



# CITY OF NEWARK CITY COUNCIL

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**SPECIAL MEETING**  
City Administration Building  
City Council Chambers  
6:00 p.m.

## AGENDA

Thursday, March 26 2020

**NOTICE IS HEREBY GIVEN** that the City Council has called for a Special City Council Meeting to be held on March 26, 2020, beginning at 6:00 p.m. in the City Council Chambers located at 37101 Newark Boulevard.

Pursuant to the Governor's Executive Order N-29-20, Mayor Nagy, Vice Mayor Freitas, and Councilmembers Collazo, Hannon, and Bucci may be attending this meeting via teleconference. In the event that any Council Member elects to teleconference, all votes conducted during the teleconferencing session will be conducted by roll call vote.

This meeting is open to the public; however, member of the public are encouraged to shelter in place and submit comments for this agenda via email. Emails should be submitted to [City.Clerk@newark.org](mailto:City.Clerk@newark.org) by 4:00 p.m. on March 26, 2020. The emails will be provided to the City Council in advance of the meeting.

### A. ROLL CALL

### B. CITY MANAGER REPORTS

- B.1 Adopt an Urgency Ordinance of the City of Newark Enacting a Temporary Moratorium on Evictions Due to Nonpayment of Rent for Residential and Commercial Tenants Where the Failure to Pay Rent is From Income Loss Resulting From the Novel Coronavirus (COVID-19) – from City Manager Benoun, Interim City Attorney Kokotaylo, and Community Development Director Turner. (URGENCY ORDINANCE)**
- B.2 Oral Update on the City's response to COVID-19 Local Emergency – from City Manager Benoun and Interim City Attorney Kokotaylo.**

Members of the public are welcome to participate in the discussion and may do so by raising their hand when the Mayor invites public comment. Once recognized, you will be given an opportunity to speak once on the item under discussion. Public comments are limited to five (5) minutes per speaker, subject to adjustment by the Mayor.

### C. ADJOURNMENT

Pursuant to Government Code 54957.5: Supplemental materials distributed less than 72 hours before this meeting, to a majority of the City Council, will be made available for public inspection at this meeting and at the City Clerk's Office located at 37101 Newark Boulevard, 5<sup>th</sup> Floor, during normal business hours. Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection.

For those persons requiring hearing assistance, please make your request to the City Clerk two days prior to the meeting.

**B.1 Adopt an Urgency Ordinance of the City of Newark Enacting a Temporary Moratorium on Evictions Due to Nonpayment of Rent for Residential and Commercial Tenants Where the Failure to Pay Rent is From Income Loss Resulting From the Novel Coronavirus (COVID-19) – from City Manager Benoun, Interim City Attorney Kokotaylo, and Community Development Director Turner.  
(URGENCY ORDINANCE-1)**

**Background/Discussion** – City staff recommends that the City Council approve and adopt an urgency ordinance that establishes a temporary moratorium on evictions due to nonpayment of rent for residential and commercial tenants where the failure to pay rent is from income loss resulting from the coronavirus (COVID-19).

The ordinance would take effect immediately and would be in effect until May 31, 2020, the expiration of the local emergency, or the Governor’s proclamation of a state of emergency, whichever is later.

Proclamations of Emergency and Shelter-In-Place Impacts

As a result of the COVID-19 pandemic, the Governor of the State of California proclaimed a state of emergency, the President of the United States declared a national state of emergency, and the Alameda County Health Officer declared a local health emergency.

Subsequently, the Alameda County Health Officer, along with six other health officers within six Bay Area counties, issued a legal order directing residents of Alameda County to shelter at home beginning March 17, 2020, and continuing through April 7, 2020. The order limits activity, travel, and business functions to only essential needs.

On March 16, 2020, the City Manager, acting as Director of Emergency Services, proclaimed a local emergency due to the COVID-19 pandemic and the City Council ratified the action at a Special City Council meeting on March 17, 2020.

On March 19, 2020, the Governor of California issued an executive order ordering all individuals within the State of California to shelter at home, except for limited purposes.

Events of all sizes across the Bay Area and in the City of Newark are being cancelled or postponed as a result of the shelter at home orders of the Alameda County Health Officer and Governor. Businesses are closing or dramatically limiting their operations. These developments are likely to result in significantly increased levels of unemployment and decreased incomes for many businesses and residents of Newark. Residential and commercial tenants have likely experienced, or will shortly experience, sudden income loss. Also, further income impacts to tenants are anticipated for a variety of reasons, including temporarily being unable to report to work because of illness caused by COVID-19 or quarantines related to COVID-19, taking care of family members that have become ill due to COVID-19, the closure of schools and daycare and the need to take care of children at home, taking care of elderly family members who are in

quarantine, shelter-in-place orders issued because of the COVID-19, pandemic and/or lay-offs due to business slow-downs and closures. These acts will leave tenants vulnerable to eviction.

### Purpose of Urgency Ordinance

In the interests of protecting the public health and welfare, and to help prevent transmission of the coronavirus, it is essential to avoid unnecessary displacement, business closures, and homelessness during a state of emergency. This urgency ordinance is intended to avoid unnecessary housing and commercial displacement, to mitigate the economic effects on small and medium sized businesses, and to prevent housed individuals from falling into homelessness. A temporary moratorium on evictions from residential, and commercial rental units due to a substantial loss of income because of the COVID-19 pandemic will protect tenants from losing their housing and businesses, which will thereby protect the public health, safety and welfare, and prevent transmission of COVID-19.

### Proposed Urgency Ordinance

The proposed urgency ordinance would take effect immediately and would apply to all eviction proceedings, such as notices to quit or pay rent or unlawful detainer actions served on or after the effective date of the ordinance. The ordinance would place a temporary moratorium on eviction actions instituted for non-payment of rent where a tenant can demonstrate that the tenant suffered a substantial loss of income due to the COVID-19 pandemic by providing a substantive eviction defense to a tenant. The ordinance will not waive the payment of rent, but rather will delay an impacted tenant's obligation to make rent payments during the period of the temporary moratorium.

The moratorium would apply to residential tenants who can demonstrate income loss caused by the COVID-19 pandemic under any of the following circumstances:

- COVID-19 illness or caring for a household or family member with COVID-19 illness;
- work closures, layoffs, job loss, a reduction in the number of compensable hours or other economic or employer impacts; or
- missing work due to a minor child's school closure, compliance with government health authority orders, or other similarly-caused reason.

The moratorium would apply to commercial tenants who can demonstrate income loss caused by the COVID-19 pandemic under any of the following circumstances:

- work closures;
- reduction in staff reporting to work;
- reduction in opening hours;
- reduction in consumer demand;
- compliance with government health authority orders; or
- other similarly-caused reason resulting in loss of business income.

The urgency ordinance, if adopted, will deter most landlords initiating eviction proceedings if a tenant can show that the non-payment of rent was due to the tenant's loss of income as a result of COVID-19. If a landlord nevertheless files an eviction proceeding in court, the ordinance could be used as an affirmative defense by the tenant in an unlawful detainer court proceeding.

Tenants will be required to pay back unpaid rent in 25% increments within forty-five (45) days, ninety (90), one hundred thirty-five (135) days, and one hundred eighty (180) days of the date of expiration of the Eviction Moratorium. The City Council can revisit the ordinance if necessary due to changing conditions.

Community Development staff contacted representatives from the Rental Housing Association of Southern Alameda County, Residents Insisting on Social Equity (RISE) Fremont, and the Newark Chamber of Commerce, informing them of the urgency ordinance and offering opportunities for discussion prior to the Council meeting. Staff will also engage in outreach to notify landlords, businesses, and tenants about the ordinance through a press release and posting notice on the City's website and social media accounts

**Attachments** – Ordinance, Presentation

**Action** – City staff recommends that the City Council adopt an urgency ordinance that establishes a temporary moratorium on evictions due to nonpayment of rent for residential and commercial tenants where the failure to pay rent is from income loss resulting from the coronavirus (COVID-19).

AN URGENCY ORDINANCE OF THE CITY OF NEWARK  
ENACTING A TEMPORARY MORATORIUM ON EVICTIONS  
DUE TO NONPAYMENT OF RENT FOR RESIDENTIAL AND  
COMMERCIAL TENANTS WHERE THE FAILURE TO PAY  
RENT IS FROM INCOME LOSS RESULTING FROM THE  
NOVEL CORONAVIRUS (COVID-19)

**WHEREAS**, 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,” and the disease it causes has been named “coronavirus disease 2019,” abbreviated COVID-19 (“COVID-19”); and

**WHEREAS**, on January 30, 2020, the World Health Organization (“WHO”) declared COVID-19 a Public Health Emergency of International Concern; and

**WHEREAS**, on January 31, 2020, the Secretary of the United States Department of Health and Human Services declared a public health emergency for the entire United States to aid the nation’s healthcare community in responding to COVID-19; and

**WHEREAS**, on February 25, 2020, the Centers for Disease Control and Prevention (“CDC”) announced that community spread of COVID-19 is likely to occur in the United States; and

**WHEREAS**, on March 1, 2020, the Alameda County Health Officer declared a public health emergency throughout the County of Alameda; and

**WHEREAS**, on March 4, 2020, the Governor of California proclaimed a state of emergency exists in California after making determinations that:

1. The conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and
2. Local authority is inadequate to cope with the threat posed by COVID-19; and

**WHEREAS**, on March 10, 2020, the Alameda County Board of Supervisors ratified the Alameda County Health Officer’s declaration of a local health emergency; and

**WHEREAS**, on March 11, 2020, the WHO declared COVID-19 a pandemic; and

**WHEREAS**, on March 12, 2020, the Alameda County Department of Public Health confirmed evidence of community-acquired transmission; and

**WHEREAS**, on March 13, 2020, the President of the United States of America declared a national state of emergency in response to the spread of COVID-19 within the United States of America; and

**WHEREAS**, on March 16, 2020, the Alameda County Health Officer, along with six other health officers within six Bay Area counties, took a unified step to slow the spread of novel coronavirus (COVID-19) and preserve critical health care capacity across the region by issuing a legal order

directing their respective residents to shelter at home beginning March 17, 2020 through April 7, 2020. The order in Alameda County limits activity, travel, and business functions to only the most essential needs. The guidance comes after substantial input from the CDC and best practices from other health officials around the world; and

**WHEREAS**, on March 16, 2020, due to an escalating increase in the number of COVID-19 cases in Alameda County, the City Manager, acting as Director of Emergency Services, found that the conditions related to the COVID-19 pandemic were of extreme peril to the safety of persons and property within the territorial limits of the City and thus proclaimed a local emergency pursuant to Newark Municipal Code Chapter 2.16 and Government Code Section 8558; and

**WHEREAS**, on March 17, 2020, at a special meeting the Newark City Council ratified the Director of Emergency Services' proclamation of a local emergency related to the COVID-19 pandemic; and

**WHEREAS**, on March 16, 2020, the Governor of California issued Executive Order N-28-20 ordering waiver of time limitations set forth in Penal Code section 396(f) concerning protections against residential evictions, and suspending any provision of state law that would preempt or otherwise restrict a local government's exercise of its police power to impose substantive limitations on residential or commercial evictions related to COVID-19. The order further suspended statutory causes of action for judicial foreclosure, including Code of Civil Procedure section 725a *et seq.* the statutory cause of action for 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; and

**WHEREAS**, on March 19, 2020, the Governor of California issued Executive Order N-33-20 ordering all individuals within the State of California to stay home or at their place of residence, except as needed to maintain continuity of operation of the federal critical infrastructure sectors, critical government services, schools, childcare, and construction; and

**WHEREAS**, events of all sizes across the Bay Area and in Newark are cancelling or being postponed due to the County's and State's Orders and recommendations at all levels of government to cancel large gatherings are occurring amid concerns over spread of the virus. Additionally, as a result of the County's shelter at home order and the Governor's order for individuals to stay in their place of residence, many businesses are closing or dramatically limiting their operations. These developments are likely to result in significantly increased levels of unemployment and decreased incomes for many businesses and residents of Newark; and

**WHEREAS**, California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the public health, safety, and general welfare, of their citizens; and

**WHEREAS**, California Government Code Section 36937 authorizes the City Council to introduce and adopt an ordinance it declares to be necessary as an emergency measure to preserve the public peace, health, and safety at one and the same meeting if passed by at least four-fifths affirmative votes; and

**WHEREAS**, this Ordinance is a temporary moratorium intended to promote stability and fairness within the residential and commercial rental market in the City during the COVID-19 pandemic, and to prevent avoidable homelessness and evictions thereby serving the public peace, health, safety, and

public welfare and to enable tenants in the City whose incomes and ability to work are affected by COVID-19 to remain in their homes; and

**WHEREAS**, displacement through eviction destabilizes the living situation of tenants and impacts the health of Newark residents and businesses by uprooting children from schools, disrupting the social ties and networks that are integral to citizens' welfare and the stability of communities within the City; and

**WHEREAS**, displacement through eviction creates undue hardship for tenants through additional relocation costs, and during the COVID-19 pandemic outbreak, affected tenants who have lost income due to impacts on the economy or their employment may be at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted; and

**WHEREAS**, housing instability threatens the public peace, health, and safety as eviction from one's home can lead to prolonged homelessness; strain on household finances due to the necessity of paying rental application fees and security deposits; stress and anxiety experienced by those displaced; interruption of the education of children in the home; and increased exposure to, and spreading of COVID-19, in contradiction to the Alameda County Health Officer and Governor's orders; and

**WHEREAS**, businesses are also affected by COVID-19 and may be unable to pay rent. If businesses are unable to pay rent, they may be evicted, which will negatively impact the local economy by laying off employees and ceasing to provide services to residents of the City, and negatively impacting local health by forcing persons out of their shelter-in-place locations to prepare for business eviction, increasing potential COVID-19 exposure, and reducing the number of retail and commercial spaces available to provide essential services, also increasing potential COVID-19 exposure as a result of less retail and commercial spaces available for residents and thus less space available for social distancing; and

**WHEREAS**, the City Council finds and determines that regulating the relations between residential and commercial landlords and tenants is essential to preventing the spread of COVID-19 in the City and thereby serve the public peace, health, and safety; and

**WHEREAS**, an urgency ordinance that is effective immediately is necessary to avoid the immediate threat to public peace, health, and safety as failure to adopt this urgency ordinance could result in the avoidable displacement or exposure to COVID-19 of the City's residents and community members.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NEWARK, DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1. Findings**

The City Council of the City of Newark finds that all of the above Recitals are true and correct and incorporated herein by reference. The provisions of the Governor's Executive Order N-28-20, including its recitals, are incorporated herein as if fully set forth.

## **SECTION 2. Urgency Findings**

The City Council of the City of Newark hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency ordinance, which finding is based upon the facts stated in the recitals above, and in the staff report dated March 26, 2020, as well as any oral and written testimony at the March 26, 2020 City Council meeting. This Ordinance and any moratorium that may be established thereunder is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the City Council.

## **SECTION 3. Ordinance**

The City Council hereby makes the findings contained herein and hereby adopts the uncodified Ordinance to read as follows.

### **COVID-19 Eviction Moratorium Ordinance**

#### **Section 1. Moratorium on Eviction for Nonpayment of Rent During the COVID-19 Emergency**

A. During the term of this Eviction Moratorium, no landlord shall endeavor to evict a residential or commercial tenant for nonpayment of rent, including but not limited to any such provision under Civil Code sections 1940 *et. seq.* or 1954.25 *et. seq.*, if the tenant demonstrates that the inability to pay rent is:

1. Due to, or arising out of a substantial decrease in household or business income (including but not limited to the circumstances described in subsections (B) and (C)) or substantial out-of-pocket medical expenses; and
2. The decrease in household or business income, or out-of-pocket medical expenses, was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented in writing.

This Eviction Moratorium shall remain in effect until May 31, 2020 or the expiration of the local emergency or the Governor's proclamation of a state of emergency, whichever is later. This Ordinance shall expire one hundred eighty (180) days following the expiration of this Eviction Moratorium.

B. "Substantial decrease in household income" includes but is not limited to income loss caused by COVID-19 illness or caring for a household or family member with COVID-19 illness, work closures, layoffs, job loss, a reduction in the number of compensable hours or other economic or employer impacts of COVID-19, missing work due to a minor child's school closure, compliance with government health authority orders, or other similarly-caused reason resulting in loss of household income due to COVID-19, substantiated with written documentation or other objectively verifiable proof of same.

C. "Substantial decrease in business income" includes, but is not limited to, income loss caused by work closures, reduction in staff reporting to work, reduction in opening hours, or reduction in consumer demand, compliance with government health authority orders, or other similarly-caused reason resulting



in loss of business income due to COVID-19, substantiated with written documentation or other objectively verifiable proof of same.

D. A landlord who knows that a tenant cannot pay some or all of the rent temporarily for the reasons set forth above shall not serve a notice pursuant to Code of Civil Procedure section 1161, file or prosecute an unlawful detainer action based on a three-day pay or quit notice, or otherwise seek to evict for nonpayment of rent.

E. A landlord knows of a tenant's inability to pay rent within the meaning of this Ordinance if the tenant, within 15 days after the date that rent is due, notifies the landlord in writing of tenant's inability to pay full rent due to a substantial decrease in household or business income or out-of-pocket medical expenses was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and provides documentation to support the claim. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim.

F. Nothing in this Ordinance relieves the tenant of liability for the unpaid rent, which the landlord may seek after the expiration of the Eviction Moratorium, as specified in subsection (A) of this Ordinance, and the tenant must pay 25% of unpaid rent within forty-five (45) days of the date of expiration of the Eviction Moratorium, an additional 25% of unpaid rent within ninety (90) days of the date of expiration of the Eviction Moratorium, an additional 25% of unpaid rent within one hundred thirty-five (135) days of the date of expiration of the Eviction Moratorium, and the final 25% of unpaid rent within one hundred eighty (180) days of the date of expiration of the Eviction Moratorium, unless a state law or order is amended or adopted providing for a longer period, in which case this subsection shall be so superseded.

G. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance, nor may a landlord seek rent that is delayed for the reasons stated in this Ordinance through the eviction process, unless rent continues to remain unpaid after the expiration of the forty-five (45), ninety (90), one hundred thirty-five (135), or one hundred eighty (180) day periods described in subsection F above.

H. This Ordinance may be asserted as an affirmative defense in any unlawful detainer action or other action brought by an owner or landlord to recover possession. A tenant may bring a civil suit seeking owner or landlord compliance with any provisions of this Ordinance.

## **Section 2. Moratorium on Judicial Foreclosures During the COVID-19 Emergency**

As provided for in Executive Order N-28-20 and consistent with the other provisions in this ordinance, the statutory cause of action for judicial foreclosure, Code of Civil Procedure section 725a *et seq.*; the statutory cause of action for 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 hereby suspended as applied to any tenancy, or residential real property and any occupation thereof, to which a limitation on eviction is imposed pursuant to this Ordinance.

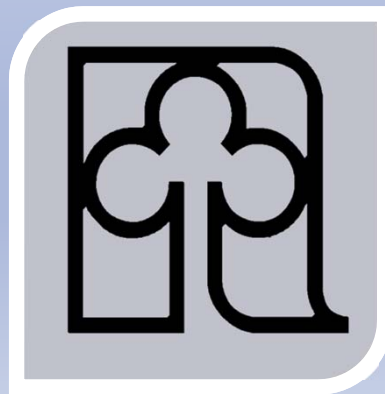
## **SECTION 4. Severability**

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Newark hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

**SECTION 5. Effective Date**

Following adoption by at least a four-fifths vote of the City Council, this Ordinance shall be effective immediately upon adoption pursuant to Newark Municipal Code Section 2.08.180. The City Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

# ADOPT AN URGENCY ORDINANCE ENACTING A TEMPORARY MORATORIUM ON COVID-19 RELATED EVICTIONS



March 26, 2020

# BACKGROUND - COVID-19



- Proclamation/Declaration of Emergency:
  - California Governor
  - United States President
  - Alameda County Health Officer
  - Union City Director of Emergency Services
- Shelter-in-Place
  - Alameda County Health Officer and six other health officers within six Bay Area counties - March 17, 2020 through April 7, 2020
  - California Governor - Until Further Notice

# BACKGROUND - IMPACTS

- Local Impacts Due to COVID-19:
  - ❑ Events of all sizes across the Bay Area and in Newark are being cancelled or postponed
  - ❑ Businesses are closing or dramatically limiting their operations
  - ❑ Increased levels of unemployment and decreased incomes for many businesses and residents of Newark
  - ❑ Missed work due to COVID-19 or care for others with COVID-19
  - ❑ School closures

# PROPOSED URGENCY ORDINANCE



- Overview:
  - Executive Order 28-20
  - Applies to all eviction proceedings (notices to quit or pay rent or unlawful detainer actions) for residential and commercial tenants
  - Provides a substantive eviction defense to a tenant
  - Applies where a tenant can demonstrate that the tenant suffered a substantial loss of income due to the COVID-19 pandemic
  - Delays an impacted tenant's obligation to make rent payments during the temporary moratorium

# PROPOSED URGENCY ORDINANCE



- Impacts on residential tenants:
  - COVID-19 illness or caring for a household or family member with COVID-19 illness
  - Work closures, layoffs, job loss, a reduction in the number of compensable hours or other economic or employer impacts
  - Missing work due to a minor child's school closure, compliance with government health authority orders, or other similarly-caused reason

# PROPOSED URGENCY ORDINANCE



- Impacts on commercial tenants:
  - COVID-19 illness or caring for a household or family member with COVID-19 illness
  - Work closures, layoffs, job loss, a reduction in the number of compensable hours or other economic or employer impacts
  - Missing work due to a minor child's school closure, compliance with government health authority orders, or other similarly-caused reason



# PROPOSED URGENCY ORDINANCE



- Other Components:
  - Tenants have 15 days after rent due to notify landlord
  - Affirmative defense in unlawful detainer proceeding
  - In effect until May 31, 2020, the expiration of the local emergency, or the Governor's proclamation of a state of emergency
  - Tenants will have 180 days from the end of the moratorium to pay any back-due rent with 25% due at 45, 90, 135 and 180 days
  - No late fees

# COMMUNITY OUTREACH



- Landlords, businesses, and tenants
  - Press release
  - City's website
  - Social Media

# RECOMMENDATION



That the City Council adopt an urgency ordinance that establishes a temporary moratorium on evictions due to nonpayment of rent for residential and commercial tenants where the failure to pay rent is from income loss resulting from the coronavirus (COVID-19).