THE CITY OF AUSTIN, PURSUANT TO THE AUTHORITY VESTED BY TEXAS GOVERNMENT CODE CHAPTER 418, HEREBY FIND AND ORDER:

SECTION 1. That the findings and recitations set out in the preamble to this Order are found to be true and correct and they are hereby adopted by the Mayor and made a part hereof for all purposes; and that this Order supersedes Mayor's Order No. 202100527-030.

SECTION 2. Effective August 1, 2021 and continuing through August 31, 2021, unless terminated or modified by a subsequent order, the Mayor of the City of Austin deems it in the public interest to **PROHIBIT**, except as otherwise provided in this subsection, the issuance of Notices to Vacate to a: (i) residential tenant who fails to pay rent and the amount of the tenant's rent is \$2,475 or less per month or (ii) a commercial tenant. In this section, a tenant includes an individual who holds over beyond the end of the rental term or renewal period. A landlord may issue a notice to vacate to a tenant described in this subsection if:

- (1) the actions of the tenant, or the tenant's household members, customers, employees, or guests, pose an imminent threat of (a) physical harm to the property owner, the

property owner's employees, or other tenants, including other tenants within the household; (b) criminal activity; (c) property damage that interferes with the use a dwelling that is occupied by other tenants; or (d) willful destruction of property;

- (2) an insured casualty loss such as fire, smoke, hail, explosion, or a similar cause creates a condition that makes the residential premises totally unusable;
- (3) the property at issue is the subject of a homestead exemption and the name on the homestead exemption matches the landlord's name; or
- (4) the residential tenant owes an amount of rent that exceeds the total of five (5) months rent that was due on or after April 1, 2020, and, as declared on the Verification of Compliance (attached as Exhibit A), that:
 - (a) the landlord has exhausted all available rental assistance remedies; or
 - (b) the landlord or tenant is not eligible for any rental assistance remedies; and
 - (c) the landlord notified the tenant that an application for rental assistance remedies was submitted within seven days from the date of application.

SECTION 3. Effective September 1, 2021 and continuing through October 15, 2021, unless terminated or modified by a subsequent order, the Mayor of the City of Austin deems it in the public interest to **PROHIBIT**, except as otherwise provided in this subsection, the issuance of Notices to Vacate to a: (i) residential tenant who fails to pay rent and the amount of the tenant's rent is \$2,475 or less per month or (ii) a commercial tenant. In this section, a tenant includes an individual who holds over beyond the end of the rental term or renewal period. A landlord may issue a notice to vacate to a tenant described in this subsection if:

- (1) the actions of the tenant, or the tenant's household members, customers, employees, or guests, pose an imminent threat of (a) physical harm to the property owner, the property owner's employees, or other tenants, including other tenants within the household; (b) criminal activity; (c) property damage that interferes with the use a dwelling that is occupied by other tenants; or (d) willful destruction of property;
- (2) an insured casualty loss such as fire, smoke, hail, explosion, or a similar cause creates a condition that makes the residential premises totally unusable;
- (3) the property at issue is the subject of a homestead exemption and the name on the homestead exemption matches the landlord's name; or
- (4) the residential tenant owes an amount of rent that exceeds the total of three (3) months rent that was due on or after April 1, 2020, and, as declared on the Verification of Compliance (attached as Exhibit A), that:

- (a) the landlord has exhausted all available rental assistance remedies; or
- (b) the landlord or tenant is not eligible for any rental assistance remedies; and
- (c) the landlord notified the tenant that an application for rental assistance remedies was submitted within seven days from the date of application.

SECTION 4. August 1, 2021 and continuing through October 15, 2021, unless terminated or modified by a subsequent order, the Mayor of the City of Austin deems it in the public interest to **PROHIBIT** the removal of property or exclusion of a tenant by a property owner in the manners described in the applicable sections of the Texas Property Code.

SECTION 5. August 1, 2021 and continuing through October 15, 2021, unless terminated or modified by a subsequent order, the Mayor of the City of Austin deems it in the public interest to **PROHIBIT** the seizure of a tenant's nonexempt property subject to a lien created under Texas Property Code Section 54.041.

SECTION 6. In this order,

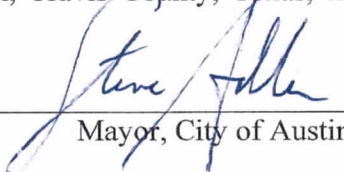
- a. **Commercial Tenant** means a tenant who operates a childcare business, live-music venue, arts venue, or restaurant/bar.
- b. **Exhausted** means that all applications for all available Rental Assistance Remedies have been denied or are still pending after 45 days as follows for named Rental Assistance Remedies:
 - (i) County's Emergency Rental Assistance Program (ERAP): Applications have been denied, are still pending 45 days from the email notice sent by the Travis County Emergency Rental Assistance Team confirming that the preliminary Landlord application has been received.
 - (ii) City of Austin's Relief of Emergency Needs for Tenants (RENT): Applications have been denied or are still pending after 45 days from the date of application
 - (iii) State of Texas Rent Relief Program: Applications have been denied or are still pending after 45 days from the date of application.
- c. **Issuance** means any method of providing notice authorized by Texas Property Code Section 24.005.
- d. **Notices to Vacate** means the notice to vacate required by Section 24.005 that must be provided prior to filing eviction suit.

- e. **Rent** means the amount due per rental pay period for a housing-related payment but does not include late fees, penalties, or other charges.
- f. **Rental Assistance Remedies** means the rental assistance programs: Texas Rent Relief Program by the State, Travis County Emergency Rental Assistance Program (ERAP), and City of Austin's Relief of Emergency Needs for Tenants (RENT).
- g. **Willful Destruction** means willfully damaging the dwelling unit or rental property.

SECTION 7. That peace officers, City of Austin Code Department inspectors, and the Office of the Austin Fire Marshal, are hereby authorized to enforce this Order. A violation of this Order may be punishable through criminal enforcement. A person who violates this Order violates Austin City Code Section 2-6-24. A violation is a misdemeanor punishable by a fine not to exceed \$1,000. A violation of this Order may be enforced by the filing of a probable cause affidavit alleging the criminal violation with the appropriate court or by issuing a citation to the person violating, that contains written notice of the time and place the person must appear before a magistrate of this state, the name and address of the person charged, and the offense charged.

SECTION 8. The City of Austin will post this Order on its website. In addition, property owner who rents real property that is likely to be impacted by this Order is strongly encouraged to post a copy of this Order at the rental property and to provide a copy to any member of the public asking for a copy. If any subsection, sentence, clause, phrase, or word of this Order or any application of it to any person, structure, gathering, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision will not affect the validity of the remainder of this Order and its application.

ORDERED this the 30th day of July 2021, in the City of Austin, Travis County, Texas, in witness whereof I subscribe my name.



Mayor, City of Austin

Filed with me, the City Clerk of the City of Austin, this 30th day of July, 2021, by Mayor Steve Adler, whose signature I hereby attest under my hand.



City Clerk



EXHIBIT A

CAUSE NO. _____

PLAINTIFF

§
§
§
§
§
§

JUSTICE OF THE PEACE

v.

PRECINCT NO. _____

DEFENDANT

TRAVIS COUNTY, TEXAS

VERIFICATION OF COMPLIANCE WITH LOCAL, STATE, AND FEDERAL EVICTION REQUIREMENTS

My name is: _____
First Middle Last

I am (check one) the Plaintiff or an authorized agent of the Plaintiff in the eviction case described at the top of this page. I am capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct.

1. Verification:

a. Plaintiff is seeking to recover possession of the following property:

Name of Apartment Complex (if any)

Street Address & Unit No. (if any) City County State ZIP

b. I verify that this property (select the one that applies): is is not a "covered dwelling" as defined by Section 4024(a)(1) of the CARES Act. The facts on which I base my conclusion are as follows:
(Please identify whether the property has a federally backed mortgage loan or federally backed multifamily mortgage loan, and if not, which database or information you have used to determine that fact.)

(If the property does not have a federally backed mortgage loan or federally backed multifamily mortgage loan, please state whether or not: (1) the property is a Low Income Housing Tax Credit (LIHTC) property, (2) the property is federally subsidized under any HUD program, or (3) the property leases to persons with Section 8 vouchers.)

c. I verify that the premises (select the one that applies): is is not a property securing an FHA-insured Single Family mortgage.

d. I verify that plaintiff (select the one that applies):

has provided the defendant with 30 days' notice to vacate as required under Section 4024(c) of the CARES Act.

has not provided the 30 days' notice, because the property is not a "covered dwelling."

e. I certify that the plaintiff: has has not received a CDC Sworn Declaration from the tenant stating that they are a "covered person" under the CDC issued Federal Eviction Moratorium Order. Any landlord proceeding with a nonpayment eviction of a "covered person" despite receiving a Declaration can be fined up to \$100,000 under federal law, with enhanced penalties, including jail, if a death occurs.

EXHIBIT A

- f. I verify that I **have** **have not** reviewed the information about the Texas Eviction Diversion Program, found at www.txcourts.gov/eviction-diversion.
- g. I verify that at the time of filing the petition for eviction (check all that apply)
"Rental Assistance Remedies" means the rental assistance programs: Texas Rent Relief Program by the State, Travis County Emergency Rental Assistance Program (ERAP), or City of Austin's Relief of Emergency Needs for Tenants (RENT). "Exhausted" means that all applications for all available Rental Assistance Remedies have been denied or are still pending after 45 days from the date of application.
 - The landlord has exhausted all available Rental Assistance Remedies
 - Either the landlord or tenant is not eligible for any Rental Assistance Remedies
 - The landlord notified the tenant(s) that an application for Rental Assistance Remedies was submitted within seven (7) days from the date of application.
 - The premises are subject to a homestead exemption and the name on the homestead exemption matches the plaintiff/landlord's name
 - I have provided the last known phone number and email address (if known to the plaintiff/landlord) of the defendant(s)/tenant(s) on the petition for eviction; or
 - I affirm no phone number is known for defendant(s) /tenant(s).
- h. I verify that the premises (check all that apply)
 - are** in the City of Austin
 - are not** in the City of Austin
 - if in the City of Austin, a 60-day notice of proposed eviction was given prior to the issuance of a notice to vacate consistent with the Austin municipal ordinance and a copy of this notice, along with the notice to vacate, are attached to the petition for eviction
 - no notice of proposed eviction was required

2. Declaration or Notary: Complete only one of the two following sections:

a. **Declaration:** I declare under penalty of perjury that everything in this verification is true and correct. My name is :

My birthdate is: _____/_____/_____
First Middle Last
Month Day Year

My address is: _____
Street Address & Unit No. (if any) City County State ZIP

Signed on _____/_____/_____ in _____ County, Texas.
Month Day Year

Your Signature

OR

b. **Notary:** I declare under penalty of perjury that everything in this verification is true and correct

Your Printed Name

Your Signature (sign only before a notary)

Sworn to and subscribed before me this _____ day of _____, 20_____.

CLERK OF THE COURT OR NOTARY

Plaintiff must serve this affidavit to all other parties (including Defendant(s)) in accordance with TRCP 501.4.

EXHIBIT A

CERTIFICATE OF SERVICE

I certify that a copy of this document was provided to all other parties (including Defendant(s)) via the following method(s) (check all that apply):

- First Class Mail to: _____ Date: _____
- Certified Mail, Return Receipt Requested to: _____
CMRRR Number: _____ Date: _____
- Email to: _____ Date: _____
- Fax to: (_____) _____ - _____ Date: _____
- Hand Delivery to: (name) _____ Date: _____
- Other (explain): _____ Date: _____