

City of Houston, Texas, Ordinance No. 2021-126

AN ORDINANCE ESTABLISHING A GRACE PERIOD FOR TENANTS TO CURE ANY RENT DELINQUENCY AND TEMPORARILY PROHIBITING CERTAIN RESIDENTIAL EVICTIONS AND OTHER ACTIONS DURING THE GRACE PERIOD DUE TO THE COVID-19 PANDEMIC; ADOPTING THE CENTERS FOR DISEASE CONTROL AND PREVENTION (“CDC”) ORDER TO TEMPORARILY HALT RESIDENTIAL EVICTIONS TO PREVENT THE FURTHER SPREAD OF COVID-19; DECLARING THE CITY’S INTENT TO COOPERATE WITH THE FEDERAL GOVERNMENT, INCLUDING WITHOUT LIMITATION THE DEPARTMENT OF JUSTICE, IN ITS INITIATION OF CRIMINAL PROCEEDINGS FOR VIOLATION OF THE CDC ORDER; AUTHORIZING DESIGNATED CITY PERSONNEL TO DEVELOP OR CAUSE TO BE DEVELOPED MECHANISMS TO SUPPORT TENANTS WHO ALLEGE VIOLATIONS OF THE CDC ORDER, INCLUDING NOTIFYING THE COURTS ABOUT ALLEGED VIOLATORS AND REFERRING TENANTS TO THE HOUSTON HARRIS COUNTY EMERGENCY RENTAL ASSISTANCE PROGRAM AND OTHER LIKE PROGRAMS FOR TENANTS FACING EVICTION PROCEEDINGS OR THE THREAT OF EVICTION PROCEEDINGS IN VIOLATION OF THIS ORDINANCE, THE CDC ORDER, TEXAS SUPREME COURT ORDERS REGARDING THE COVID-19 STATE OF DISASTER AS THEY PERTAIN TO EVICTION PROCEEDINGS OR OTHER APPLICABLE COVID-19 ORDERS; CONTAINING FINDINGS AND PROVISIONS RELATED TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * *

WHEREAS, on March 11, 2020, the Mayor of the City of Houston (“City”) signed a proclamation declaring a Local State of Disaster Due to a Public Health Emergency, as extended on March 17, 2020, pursuant to Ordinance No. 2020-212, to help contain and mitigate the Coronavirus Disease 2019 (“COVID-19”); and

WHEREAS, on March 13, 2020, Governor Abbot issued a declaration of State of Disaster to prepare for, respond to, and mitigate the spread of COVID-19 to protect the health and welfare of Texas residents, and subsequently issued various executive orders related to the same, which declaration the Governor continues to renew pursuant to state law; and

WHEREAS, the virus that causes COVID-19 is contagious and spreads mainly through close contact from person-to-person including between people who are physically near each other (within about 6 feet) according to the Centers for Disease Control and Prevention (“CDC”); and

WHEREAS, individuals may be unable to work or to work as much and may incur COVID-19 related expenses due to contracting COVID-19, quarantining or isolating due to COVID-19 exposure, business and work closures, businesses or employers reducing in response to governmental orders, recommendations or occupancy limitations or the secondary effects of COVID-19 (e.g. fewer customers), all of which may impact an individual's ability to pay rent, fees, or other charges associated with the individual's residential lease; and

WHEREAS, ensuring that people are stably and safely housed, reducing household overcrowding and people living in shared or congregate housing particularly during this pandemic, preventing homelessness, and mitigating the spread of COVID-19 are matters of public health, safety, and welfare and it constitutes a public purpose for the City to safeguard its residents from the detrimental primary and secondary effects of the COVID-19 pandemic; and

WHEREAS, on September 4, 2020, the CDC issued an order entitled "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19" which Congress extended by the Consolidated Appropriations Act, 2021, and the CDC further extended and modified on January 29, 2021, such that the CDC Order is effective through March 31, 2021, unless extended, modified, or rescinded ("CDC Order"); and

WHEREAS, the CDC Order prohibits a landlord, owner of residential property, or other person with a legal right to pursue eviction or possessory action from evicting any covered person from any residential property in any state or U.S. territory in which there are documented cases of COVID-19 that provides a level of public health protections below the requirements listed in the Order; and

WHEREAS, the CDC Order defines a "covered person," in relevant part, as: any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury indicating that: (1) the individual has used best efforts to obtain all available government assistance for rent or housing; (2) the individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2021 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2020 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act; (3) the individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses; (4) the individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and (5) eviction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options; and

WHEREAS, the CDC Order “does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract” and [n]othing in th[e] [CDC] Order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract;” and

WHEREAS, nothing in the CDC Order “precludes evictions based on a tenant, lessee, or resident: (1) engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest);” and

WHEREAS, on January 29, 2021, the Supreme Court of Texas issued the Thirty-Fourth Emergency Order Regarding the COVID-19 State of Disaster, which expires on March 31, 2021, unless extended by the Chief Justice of the Supreme Court (“Texas Supreme Court Order 34”); and

WHEREAS, Texas Supreme Court Order 34 requires landlords in any action to recover possession of residential property to (i) state in an eviction petition, among other statements, whether or not the tenant has provided the landlord with a declaration under the CDC Order and (ii) include in the eviction citation a statement informing the tenant of the tenant’s ability to stop the eviction by signing and giving a copy to the landlord and the court, the declaration form provided by the CDC Order, with a copy of said form attached to the citation; and

WHEREAS, on February 11, 2021, the Supreme Court of Texas issued the Thirty-Fifth Emergency Order Regarding the COVID-19 State of Disaster, which expires on May 12, 2021, unless extended by the Chief Justice of the Supreme Court (“Texas Supreme Court Order 35”, and collectively with Texas Supreme Court Order 34, the “Texas Supreme Court Orders”); and

WHEREAS, Texas Supreme Court Order 35 further requires landlords in any action to recover possession of residential property under Chapter 24 of the Texas Property Code and Rule 510 of the Texas Rules of Civil Procedure based, in whole or part, on the nonpayment of rent, to, among other things, (i) state that the landlord has reviewed the information about the Texas Eviction Diversion Program (“TDEP”) available at www.txcourts.gov/eviction-diversion/, and (ii) include in the eviction citation a statement informing the tenant that if the tenant and landlord agree to participate in TDEP, the tenant may be able to have up to 15 months of the rent the tenant owes paid and stop the eviction, and (iii) attach a copy of a TDEP brochure to the citation; and

WHEREAS, pursuant to Texas Supreme Court Order 35, at trial, if the landlord and tenant both express an interest in participating in TDEP, the trial judge must abate the eviction action for 60 days; and

WHEREAS, as of February 12, 2021, the City has experienced approximately 163,990 confirmed cases of COVID-19 and approximately 1,861 deaths as a result of the disease; and

WHEREAS, COVID-19 continues to threaten and harm the health of City residents and the City economy, and the Houston Health Department continues to emphasize the need for continued vigilance by individuals and local businesses in complying with COVID-19 preventive measures; and

WHEREAS, evicting residential tenants during the pandemic will destabilize the economy and will contribute to additional person-to-person contact by rendering individuals homeless or forcing such individuals to move into and live in close quarters in a new household, shared living setting or congregate shelters, which puts them at higher risk to COVID-19; and

WHEREAS, as the CDC Order explains: “[e]victed individuals without access to housing or assistance options may also contribute to the homeless population, including older adults or those with underlying medical conditions, who are more at risk for severe illness from COVID-19 than the general population;” and

WHEREAS, a person violating the CDC Order, may be subject to (i) a fine of no more than \$100,000 if the violation does not result in death or (ii) a fine of no more than \$250,000 if the violation results in a death or as otherwise provided by law; and

WHEREAS, an organization violating the CDC Order may be subject to a fine of no more than (i) \$200,000 per event if the violation does not result in a death or (ii) \$500,000 per event if the violation results in a death or as otherwise provided by law; and

WHEREAS, the United States Department of Justice (“DOJ”) may initiate criminal proceedings, as appropriate, seeking the imposition of the above-referenced criminal penalties for violation of the CDC Order; and

WHEREAS, the City desires to establish a grace period for a covered person as defined in the CDC Order to cure any delinquent rent owed to the covered person’s landlord and temporarily prohibit the landlord from initiating any eviction proceedings against a covered person or take other specified actions against the covered person (e.g. remove or seize property or exclude the tenant from the property), based in whole or in part, on the nonpayment of rent, if said covered person provides the landlord a CDC Declaration or any similar written documentation signed by the covered person and containing the same information as the CDC Declaration;

WHEREAS, the City further desires to adopt the CDC Order and declare its intent to cooperate with the federal government in its enforcement of the CDC Order; and

WHEREAS, the City further desires to support tenants in availing themselves to the protections under the CDC Order and submitting the CDC declaration to landlords and the court in eviction proceedings in compliance with the Texas Supreme Court Orders; and

WHEREAS, the City further desires that its designated staff promote compliance with this Ordinance, the CDC Order and Texas Supreme Court Orders and deter non-compliance with this Ordinance and the CDC Order by creating a mechanism for tenants to report violations of this Ordinance and the CDC Order within the City, cooperate with the federal government in its prosecution of any violators of the CDC Order and ensure tenants are receiving the full benefits of the Texas Supreme Court Orders so that residential tenants remain stably and safely housed while this Ordinance, CDC Order, and Texas Supreme Court Orders are in effect;

WHEREAS, the City Council has determined that the adoption of this Ordinance and the CDC Order and the City's provision, directly or indirectly, of support to tenants facing eviction or the threat of eviction during the COVID-19 pandemic, will benefit and protect the public health, safety, and welfare of residents of the City; **NOW, THEREFORE,**

* * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the facts and recitals contained in the preamble of this Ordinance are hereby found and declared to be true and correct and are adopted as part of this Ordinance.

Section 2. That City Council hereby incorporates and adopts the CDC Order, attached hereto as **Exhibit "A"**, for all purposes of this Ordinance, and any amendments, extensions, or successor orders of the CDC Order made by the CDC shall also constitute and be deemed to be adopted and incorporated into this Ordinance, except that in the event of a conflict between the expiration date of the CDC Order and this Ordinance, the expiration date of this Ordinance shall control and supersede the expiration date of the CDC Order or any amendment, extension or successor thereto.

Section 3. That City Council hereby adopts the following terms for the purposes of this Ordinance:

- (a) "*CDC Declaration*" shall mean a declaration under the CDC Order (such as the declaration form available at <https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html>) or any similar written documentation

signed by the Covered Person and containing the same information as the form available at the CDC's website.

- (b) "*Covered Person*" shall have the meaning ascribed to the term in the CDC Order. The CDC Order defines "covered person" to mean any tenant, lessee, or resident of a Residential property who provides to their landlord, the owner of the Residential property, or other person with a legal right to pursue Eviction or a possessory action, a declaration under penalty of perjury indicating that:
- (1) The individual has used best efforts to obtain all Available Government Assistance for rent or housing;
 - (2) The individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2021 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2020 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
 - (3) [T]he individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses [where per the CDC Order, "[a]n extraordinary medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year"]; and
 - (4) [T]he individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and
 - (5) [E]viction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other Available Housing options.
- (c) "*Grace Period*" shall mean the period beginning on the date this Ordinance is passed and approved by City Council and continuing through and including March 31, 2021.
- (d) "*Landlord*" shall mean a landlord, owner of a Residential property, or other Person with a legal right to pursue Eviction or possessory action.
- (e) Capitalized terms not defined in this Ordinance shall have the meaning set forth in the CDC Order.

Section 4. During the Grace Period, a Landlord shall not and is hereby prohibited from engaging in, taking, or causing to be taken any one or more of the following actions: (a) evicting or initiating, in any way, any Eviction proceeding (including but not limited to issuing a notice to vacate), forcible detainer suit, forcible entry and detainer, or any action for eviction to recover possession of Residential property under Chapter 24 of the Texas Property Code or Rule 510 of the Texas Rules of Civil Procedure, against a Covered Person; (b) removing the property of a Covered Person from the Covered Person's Residential property; (c) excluding a Covered Person from the Covered Person's Residential property in any of the manners described in the applicable sections of the Texas Property Code; or (d) seizing a Covered Person's nonexempt property subject to a lien created under Section 54.041 of the Texas Property Code.

Section 5. This Ordinance does not relieve any individual or Covered Person of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract during the Grace Period. Nothing in this Ordinance precludes a Landlord from charging or collecting fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract during the Grace Period.

Section 6. This Ordinance shall not apply and shall not preclude an Eviction or a Landlord from initiating eviction proceedings against a Covered Person during the Grace Period for: (1) engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

Section 7. That the Mayor shall direct various City personnel in the appropriate City departments, including without limitation, the Director of the Housing and Community Development Department, to support or cause to be supported this Ordinance, the CDC Order, and Texas Supreme Court Order 34 and Texas Supreme Court Order 35, attached hereto as **Exhibit "B"** and **Exhibit "C"**, respectively, or the federal government's prosecution of any violators of the CDC Order, including without limitation:

- (a) develop or cause to be developed mechanisms to receive and evaluate alleged violations of this Ordinance and the CDC Order, such as continuing to utilize the Eviction Defense Coalition's hotline to receive questions, complaints, and concerns regarding evictions;
- (b) refer tenants to the Houston Harris County Emergency Rental Assistance Program and other like programs for tenants facing eviction proceedings or the threat of eviction proceeding in violation of this Ordinance, the CDC Order, the Texas Supreme Orders or other applicable COVID-19 orders;

(c) refer or cause to be referred violators of the CDC Order to the federal government (e.g. the DOJ) and work with the federal government in enforcing the CDC Order; and

(d) report any violations of this Ordinance or the CDC Order to applicable courts through appropriate means.

Section 8. This Ordinance shall expire at 11:59 PM on March 31, 2021, irrespective of whether the CDC Order is extended or modified beyond that date.

Section 9. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 10. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor.

PASSED AND APPROVED this 17th day of February, 2021.



Mayor of the City of Houston

City Secretary

Prepared by Legal Dept. _____
(KC/ea/02/12/21)

DocuSigned by:


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Senior Assistant City Attorney

Requested by Tom McCasland, Director, Housing and Community Development Department

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AYE	NO	
✓		MAYOR TURNER
....	COUNCIL MEMBERS
✓		PECK
		ABSENT-ON PERSONAL BUSINESS JACKSON
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
		ABSENT-ON PERSONAL BUSINESS THOMAS
		ABSENT-ON PERSONAL BUSINESS TRAVIS
✓		CISNEROS
✓		GALLEGOS
		ABSENT-ON PERSONAL BUSINESS POLLARD
✓		MARTHA CASTEX-TATUM
✓		KNOX
✓		ROBINSON
✓		KUBOSH
✓		PLUMMER
✓		ALCORN
CAPTION	ADOPTED	

**CENTERS FOR DISEASE CONTROL AND PREVENTION
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**ORDER UNDER SECTION 361
OF THE PUBLIC HEALTH SERVICE ACT (42 U.S.C. 264)
AND 42 CODE OF FEDERAL REGULATIONS 70.2**

**TEMPORARY HALT IN RESIDENTIAL EVICTIONS TO
PREVENT THE FURTHER SPREAD OF COVID-19**

SUMMARY

Subject to the limitations under "Applicability," a landlord, owner of a residential property, or other person¹ with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order.

DEFINITIONS

"*Available government assistance*" means any governmental rental or housing payment benefits available to the individual or any household member.

"*Available housing*" means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, state, or local occupancy standards and that would not result in an overall increase of housing cost to such individual.

"*Covered person*"² means any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury indicating that:

¹ For purposes of this Order, "person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

² This definition is based on factors that are known to contribute to evictions and thus increase the need for individuals to move into close quarters in new congregate or shared living arrangements or experience homelessness. Individuals who suffer job loss, have limited financial resources, are low income, or have high out-of-pocket medical expenses are more likely to be evicted for nonpayment of rent than others not experiencing these factors. See Desmond, M., Gershenson, C., Who gets evicted? Assessing individual, neighborhood, and network factors, *Social Science Research* 62 (2017), 366-377, <http://dx.doi.org/10.1016/j.ssresearch.2016.08.017>, (identifying job loss as a possible predictor of eviction because renters who lose their jobs experience not only a sudden loss of income but also the loss of predictable future income). According to one survey, over one quarter (26%) of respondents also identified job loss as the primary cause of homelessness. See 2019 San Francisco Homeless Point-in-Time Count & Survey, page 22, available at: https://hsh.sfgov.org/wp-content/uploads/2020/01/2019HIRDRReport_SanFrancisco_FinalDraft-1.pdf.

(1) The individual has used best efforts to obtain all available government assistance for rent or housing;

(2) The individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2021 (or no more than \$198,000 if filing a joint tax return),³ (ii) was not required to report any income in 2020 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;

(3) the individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary⁴ out-of-pocket medical expenses;

(4) the individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and

(5) eviction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.

"*Evict*" and "*Eviction*" means any action by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action, to remove or cause the removal of a covered person from a residential property. It also does not include foreclosure on a home mortgage.

"*Residential property*" means any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park, or similar dwelling leased for residential purposes, but shall not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant as defined under the laws of the state, territorial, tribal, or local jurisdiction.

"*State*" shall have the same definition as under 42 CFR §70.1, meaning "any of the 50 states, plus the District of Columbia."

"*U.S. territory*" shall have the same definition as under 42 CFR §70.1, meaning "any territory (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands."

³ According to one study, the national two-bedroom housing wage in 2020 was \$23.96 per hour (approximately, \$49,837 annually), meaning that an hourly wage of \$23.96 was needed to afford a modest two bedroom house without spending more than 30% of one's income on rent. The hourly wage needed in Hawaii (the highest cost U.S. State for rent) was \$38.76 (approximately \$80,621 annually). See National Low-Income Housing Coalition, *Out of Reach: The High Cost of Housing 2020*, available at: <https://reports.nlihc.org/oor>. As further explained herein, because this Order is intended to serve the critical public health goal of preventing evicted individuals from potentially contributing to the interstate spread of COVID-19 through movement into close quarters in new congregate, shared housing settings, or through homelessness, the higher income thresholds listed here have been determined to better serve this goal.

⁴ An extraordinary medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

STATEMENT OF INTENT

This Order shall be interpreted and implemented in a manner as to achieve the following objectives:

- Mitigating the spread of COVID-19 within congregate or shared living settings, or through unsheltered homelessness;
- Mitigating the further spread of COVID-19 from one state or territory into any other state or territory; and
- Supporting response efforts to COVID-19 at the Federal, state, local, territorial, and tribal levels.

BACKGROUND

There is currently a pandemic of a respiratory disease ("COVID-19") caused by a novel coronavirus (SARS-CoV-2) that has now spread globally, including cases reported in all fifty states within the United States plus the District of Columbia and U.S. territories. As of January 21, 2021, there have been over 96 million cases of COVID-19 globally, resulting in over 2,000,000 deaths. Over 24,400,000 cases have been identified in the United States, with new cases reported daily, and over 400,000 deaths due to the disease. On January 8, 2021, over 300,000 COVID-19 cases in the U.S. were reported to CDC, representing a peak approximately 7 times the highest daily cases in April, 2020 and approximately 4 times the highest daily cases in July, 2020.

The virus that causes COVID-19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet), mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. Some people without symptoms may be able to spread the virus. Among adults, the risk for severe illness from COVID-19 increases with age, with older adults at highest risk. Severe illness means that persons with COVID-19 may require hospitalization, intensive care, or a ventilator to help them breathe, and may be fatal. People of any age with certain underlying medical conditions, such as cancer, an immunocompromised state, obesity, serious heart conditions, and diabetes, are at increased risk for severe illness from COVID-19.⁵

COVID-19 presents a historic threat to public health, and COVID-19 cases have been detected in every county in the continental United States⁶. Through December 2020 and January 2021, the number of deaths per day from COVID-19 consistently exceeded any other cause⁷. Additionally, in recent months, new variants of SARS-CoV-2 have emerged globally, some of which have been associated with increased transmissibility⁸. To respond to this public health threat, the

⁵CDC, People with Certain Medical Conditions, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (accessed August 26, 2020).

⁶ USAFacts, <https://usafacts.org/visualizations/coronavirus-covid-19-spread-map/>

⁷ Woolf SH, Chapman DA, Lee JH. COVID-19 as the Leading Cause of Death in the United States. *JAMA*. 2021;325(2):123–124. doi:10.1001/jama.2020.24865

⁸ Emerging SARS-CoV-2 Variants. <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/scientific-brief-emerging-variants.html>

Federal, state, and local governments have taken unprecedented or exceedingly rare actions, including border closures, restrictions on travel, stay-at-home orders, mask requirements, and eviction moratoria. Despite these significant efforts, COVID-19 continues to spread and further action is needed.

In the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure utilized to prevent the spread of communicable disease. Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition. They also allow state and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID-19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into close quarters in congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19.

On September 4, 2020, the CDC Director issued an Order temporarily halting evictions in the United States for the reasons described therein. That Order was set to expire on December 31, 2020, subject to further extension, modification, or rescission. Section 502 of Title V, Division N of the Consolidated Appropriations Act, 2021 extended the Order until January 31, 2021. This Order further extends and modifies the prior Orders until March 31, 2021 for the reasons described herein. Much of the content of the September 4, 2020 Order has been incorporated into this Order. To the extent any provision of this Order conflicts with prior Orders, this Order is controlling.

In addition to extending the effective period of the September 4, 2020 Order, as further extended by the Consolidated Appropriations Act, 2021, this Order includes newly available modeling projections and observational data from COVID-19 incidence comparisons across states that have implemented and lifted eviction moratoria, which clearly demonstrate the need for this Order. The Order now also applies to American Samoa because cases of COVID-19 have now been reported there.

APPLICABILITY

This Order does not apply in any state, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order. In accordance with 42 U.S.C. 264(e), this Order does not preclude state, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this Order.

This Order is a temporary eviction moratorium to prevent the further spread of COVID-19. This Order does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract. Nothing in this Order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Nothing in this Order precludes evictions based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents;⁹ (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

This Order now applies to American Samoa. At the time of publication of the September 4, 2020 Order, no cases had been reported in American Samoa. Cases have now been reported there.¹⁰

EVICTION AND RISK OF COVID-19 TRANSMISSION

Evicted renters must move, which leads to multiple outcomes that increase the risk of COVID-19 spread. Specifically, many evicted renters move into close quarters in shared housing or other congregate settings. According to the Census Bureau American Housing Survey, 32% of renters reported that they would move in with friends or family members upon eviction, which would introduce new household members and potentially increase household crowding.¹¹ Studies show that COVID-19 transmission occurs readily within households; household contacts are estimated to be 6 times more likely to become infected by an index case of COVID-19 than other close contacts.¹²

Preliminary modeling projections and observational data from COVID-19 incidence comparisons across states that implemented and lifted eviction moratoria indicate that evictions substantially contribute to COVID-19 transmission. In mathematical models where eviction led exclusively to sharing housing with friends or family, lifting eviction moratoria led to a 40% increased risk of contracting COVID-19 among people who were evicted and those with whom they shared housing after eviction (pre-peer review).¹³ Compared to a scenario where no evictions occurred, the models also predicted a 5-50% increased risk of infection even for those who did not share housing as a result of increased overall transmission. The authors estimated that anywhere from 1,000 to 100,000 excess cases per million population could be attributable to evictions depending on the eviction and infection rates.¹⁴ An analysis of observational data from state-based eviction moratoria in 43 states and the District of Columbia showed significant increases in COVID-19 incidence and mortality approximately 2-3 months after eviction

⁹ Individuals who might have COVID-19 are advised to stay home except to get medical care. Accordingly, individuals who might have COVID-19 and take reasonable precautions to not spread the disease should not be evicted on the ground that they may pose a health or safety threat to other residents. See What to Do if You are Sick, available at <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>.

¹⁰ <https://www.who.int/americansamoa>.

¹¹ United States Census Bureau. American Housing Survey, 2017. <https://www.census.gov/programs-surveys/ahs.html>.

¹² Bi Q, Wu Y, Mei S, et al. Epidemiology and transmission of COVID-19 in 391 cases and 1286 of their close contacts in Shenzhen, China: a retrospective cohort study. *Lancet Infect Dis* 2020, [https://doi.org/10.1016/S1473-3099\(20\)30287-5](https://doi.org/10.1016/S1473-3099(20)30287-5).

¹³ Sheen J, Nande A, Walters EL, Adlam B, Gheorghe A, Shinnick J, Tejeda MF, Greenlee A, Schneider D, Hill AL, Levy MZ. The effect of eviction moratoriums on the transmission of SARS-CoV-2. *medRxiv [Preprint]*. 2020 Nov 1:2020.10.27.20220897. doi: 10.1101/2020.10.27.20220897. PMID: 33140067; PMCID: PMC7605580.

¹⁴ *Id.*

moratoria were lifted (pre-peer review).¹⁵ Specifically, the authors compared the COVID-19 incidence and mortality rates in states that lifted their moratoria with the rates in states that maintained their moratoria. In these models, the authors controlled for time-varying indicators of each state's test count as well as major public-health interventions including lifting stay-at-home orders, school closures, and mask mandates. After adjusting for these other changes, they found that the incidence of COVID-19 in states that lifted their moratoria was 1.6 times that of states that did not at 10 weeks post-lifting (95% CI 1.0, 2.3), a ratio that grew to 2.1 at ≥ 16 weeks (CI 1.1, 3.9). Similarly, they found that mortality in states that lifted their moratoria was 1.6 times that of states that did not at 7 weeks post-lifting (CI 1.2, 2.3), a ratio that grew to 5.4 at ≥ 16 weeks (CI 3.1, 9.3). Although there may be additional factors that the authors were unable to adjust for, the authors estimated that, nationally, over 433,000 cases of COVID-19 and over 10,000 deaths could be attributed to lifting state moratoria.¹⁶

Shared housing is not limited to friends and family. It includes a broad range of settings, including transitional housing, and domestic violence and abuse shelters. Special considerations exist for such housing because of the challenges of maintaining social distance. Residents often gather closely or use shared equipment, such as kitchen appliances, laundry facilities, stairwells, and elevators. Residents may have unique needs, such as disabilities, cognitive decline, or no access to technology, and thus may find it more difficult to take actions to protect themselves from COVID-19. CDC recommends that shelters provide new residents with a clean mask, keep them isolated from others, screen for symptoms at entry, or arrange for medical evaluations as needed depending on symptoms.¹⁷ Accordingly, an influx of new residents at facilities that offer support services could potentially overwhelm staff and, if recommendations are not followed, lead to exposures.

Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136) to aid individuals and businesses adversely affected by COVID-19. Section 4024 of the CARES Act provided a 120-day moratorium on eviction filings as well as other protections for tenants in certain rental properties with Federal assistance or federally related financing. These protections helped alleviate the public health consequences of tenant displacement during the COVID-19 pandemic. The CARES Act eviction moratorium expired on July 24, 2020.¹⁸ The protections in the CARES Act supplemented temporary eviction moratoria and rent freezes implemented by governors and local officials using emergency powers.

¹⁵ Leifheit, Kathryn M. and Linton, Sabriya L. and Raifman, Julia and Schwartz, Gabriel and Benfer, Emily and Zimmerman, Frederick J and Pollack, Craig, *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality* (November 30, 2020). Available at SSRN: <https://ssrn.com/abstract=3739576> or <http://dx.doi.org/10.2139/ssrn.3739576>.

¹⁶ *Id.*

¹⁷ See CDC COVID-19 Guidance for Shared or Congregate Housing, available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html>.

¹⁸ Because evictions generally require 30-days' notice, the effects of housing displacement due to the expiration of the CARES act are not expected to manifest until August 27, 2020.

Researchers estimated that this temporary Federal moratorium provided relief to a material portion of the nation's roughly 43 million renters.¹⁹ Approximately 12.3 million rental units have federally backed financing, representing 28% of renters. Other data show more than 2 million housing vouchers along with approximately 2 million other federally assisted rental units.²⁰

The CARES Act moratorium, however, did not reach all renters. Neither does the more recently enacted Emergency Rental Assistance Program under the Consolidated Appropriations Act, 2021, as administered by the Department of Treasury.²¹ Many renters who fell outside the scope of the moratorium were protected under state and local moratoria. In the absence of state and local protections, as many as 30-40 million people in America could be at risk of eviction.²² A wave of evictions on that scale would be unprecedented in modern times.²³ A large portion of those who are evicted may move into close quarters in shared housing or, as discussed below, become homeless, thus contributing to the spread of COVID-19.

The statistics on interstate moves show that mass evictions would likely increase the interstate spread of COVID-19. Over 35 million Americans, representing approximately 10% of the U.S. population, move each year.²⁴ Approximately 15% of moves are interstate.²⁵

EVICTION, HOMELESSNESS, AND RISK OF SEVERE DISEASE FROM COVID-19

Evicted individuals without access to housing or assistance options may also contribute to the homeless population, including older adults or those with underlying medical conditions, who are more at risk for severe illness from COVID-19 than the general population.²⁶ In Seattle-King County, 5-15% of people experiencing homelessness between 2018 and 2020 cited eviction as the primary reason for becoming homeless.²⁷ Additionally, some individuals and families who are evicted may originally stay with family or friends, but subsequently seek homeless services. Among people who entered shelters throughout the United States in 2017, 27% were staying with family or friends beforehand.²⁸

¹⁹ See Congressional Research Service, CARES Act Eviction Moratorium, (April 7, 2020) available at: <https://crsreports.congress.gov/product/pdf/TN/IN11320>.

²⁰ See HUD, A Picture of Subsidized Households General Description of the Data and Bibliography, available at: <https://www.huduser.gov/portal/datasets/assthsq/statedata98/descript.html>.

²¹ <https://home.treasury.gov/policy-issues/cares/emergency-rental-assistance-program>.

²² See Emily Benfer, et al., The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America are at Risk, available at: <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>.

²³ As a baseline, approximately 900,000 renters are evicted every year in the United States. Princeton University Eviction Lab. National Estimates: Eviction in America. <https://evictionlab.org/national-estimates/>.

²⁴ See U.S. Census Bureau, CPS Historical Migration/Geographic Mobility Tables, available at: <https://www.census.gov/data/tables/time-series/demo/geographic-mobility/historic.html>.

²⁵ *Id.*

²⁶ See CDC, Coronavirus Disease 2019 (COVID-19), People Who Are at Increased Risk for Severe Illness, available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html> (accessed August 26, 2020).

²⁷ Seattle-King County. Point in Time Count. https://regionalhomelesssystem.org/wp-content/uploads/2020/07/Count-Us-In-2020-Final_7.29.2020.pdf.

²⁸ United States Department of Housing and Urban Development. The 2017 Annual Homeless Assessment Report (AHAR) to Congress: Part 2. Available at: <https://files.hudexchange.info/resources/documents/2017-AHAR-Part-2.pdf>.

People experiencing homelessness are a high-risk population. It may be more difficult for these persons to consistently access the necessary resources in order to adhere to public health recommendations to prevent COVID-19. For instance, it may not be possible to avoid certain congregate settings such as homeless shelters, or easily access facilities to engage in handwashing with soap and water.

Extensive outbreaks of COVID-19 have been identified in homeless shelters.²⁹ In Seattle, Washington, a network of three related homeless shelters experienced an outbreak that led to 43 cases among residents and staff members.³⁰ In Boston, Massachusetts, universal COVID-19 testing at a single shelter revealed 147 cases, representing 36% of shelter residents.³¹ COVID-19 testing in a single shelter in San Francisco led to the identification of 101 cases (67% of those tested).³² Throughout the United States, among 208 shelters reporting universal diagnostic testing data, 9% of shelter clients have tested positive.³³

CDC guidance recommends increasing physical distance between beds in homeless shelters.³⁴ To adhere to this guidance, shelters have limited the number of people served throughout the United States. In many places, considerably fewer beds are available to individuals who become homeless. Shelters that do not adhere to the guidance, and operate at ordinary or increased occupancy, are at greater risk for the types of outbreaks described above. The challenge of mitigating disease transmission in homeless shelters has been compounded because some organizations have chosen to stop or limit volunteer access and participation.

In the context of the current pandemic, large increases in evictions resulting in homelessness could have at least two potential negative consequences. One is if homeless shelters increase occupancy in ways that increase the exposure risk to COVID-19. The other is if homeless shelters continue to limit new admissions, leading to increases in unsheltered homelessness. Neither consequence is in the interest of the public health.

Recently published data suggest that those experiencing unsheltered homelessness may have a lower risk of contracting COVID-19 compared to those staying in shelters.³⁵ Data are not yet

²⁹ Mosites E, et al, Assessment of SARS-CoV-2 Infection Prevalence in Homeless Shelters—Four U.S. Cities, March 27–April 15, 2020. *MMWR* 2020 May 1;69(17):521–522.

³⁰ Tobolowsky FA, et al. COVID-19 Outbreak Among Three Affiliated Homeless Service Sites—King County, Washington, 2020. *MMWR* 2020 May 1;69(17):523–526.

³¹ Baggett TP, Keyes H, Sporn N, Gaeta JM. Prevalence of SARS-CoV-2 Infection in Residents of a Large Homeless Shelter in Boston. *JAMA*. 2020 Apr 27;323(21):2191–2. Online ahead of print.

³² Imbert E, et al. Coronavirus Disease 2019 (COVID-19) Outbreak in a San Francisco Homeless Shelter. *Clin Infect Dis*. 2020 Aug 3.

³³ National Health Care for the Homeless Council and Centers for Disease Control and Prevention. Universal Testing Data Dashboard. Available at: <https://nhchc.org/cdc-covid-dashboard/>.

³⁴ Centers for Disease Control and Prevention. Interim Guidance for Homeless Service Providers to Plan and Respond to COVID-19. <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html>.

³⁵ Yoon JC, Montgomery MP, Buff AM, Boyd AT, Jamison C, Hernandez A, Schmit K, Shah S, Ajoku S, Holland DP, Prieto J, Smith S, Swancutt MA, Turner K, Andrews T, Flowers K, Wells A, Marchman C, Laney E, Bixler D, Cavanaugh S, Flowers N, Gaffga N, Ko JY, Paulin HN, Weng MK, Mosites E, Morris SB. COVID-19 Prevalence among People Experiencing Homelessness and Homelessness Service Staff during Early Community Transmission

available to evaluate the risk of COVID-19 among people who are staying unsheltered compared to the general population. However, increases in unsheltered homelessness may lead to further strains on the healthcare system, impacting the availability of COVID-19 care. People experiencing homelessness have been estimated to use the emergency department almost 5 times the rate of the general population³⁶, and those who are unsheltered are estimated to use the emergency department twice as often as those who are sheltered.³⁷In the context of the pandemic, increased emergency department use is untenable given the existing strains on the healthcare system.³⁸

Additionally, research suggests that the population of persons who would be evicted and become homeless would include many who are predisposed to developing severe disease from COVID-19. Five studies have shown an association between eviction and hypertension, which has been associated with more severe outcomes from COVID-19.³⁹ Also, people experiencing homelessness often have underlying conditions that increase their risk of severe outcomes of COVID-19.⁴⁰ Among patients with COVID-19, homelessness has been associated with increased likelihood of hospitalization.⁴¹

These public health risks may increase seasonally. Each year, as winter approaches and the temperature drops, many persons experiencing homelessness move into shelters to escape the cold and the occupancy of shelters increases.⁴² At the same time, there is evidence to suggest that the homeless are more susceptible to respiratory tract infections,⁴³ which may include seasonal influenza. While there are differences in the epidemiology of COVID-19 and seasonal influenza, the potential co-circulation of viruses during periods of increased occupancy in shelters could increase the risk to occupants in those shelters.

In short, evictions threaten to increase the spread of COVID-19 as they force people to move, often into close quarters in new shared housing settings with friends or family, or congregate

in Atlanta, Georgia, April-May 2020. *Clin Infect Dis.* 2020 Sep 8;ciaa1340. doi: 10.1093/cid/ciaa1340. Epub ahead of print. PMID: 32898272; PMCID: PMC7499502.

³⁶ Amato S, Nobay F, Amato DP, Abar B, Adler D. Sick and unsheltered: Homelessness as a major risk factor for emergency care utilization. *Am J Emerg Med.* 2019 Mar;37(3):415-420. doi: 10.1016/j.ajem.2018.06.001. Epub 2018 Jun 2. PMID: 29891125.

³⁷ Raven MC, Tieu L, Lee CT, Ponath C, Guzman D, Kushel M. Emergency Department Use in a Cohort of Older Homeless Adults: Results From the HOPE HOME Study. *Acad Emerg Med.* 2017 Jan;24(1):63-74. doi: 10.1111/acem.13070. PMID: 27520382; PMCID: PMC5857347.

³⁸ <https://www.wsj.com/articles/covid-19-surge-strains-hospitals-once-again-11605100312>.

³⁹ Hugo Vasquez-Vera, et al. The threat of home eviction and its effects on health through the equity lens: A systematic review. *Social Science and Medicine.* 175 (2017) 199e208.

⁴⁰ Fazel S, Geddes JR, Kushel M. The health of homeless people in high-income countries: descriptive epidemiology, health consequences, and clinical and policy recommendations. *Lancet.* 2014;384(9953):1529-1540.

⁴¹ Hsu HE, et al. Race/Ethnicity, Underlying Medical Conditions, Homelessness, and Hospitalization Status of Adult Patients with COVID-19 at an Urban Safety-Net Medical Center—Boston, Massachusetts, 2020. *MMWR* 2020 Jul 10;69(27):864-869. Historically, African Americans and Hispanic Americans are disproportionately represented in evictions compared to other races. They are more likely to experience severe outcomes of COVID-19. *Id.*

⁴² See, generally, the Annual Homeless Assessment Report to Congress (2007), available at: <https://www.huduser.gov/Publications/pdf/ahar.pdf> (acknowledging the seasonality of shelter bed use).

⁴³ Ly TDA, Edouard S, Badiaga S, et al. Epidemiology of respiratory pathogen carriage in the homeless population within two shelters in Marseille, France, 2015-2017: Cross sectional 1-day surveys. *Clin Microbiol Infect.* 2019; 25(2):249.e1-249.e6.

settings such as homeless shelters. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase.

FINDINGS AND ACTION

For the reasons described herein, I am extending and modifying the September 4, 2020 Order, as further extended by Section 502 of Title V, Division N of the Consolidated Appropriations Act, 2021. I have determined that extending the temporary halt in evictions in this Order constitutes a reasonably necessary measure under 42 CFR §70.2 to prevent the further spread of COVID-19 throughout the United States. I have further determined that measures by states, localities, or territories that do not meet or exceed these minimum protections are insufficient to prevent the interstate spread of COVID-19.⁴⁴

Based on the convergence of COVID-19, seasonal influenza, household crowding and transmission, and the increased risk of individuals sheltering in close quarters in congregate settings such as homeless shelters, which may be unable to provide adequate social distancing as populations increase, all of which may be exacerbated as winter continues, I have determined that extending the temporary halt on evictions, subject to further extension, modification, or rescission, is appropriate.

Therefore, under 42 CFR §70.2, subject to the limitations under the "Applicability" section, the September 4, 2020 Order is hereby modified and extended through March 31, 2021.

Accordingly, a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action shall not evict any covered person from any residential property in any state or U.S. territory in which there are documented cases of COVID-19 that provides a level of public-health protections below the requirements listed in this Order.

This Order is not a rule within the meaning of the Administrative Procedure Act ("APA") but rather an emergency action taken under the existing authority of 42 CFR 70.2. The purpose of §70.2 is to enable CDC to take swift steps to prevent contagion.⁴⁵

In the event that this Order qualifies as a rule under the APA, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and comment and the opportunity to comment on this Order and the delay in effective date. See 5 U.S.C. 553(b)(3)(B). Considering the public-health emergency caused by COVID-19, it would be impracticable and contrary to the public health, and by extension the public interest, to delay the issuance and effective date of this Order.

In the September 4, 2020 Order, the previous CDC Director determined that good cause existed because the public health emergency caused by COVID-19 made it impracticable and contrary to the public health, and by extension the public interest, to delay the issuance and effective date of

⁴⁴ In the United States, public health measures are implemented at all levels of government, including the federal, state, local, and tribal levels. Publicly-available compilations of pending measures indicate that eviction moratoria and other protections from eviction have expired or are set to expire in many jurisdictions. Eviction Lab, *COVID-19 Housing Policy Scorecard*, available at: <https://evictionlab.org/covid-policy-scorecard/>.

⁴⁵ *Chambless Enters., LLC v. Redfield*, No. 20-1455, 2020 WL 7588849, (W.D. La. 2020).

the Order. The previous Director also found that a delay in the effective date of the Order would permit the occurrence of evictions—potentially on a mass scale—that would have potentially significant consequences. One such potential consequence would be that evicted individuals would move into close quarters in congregate or shared living settings, including homeless shelters, which would put the individuals at higher risk for COVID-19. Another potential consequence would be if evicted individuals become homeless and unsheltered, and further contribute to the spread of COVID-19. For these reasons, the previous Director concluded that the delay in the effective date of the Order would defeat the purpose of the Order and endanger the public health and, therefore, determined that immediate action was necessary. As a result, the previous Director issued the Order without prior notice and comment and without a delay in the effective date. Because these conditions continue to exist—indeed, have worsened—and because the extension granted in section 502 of Title V, Division N of the Consolidated Appropriations Act, 2021 is set to expire on January 31, 2021, I hereby conclude that immediate action is again necessary without prior notice and comment and without a delay in the effective date.

The rapidly changing nature of the pandemic requires not only that CDC act swiftly, but also deftly to ensure that its actions are commensurate with the threat. This necessarily involves assessing evolving conditions that inform CDC's determinations.

The conditions that existed on September 4, 2020 have only worsened. As of January 21, 2021, there have been over 24,400,000 cases and over 400,000 deaths. Data collected by Princeton University show that eviction filings are occurring; it is therefore expected that large numbers of evictions would be processed if the Order were to expire. [<https://evictionlab.org/eviction-tracking>]. Without this Order, there is every reason to expect that evictions will increase significantly, resulting in further spread of COVID-19. It is imperative is to act quickly to protect the public health, and it would be impracticable and contrary to the public interest to delay the issuance and effective date of the Order pending notice-and-comment rulemaking.

Similarly, if this Order qualifies as a rule under the APA, the Office of Information and Regulatory Affairs (OIRA) has determined that it would be a major rule under the Congressional Review Act (CRA). But there would not be a delay in its effective date. The agency has determined that for the same reasons, there would be good cause under the CRA to make the requirements herein effective immediately

If any provision of this Order, or the application of any provision to any persons, entities, or circumstances, shall be held invalid, the remainder of the provisions, or the application of such provisions to any persons, entities, or circumstances other than those to which it is held invalid, shall remain valid and in effect.

This Order shall be enforced by federal authorities and cooperating state and local authorities through the provisions of 18 U.S.C. 3559, 3571; 42 U.S.C. 243, 268, 271; and 42 CFR 70.18. However, this Order has no effect on the contractual obligations of renters to pay rent and shall not preclude charging or collecting fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

CRIMINAL PENALTIES

Under 18 U.S.C. 3559, 3571; 42 U.S.C. 271; and 42 CFR 70.18, a person violating this Order may be subject to a fine of no more than \$100,000 if the violation does not result in a death, or a fine of no more than \$250,000 if the violation results in a death, or as otherwise provided by law. An organization violating this Order may be subject to a fine of no more than \$200,000 per event if the violation does not result in a death or \$500,000 per event if the violation results in a death or as otherwise provided by law. The U.S. Department of Justice may initiate criminal proceedings as appropriate seeking imposition of these criminal penalties.

NOTICE TO COOPERATING STATE AND LOCAL OFFICIALS

Under 42 U.S.C. 243, the U.S. Department of Health and Human Services is authorized to cooperate with and aid state and local authorities in the enforcement of their quarantine and other health regulations and to accept state and local assistance in the enforcement of Federal quarantine rules and regulations, including in the enforcement of this Order.

NOTICE OF AVAILABLE FEDERAL RESOURCES

While this Order to prevent eviction is effectuated to protect the public health, the states and units of local government are reminded that the Federal Government has deployed unprecedented resources to address the pandemic, including housing assistance.

The Department of Housing and Urban Development (HUD) has informed CDC that all HUD grantees—states, cities, communities, and nonprofits—who received Emergency Solutions Grants (ESG) or Community Development Block Grant (CDBG) funds under the CARES Act may use these funds to provide temporary rental assistance, homelessness prevention, or other aid to individuals who are experiencing financial hardship because of the pandemic and are at risk of being evicted, consistent with applicable laws, regulations, and guidance.

HUD has further informed CDC that:

HUD's grantees and partners play a critical role in prioritizing efforts to support this goal. As grantees decide how to deploy CDBG-CV and ESG-CV funds provided by the CARES Act, all communities should assess what resources have already been allocated to prevent evictions and homelessness through temporary rental assistance and homelessness prevention, particularly to the most vulnerable households.

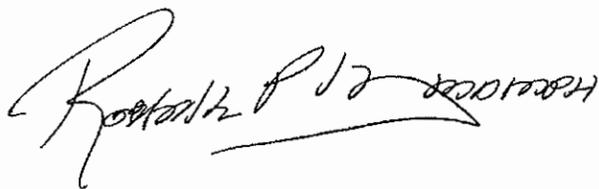
HUD stands at the ready to support American communities take these steps to reduce the spread of COVID-19 and maintain economic prosperity. Where gaps are identified, grantees should coordinate across available Federal, non-Federal, and philanthropic funds to ensure these critical needs are sufficiently addressed and utilize HUD's technical assistance to design and implement programs to support a coordinated response to eviction prevention needs. For program support, including technical assistance, please visit www.hudexchange.info/program-support. For further information on HUD resources, tools, and guidance available to respond to the COVID-19 pandemic, state and local officials are directed to visit <https://www.hud.gov/coronavirus>. These tools include toolkits for Public Housing Authorities and Housing Choice Voucher landlords related to housing stability and eviction prevention, as well as similar guidance for owners and renters in HUD-assisted multifamily properties.

Similarly, the Department of the Treasury has informed CDC that the funds allocated through the Coronavirus Relief Fund and the Emergency Rental Assistance Program may be used to fund rental assistance programs to prevent eviction. Visit <https://home.treasury.gov/policy-issues/cares/state-and-local-governments> for more information about the Coronavirus Relief Fund and <https://home.treasury.gov/policy-issues/cares/emergency-rental-assistance-program> for more information about the Emergency Rental Assistance Program..

EFFECTIVE DATE

This Order is effective on January 31, 2021 and will remain in effect, unless extended, modified, or rescinded, through March 31, 2021.

In testimony whereof, the Director, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, has hereunto set her hand at Atlanta, Georgia, this 29th day of January 2021.

A handwritten signature in black ink, appearing to read "Rochelle P. Walensky", with a horizontal line underneath the name.

Rochelle P. Walensky, MD, MPH

Director,

Centers for Disease Control and Prevention

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 21-9011

THIRTY-FOURTH EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER

ORDERED that:

1. Governor Abbott has declared a state of disaster in all 254 counties in the State of Texas in response to the imminent threat of the COVID-19 pandemic. This Order is issued pursuant to Section 22.0035(b) of the Texas Government Code.

2. Paragraphs 3 and 4 of the Thirty-Second Emergency Order (Misc. Dkt. No. 20-9161), issued December 29, 2020, are renewed as amended.

3. In any action for eviction to recover possession of residential property under Chapter 24 of the Texas Property Code and Rule 510 of the Texas Rules of Civil Procedure:

a. a sworn original, amended, or supplemental petition containing “a description of the facts and grounds for eviction” required by Texas Rule of Civil Procedure 510.3(a)(2) must state whether or not:

i. the premises are a “covered dwelling” subject to Section 4024 of the CARES Act;

ii. the plaintiff has provided the defendant with 30 days’ notice to vacate under Section 4024(c) of the CARES Act;

iii. the defendant has provided the plaintiff with a declaration under the Centers for Disease Control and Prevention’s agency order effective September 4, 2020, titled Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, as extended by Section 502 of the Consolidated Appropriations Act, 2021, and as further extended and modified by the Centers for Disease Control and

Prevention's agency order effective January 31, 2021, titled Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 ("CDC Order"); and

iv. the premises are a property securing an FHA-insured Single Family mortgage;

b. in addition to the contents required by Texas Rule of Civil Procedure 510.4(a), the citation must include:

i. the following statement: "The Centers for Disease Control issued an order stopping some evictions. You may be able to stop your eviction if you sign the attached 'Declaration under Penalty of Perjury for the Centers for Disease Control and Prevention's Temporary Halt in Evictions to Prevent Further Spread of COVID-19' and give a copy to your landlord and the court. Before signing the Declaration, read it carefully and make sure all the statements are true. The Declaration is sworn, meaning you can be prosecuted, go to jail, or pay a fine if any of the statements are not true. Find out more about the order at <https://texaslawhelp.org/article/cdc-eviction-moratorium>.";

ii. the following Spanish translation of the statement in (i): "Los Centros de Control y Prevención de Enfermedades han emitido una orden para impedir ciertos desalojos de inquilinos. Es posible que usted pueda evitar su desalojo si llena el formulario adjunto titulado '*Declaración Bajo Pena de Perjurio para la Suspensión Temporal de Desalojos de los Centros de Control y Prevención de Enfermedades para Prevenir una Mayor Propagación de COVID-19*,' y le entrega una copia del formulario al propietario y presenta otra copia ante tribunales. Antes de firmar la declaración, debe leerla cuidadosamente y asegurarse que toda la información declarada es cierta. Esta declaración se firma bajo juramento, lo que significa que se le puede imponer cargos penales, encarcelar o multar si la información declarada no es cierta. Para mayor información sobre esta orden, visite el siguiente enlace, <https://texaslawhelp.org/article/cdc-eviction-moratorium>."; and

iii. a copy of the declaration form, titled Declaration under Penalty of Perjury for the Centers for Disease Control and Prevention's Temporary Halt in Evictions to Prevent Further Spread of COVID-19, ("CDC Declaration") that is attached to the CDC's Order or a similar declaration form;

c. a judge continues to have the authority under Texas Rule of Civil Procedure

500.6 to develop the facts of the case, including the authority to question:

i. whether the premises is a “covered dwelling” subject to Section 4024 of the CARES Act; and

ii. whether the defendant is aware of the CDC Order and has had an opportunity to complete the CDC Declaration or a similar declaration; and

d. if a defendant provides the CDC Declaration or a similar declaration to the plaintiff after a petition is filed:

i. the defendant must file the declaration with the justice court and serve a copy of the declaration on the plaintiff; and

ii. the justice court must abate the eviction action, including the issuance and execution of any writ of possession under Texas Rule of Civil Procedure 510.8(d), except as provided in Paragraph 4.

if: 4. An eviction action covered by Paragraph 3(d) may nevertheless proceed if, but only

a. the plaintiff contests the defendant’s declaration or the CDC Order;

and b. the judge holds a hearing to determine whether the action should proceed;

c. the judge determines that the action should proceed and signs a written order stating:

i. the reasons for the determination that the action should proceed; and

ii. procedures that will apply as the action proceeds.

5. This Order is effective immediately, and expires March 31, 2021, unless extended by the Chief Justice of the Supreme Court.

6. The Clerk of the Supreme Court is directed to:

- a. post a copy of this Order on www.txcourts.gov;
- b. file a copy of this Order with the Secretary of State; and
- c. send a copy of this Order to the Governor, the Attorney General, and each member of the Legislature.

7. The State Bar of Texas is directed to take all reasonable steps to notify members of the Texas bar of this Order.

Dated: January 29, 2021

JUSTICE DEVINE and JUSTICE BLACKLOCK dissent.



Nathan L. Hecht, Chief Justice

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 21-9015

THIRTY-FIFTH EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER

ORDERED that:

1. Governor Abbott has declared a state of disaster in all 254 counties in the State of Texas in response to the imminent threat of the COVID-19 pandemic. This Order is issued pursuant to Section 22.0035(b) of the Texas Government Code.

2. The Thirty-First Emergency Order (Misc. Dkt. No. 20-9151) is renewed as amended.

3. In consultation with Governor Abbott, who has directed federal funding from the CARES Act, Community Development Block Grant, and Emergency Solutions Grant to rental assistance and eviction diversion, and the Texas Department of Housing and Community Affairs, and in an effort to curb the possible surge of evictions due to the COVID-19 pandemic, assist Texas's most vulnerable tenants, and provide landlords with an alternative to eviction, the Court establishes the Texas Eviction Diversion Program and adopts the procedures set forth in this Order.

4. Eligibility for rental assistance under the Texas Eviction Diversion Program will be determined by the Texas Department of Housing and Community Affairs and its providers.

5. In any action for eviction to recover possession of residential property under Chapter 24 of the Texas Property Code and Rule 510 of the Texas Rules of Civil Procedure based, in whole or part, on the nonpayment of rent:

a. in addition to the contents required by Texas Rules of Civil Procedure 502.2 and 510.3, a sworn original, amended, or supplemental petition must state that the plaintiff has reviewed the information about the Texas Eviction Diversion Program available at www.txcourts.gov/eviction-diversion/;

b. in addition to the contents required by Texas Rule of Civil Procedure 510.4(a), the citation must include:

i. the following statement: "If you and your landlord agree to participate in the Texas Eviction Diversion Program, you may be able to have up to 15 months of the rent you owe paid and stop your eviction. At your trial, the court will tell you about the Program and ask if you are interested in participating. Find out more about

the Program in the attached brochure, titled State of Texas Eviction Diversion Program, at www.txcourts.gov/eviction-diversion/; and at <https://texaslawhelp.org/article/texas-eviction-diversion-program>. You may also call Texas Legal Services Center for assistance at 855-270-7655.”; and

ii. the following Spanish translation of the statement in (i): “Si usted y el propietario están de acuerdo en participar en el Programa de Desvío de Desalojo del Estado de Texas, podrá ser elegible para recibir asistencia de hasta quince meses de pagos vencidos de su alquiler y detener su desalojo. En su audiencia de desalojo, el juez le dará información sobre este programa y le preguntará si desea participar en él. Encontrará más información sobre el programa en el folleto adjunto titulado Programa de Desvío de Desalojo del Estado de Texas. Puede visitar los siguientes enlaces para más información www.txcourts.gov/eviction-diversion o <https://texaslawhelp.org/article/texas-eviction-diversion-program>, o llamar al Centro de Servicios Legales de Texas (*en inglés, Texas Legal Services Center*) por teléfono al 855-270-7655.”; and

iii. a copy of the informational brochure, titled State of Texas Eviction Diversion Program, prepared by the Texas Department of Housing and Community Affairs;

c. at the trial required by Texas Rules of Civil Procedure 510.6 and 510.7, the judge must:

i. discuss the Texas Eviction Diversion Program with the plaintiff and defendant;

ii. ask the plaintiff and defendant whether they are interested in participating in the Texas Eviction Diversion Program; and

iii. if the plaintiff and defendant both express an interest in participating in the Texas Eviction Diversion Program:

(A) abate the eviction action for 60 days;

(B) make all court records, files, and information—including information stored by electronic means—relating to the eviction action confidential to prohibit disclosure to the public; and

(C) inform the parties of the reinstatement and dismissal procedures outlined in Paragraphs 6 and 7 of this Order.

6. To reinstate an eviction action abated under Paragraph 5(c)(iii), the plaintiff must file a motion to reinstate with the court within the 60-day abatement period and serve a copy of the motion on the defendant. Upon the filing and service of the motion, the judge must sign and serve—in a method provided by Texas Rule of Civil Procedure 510.4—a written order that:

- a. reinstates the eviction action;
- b. sets the eviction action for trial as soon as practicable, but no later than 21 days after the date the order is signed;
- c. states the procedures for the action to proceed; and
- d. makes all court records, files, and information—including information stored by electronic means—relating to the eviction action non-confidential to allow disclosure to the public.

7. If the plaintiff does not file and serve a motion to reinstate an action abated under Paragraph 5(c)(iii) within the 60-day abatement period, the judge must dismiss the action, including any claims that do not involve the nonpayment of rent, with prejudice. All court records, files, and information—including information stored by electronic means—relating to the dismissed eviction action must remain confidential.

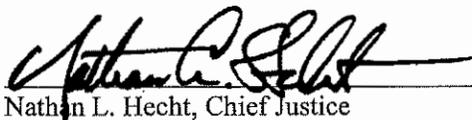
8. Paragraph 7 does not prohibit the plaintiff from filing an action for eviction based on future events or acts that are an independent basis for eviction.

9. This Order is effective for all counties on February 15, 2021. This Order expires May 12, 2021, unless extended by the Chief Justice of the Supreme Court.

10. The Clerk of the Supreme Court is directed to:
- a. post a copy of this Order on www.txcourts.gov;
 - b. file a copy of this Order with the Secretary of State; and
 - c. send a copy of this Order to the Governor, the Attorney General, and each member of the Legislature.

11. The State Bar of Texas is directed to take all reasonable steps to notify members of the Texas bar of this Order.

Dated: February 11, 2021.


Nathan L. Hecht, Chief Justice