

Office of the City Manager

**FORTY-SECOND SUPPLEMENT TO THE EXECUTIVE ORDER OF THE
DIRECTOR OF EMERGENCY SERVICES DECLARING THE EXISTENCE OF A
LOCAL EMERGENCY**

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 March 4, 2020, the Los Angeles County Board of Supervisors and Department of Public Health declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to COVID-19; and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State prepare for broader spread of COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, on March 13, 2020, the City Manager, in his role as the Director of Emergency Services, (“Director of Emergency Services”) proclaimed the existence of a local emergency pursuant to Chapter 2.16 of the Santa Monica Municipal Code to ensure the availability of mutual aid and an effective the City’s response to COVID-19 and this local emergency was restated on March 14, 2020, through a revised declaration of local emergency to ensure compliance with all digital signature requirements (the “Executive Order”); and

WHEREAS, on March 16, 2020, the Los Angeles County Department of Public Health issued a Health Officer Order for the Control of COVID-19 (“Health Officer Order”) that imposed various restrictions on gatherings, closure of certain businesses, and certain social distancing measures, and

WHEREAS, since March 16, 2020, the Los Angeles County Department of Public Health has on multiple occasions amended and modified its Health Officer Order, and, as of the date of this Order, a Health Officer Order remains in effect, which requires various measures to reduce the spread of COVID-19; and

WHEREAS, since the Director of Emergency Services issued the Executive Order on March 13, 2020, the Director of Emergency Services has issued 41 separate supplements to the Executive Order; and

WHEREAS, on multiple occasions since the Director of Emergency Services issued the Executive Order on March 13, 2020, the City Council ratified the proclamation of local emergency made by the Director of Emergency Services; most recently, on December 7, 2021, the City Council ratified the proclamation of local emergency made by the Director of Emergency Services, as well as the Fifth Revised First, Revised Fourth, Revised Fifth, Seventh, Eighth, Ninth, Twelfth, Thirteenth, Fifteenth, Sixteenth, Seventeenth, Third Revised Eighteenth, Nineteenth, Second Revised Twenty-First, Twenty-Second, Twenty-Third, Twenty-Fourth, Twenty-Fifth, Twenty-Sixth, Twenty-Seventh, Twenty-Eighth, Twenty-Ninth, Thirty-First, Thirty-Second, Thirty-Third, Corrected Thirty-Fourth, Thirty-Fifth, Thirty-Sixth, Thirty-Seventh, Thirty-Eighth, Thirty-Ninth, Fortieth, and Forty-First Supplements thereto; resolved that the local emergency shall be deemed to continue and exist until its termination is proclaimed by the City Council; and resolved that the supplements being ratified above shall, except for those portions of earlier supplements that were not extended by the Nineteenth, Thirty-First, Corrected Thirty-Fourth, Thirty-Fifth, Thirty-Sixth, Thirty-Seventh, and Thirty-Ninth Supplements, be operative and remain in effect through January 31, 2022, or any later date expressly stated within the text of an individual supplement; and

WHEREAS, on March 18, 2020, the Director of Emergency Services issued a Revised First Supplement to the Executive Order of the Director of Emergency Services implementing eviction protections for residential and commercial tenants and suspending removals of rental property from the market under the Ellis Act; and

WHEREAS, on June 17, 2020, the Director of Emergency Services issued a Fifth Revised First Supplement to the Executive Order of the Director of Emergency Services Declaring the Existence of a Local Emergency, which, among other things, for residential tenants restated the existing temporary eviction moratorium and extended the period for which unpaid rent will be subject to that eviction moratorium; and

WHEREAS, on September 18, 2020, the Director of Emergency Services issued a Twenty-Sixth Supplement to the Executive Order of the Director of Emergency Services Declaring the Existence of a Local Emergency, which, among other things, required landlords to report endeavors to evict residential tenants to the Santa Monica City Attorney's Office; and

WHEREAS, on December 22, 2020, the Director of Emergency Services issued a Thirty-First Supplement to the Executive Order of the Director of Emergency Services Declaring the Existence of a Local Emergency, which, among other things, extended the City's moratorium on evictions of residential tenants for reasons other than nonpayment of rent; and

WHEREAS, on June 24, 2021, the Director of Emergency Services issued a Thirty-Eighth Supplement to the Executive Order of the Director of Emergency Services Declaring the Existence of a Local Emergency, which, among other things, adopted in part the June 22, 2021 Los Angeles County Resolution Further Amending and Restating the Executive Order for an Eviction Moratorium as it applies to eviction protections for reasons other than nonpayment of rent, thereby rendering these provisions enforceable by the city; and

WHEREAS, on September 28, 2021, the Fortieth Supplement to the Executive Order of the Director of Emergency Services Declaring the Existence of a Local Emergency extended the Thirty-Eighth Supplement of Executive Order of the Director of Emergency Services Declaring the Existence of a Local Emergency until October 31, 2021, which among other things adopted in part the June 22, 2021 Los Angeles County Resolution Further Amending and Restating the Executive Order for an Eviction Moratorium as it applies to eviction protections for reasons other than nonpayment of rent, thereby rendering these provisions enforceable by the City; and

WHEREAS, on September 28, 2021, Los Angeles County adopted the COVID-19 Protections Resolution, available at <https://file.lacounty.gov/SDSInter/bos/supdocs/162124.pdf>, which states that it applies to incorporated cities within the County but does not preclude an incorporated city within the County from imposing greater protections, and which implements an eviction moratorium for evictions based on specified grounds, including nonpayment of rent, no-fault termination of tenancy or occupancy, owner move-ins, nuisance or unauthorized occupants or pets, and denial of entry; and

WHEREAS, on October 29, 2021, the Director of Emergency Services issued a Forty-First Supplement to the Executive Order of the Director of Emergency Services Declaring the Existence of a Local Emergency, which, among other things, extended the following: eviction protections for reasons other than nonpayment of rent by adopting the September 28, 2021 Los Angeles County COVID-19 Tenant Protections Resolution as it applies to residential eviction protections for reasons other than nonpayment of it, subject to Section 3(a) of the Fifth Revised First Supplement as amended by Section 26 of the Twenty-Eight Supplement (Ellis Act evictions); Sections 8 (affirmative defenses), Section 9 (non-waivability of rights), Section 10 (private right of action), Section 11 (tenant harassment), Section 20 (prohibition on deception), Section 21-22 (landlord liability for bad faith eviction notice or action), and Section 23 (enforceability) of the Fifth Revised First Supplement as applicable; Section 3 of the Thirty-First Supplement as amended by the Forty-First Supplement;

WHEREAS, the County's September 28, 2021 COVID-19 Protections Resolution, which the City adopted in part in its Forty-First Supplement, is set to expire on January 31, 2022; and

WHEREAS, on January 25, 2022, Los Angeles County adopted a resolution amending and restating the County's COVID-19 Protections Resolution, which among other things extended eviction protections for reasons other than nonpayment of rent and imposed eviction protections for nonpayment of rent;

WHEREAS, the City's ability to effectively enforce COVID-19 tenant protections is critical to protect the public health and safety; and

WHEREAS, during this local emergency, and in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement, to protect the City's affordable housing stock, to prevent housed individuals from falling into homelessness, and to prevent loss of local businesses; and

WHEREAS, this local emergency includes an economic crisis that could only worsen the existing housing crisis in the City and in Los Angeles County; and

WHEREAS, the City cannot mitigate in the emergency environment the instability and disruption of residential housing that might occur when multi-family buildings are removed from the rental market under the Ellis Act; and

WHEREAS, Ellis Act removals and other no-fault evictions would displace residents from their homes during COVID-19-related social distancing, quarantine, and home isolation measures that make searching for new housing infeasible and potentially dangerous to one's health and safety; and

WHEREAS, the City must track how many evictions and endeavors to evict occur in Santa Monica, along with the nature of these attempts and their outcomes, in order to best prevent displacement of low- and moderate-income residents and to explore other options to prevent displacement of low and moderate income tenants, including through the feasibility of a Right to Counsel Ordinance and other measures to protect tenants' legal rights during the pandemic; and

WHEREAS, in order to protect the health, safety and welfare of the residents of Santa Monica both during and in the recovery from the COVID-19 emergency, it is necessary to fully understand the nature of the eviction problem and need to provide access to legal services to tenants who are subject to eviction proceedings; and

WHEREAS, while the County and the City have made significant progress in vaccine distribution, COVID-19 cases have surged once again, this time due to the Omicron variant, which emerged in late 2021; and

WHEREAS, the City has an important government interest in maintaining a thriving business community and protecting the health, safety, and economic welfare of its citizens and businesses; and

WHEREAS, permitting restaurants to temporarily use a parking meter or designated spaces in a public parking lot for curbside pickup in accordance with this Order will enable the restaurants to operate safely during the pendency of this COVID-19 emergency while the City experiences a surge in the Omicron variant; and

WHEREAS, as of January 25, 2022, the Los Angeles County Department of Public Health has confirmed 2,540,075 cases of COVID-19 in Los Angeles County and has continued to advise that public health measures remain required to prevent the further spread of COVID-19; and

WHEREAS, California Government Code 8634 empowers the City to promulgate orders and regulations necessary to provide for the protection of life and property during a local emergency, and

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary to exercise my authority pursuant to Section 2.16.060 of the Santa Monica Municipal Code to issue this regulation related to the protection of life and property.

NOW, THEREFORE, I, David White, the Director of Emergency Services for the City of Santa Monica, do hereby issue the following order to become effective immediately, subject to ratification as soon as practicable by the City Council.

IT IS HEREBY ORDERED THAT:

A. Extension of Emergency Supplements

1. Subject to the exceptions stated in Section 2 and 4 of this Order; Section 2 of the Nineteenth Supplement issued June 29, 2020; Sections 6 and 7 of the Thirty-First Supplement issued December 22, 2020; Sections 8 through 11 of the Corrected Thirty-Fourth Supplement issued March 24, 2021; Sections 2 and 3 of the Thirty-Fifth Supplement issued April 27, 2021; Sections 19 and 20 of the Thirty-Sixth Supplement issued May 18, 2021; and Sections 2, 3, and 4 of the Thirty-Seventh Supplement issued June 24, 2021; and Section 2 of the Thirty-Ninth Supplement issued July 14, 2021, the Fifth Revised First, Revised Fourth, Revised Fifth, Seventh, Eighth, Ninth, Twelfth, Thirteenth, Fifteenth, Sixteenth, Seventeenth, Third Revised

Eighteenth, Nineteenth, Second Revised Twenty-First, Twenty-Second, Twenty-Third, Twenty-Fourth, Twenty-Fifth, Twenty-Sixth, Twenty-Seventh, Twenty-Eighth, Twenty-Ninth, Thirty-First, Thirty-Second, Thirty-Third, Corrected Thirty-Fourth, Thirty-Fifth, Thirty-Sixth, Thirty-Seventh, Thirty-Ninth, Fortieth, and Forty-First Supplements to the Executive Order of the Director of Emergency Services Declaring the Existence of a Local Emergency shall be extended to be operative and remain in effect until, whichever occurs earlier, the termination of the County Health Officer Order, including any amendments and successors thereto, or June 30, 2022, provided that City Council ratifies the need for continuing the local emergency due to COVID-19 every 60 days. At that time, the foregoing Supplements to the Executive Order of the Director of Emergency Services Declaring the Existence of a Local Emergency shall automatically expire unless earlier extended or expressly superseded by an action of the City Council or by a further Executive Order of the Director of Emergency Services or Supplement thereto.

2. The COVID-19 tenant protection provisions set forth in Sections 8 through 11 and 20 through 23 of the Fifth Revised First Supplement issued on June 17, 2020; Section 3(a) of the Fifth Revised First Supplement as amended by Section 26 of the Twenty-Eighth Supplement issued on November 24, 2020; Sections 1 through 3 of the Thirty-First Supplement issued on December 22, 2020; and Sections 3 through 7 of the Forty-First Supplement issued on October 29, 202 are superseded by Sections 5 through 11 of this Order and for this reason these sections of these supplements are not extended.
3. Sections 18 through 24 of the Twenty-Eighth Supplement issued November 24, 2020; have been superseded by the City Council's January 25, 2022 adoption of Emergency Interim Zoning Ordinance No. 2688, An Emergency Interim Zoning Ordinance of the City Council of the City of Santa Monica Amending Santa Monica Municipal Code Section 9.37.070 to Extend Permit Timeframes Due to Unavoidable Delays Caused by the COVID-19 Pandemic and to Further Economic Recovery Effort, and Emergency Ordinance No. 2689, An Emergency Ordinance of the City Council of the City of Santa Monica Amending Portions of Article VIII and Chapter 9.56 of the Santa Monica Municipal Code to Extend Certain Time Frames for Building Permits, Mandatory Seismic Retrofit Compliance, and Certificates of Appropriateness, and to Extend Processing Time Frames for Applications Under Chapter 9.56 Due to Unavoidable Delays Caused by the COVID-19 Pandemic and to Further Economic Recovery Efforts, and for this reason these sections of these supplements are not extended.

4. Section 2 of the Revised Fifth Supplement issued on March 18, 2020 regarding the suspension of water shutoff for nonpayment of bills is not extended and shall have no force and effect as of the effective date of this Order.

B. Restatement and Amendment of COVID-19 Tenant Protections

5. **Eviction Protections**

- a. Definitions. For purposes of this Order, “endeavor to evict” includes, but is not limited to: serving a Notice to Pay or Quit, a Notice to Perform Covenant or Quit, a Notice of Termination, or any other eviction notice; filing or pursuing an unlawful detainer action based on such notices; or seeking to terminate a tenancy or evict a residential tenant through other means.
- b. Withdrawal of All Rental Units on a Parcel of Land from the Rental Market. If a landlord files a Notice of Intention to Withdraw Accommodations from Rent or Lease pursuant to the Ellis Act, California Government Code Section 7060, *et seq.*, the landlord may serve any requisite notices, such as a Notice to Terminate Tenancies. A landlord shall not file an unlawful detainer action based on the removal of a unit from the rental market pursuant to the Ellis Act until sixty days after the expiration of this Order.
- c. No-Fault Termination of Tenancy or Occupancy. A residential tenant shall not be evicted, and a landlord shall not endeavor to evict a residential tenant, where grounds for terminating the tenancy or occupancy is not based on any alleged fault by the tenant.
- d. Nuisance or Unauthorized Occupants or Pets. A residential tenant shall not be evicted, and a landlord shall not endeavor to evict a residential tenant, for nuisance or for unauthorized occupants or pets whose presence is necessitated by or related to the COVID-19 emergency.
- e. Denial of Entry. A residential tenant shall not be evicted, and a landlord shall not endeavor to evict a residential tenant, on the ground that such residential tenant denied entry by the landlord into the rental unit, subject to the following:
 - (1) The following circumstances permit entry into the residential tenant’s unit:
 - (i) Remediating a condition that substantially endangers or impairs the health or safety of a residential tenant or other persons in, or in the vicinity of, the rental unit, or

- (ii) A residential tenant is causing or threatening to cause substantial damage to the rental unit.
 - (2) If a landlord seeks entry pursuant to subsection 5(e) above, the landlord must:
 - (i) Not permit entry by any person who is, or who the landlord has good cause to believe is, a carrier of COVID-19.
 - (ii) Ensure that appropriate social distancing, cleaning, and sanitation measures are taken to protect the residential tenant and members of the household from risk of transmitting COVID-19 as a result of Entry into the rental unit. Such measures must account for: the residential tenant notifying the landlord that the residential tenant, or a member of the household, has or believes in good faith to have been recently exposed to COVID-19; or the residential tenant notifying the landlord that the residential tenant, or a member of the household, is at a higher risk for more serious complications from COVID-19.
 - (iii) A landlord who enters the rental unit shall promptly leave the rental unit if the residential tenant revokes permission to enter because of the landlord's failure to observe appropriate social distancing, cleaning, and sanitization measures.
 - (3) For purposes of this subsection only, "landlord" includes, but is not limited to, any person authorized by the landlord to enter the rental unit, such as maintenance personnel, a prospective buyer, or a prospective residential tenant.
- f. Notwithstanding subsections 5(a). through 5(e), above, or any other provision of this Order, this Order shall not apply where the eviction is necessary to maintain compliance with the requirements of Civil Code section 1941.1, Health and Safety Code sections 17920.3 or 17920.10, or any other applicable law or government order concerning the safety or habitability of rental units, or where the Tenant's occupancy is otherwise a threat to the public health or safety as determined by a court of law.

6. Remedies for Violations of Eviction Protections

- a. This Order grants residential tenants an affirmative defense that may be raised at any time in an unlawful detainer action in the event that the action is commenced in violation of this Order.

- b. A residential tenant injured by a landlord's violation of Section 5 of this Order has a private right of action against the landlord, including for violation of California Business and Professions Code Section 17200, et seq., and shall be entitled to attorney's fees and exemplary damages according to proof.
7. A landlord who in bad faith serves an eviction notice to a residential tenant without reasonable grounds, or in bad faith brings an eviction action against a residential tenant without reasonable grounds that terminates in the residential tenant's favor, shall be liable under this Order and shall also be deemed in violation of the City's Tenant Harassment Ordinance, as set forth in Section 4.56.020 of the Santa Monica Municipal Code. The maximum civil penalty for any violation of the Tenant Harassment Ordinance occurring while this Order is in effect is increased from \$10,000 to \$15,000.
8. **Reporting Requirements**
 - a. Landlords shall email the Santa Monica City Attorney's Office, at EMReports@santamonica.gov, unredacted copies of any notices of any endeavors to evict (pandemic-related or not), including a termination notice (for example, the 15-day Notice required by the COVID-19 Tenant Relief Act of 2020) or a Summons and Complaint for Unlawful Detainer, within two (2) days of serving such notice or summons and complaint on a tenant.
 - b. Landlords shall email the Santa Monica City Attorney's Office, at EMReports@santamonica.gov, the following information within three (3) days of its availability to landlord: (1) whether the residential tenant obtained a fee waiver; (2) whether the residential tenant has legal representation; (3) whether the landlord has legal representation; and (4) outcome of the endeavor to evict. Violations of this section
 - c. Violations of Section 8 of this Order do not result in an affirmative defense for the tenant in an unlawful detainer action.
9. A landlord may not deceive a residential tenant in connection with the rights and obligations under this Order. For purposes of this section, "deceive" includes intentional misrepresentation, negligent misrepresentation, concealment of a material fact, or false promise.
10. Any provision in a rental agreement, payment plan, or any other agreement between a landlord and residential tenant that waives or modifies any rights under this Order shall be void as contrary to public policy.

11. Sections 5 through 10 of this Order shall be enforceable by the Santa Monica Police Department and any City Officer or employee granted authority to issue written notices to appear pursuant to Santa Monica Municipal Code Section 3.36.090 as a misdemeanor pursuant to Government Code Section 8665 and Santa Monica Municipal Code Section 2.16.100, or through the issuance of administrative citations in accordance with Chapter 1.09 of the Santa Monica Municipal Code. Pursuant to Section 1.09.040 of the Santa Monica Municipal Code, the amount of the fine for each violation of any provision of this Order shall be up to a maximum of \$1,000. Pursuant to Santa Monica Municipal Code Section 1.09.040(c), a later payment charge of 10% of the applicable fine shall be imposed for the payment of an administrative fine imposed pursuant to this Order after its due date.

C. Temporary Curbside Pickup Zones for Restaurants

12. As used in Sections 12 through 16 of this Order, the following terms have the following meanings:
 - a. “Restaurant” means a restaurant, full-service, as that term is defined by Santa Monica Municipal Code Section 9.51.030(B)(8)(b), or restaurant, limited-service and take-out, as that term is defined by Santa Monica Municipal Code Section 9.51.030(B)(8)(c).
 - b. “Curbside pickup sign” is a sign prepared by Director of the Community Development Department or designee that, when (1) posted by the restaurant on a single parking meter adjacent to or near the restaurant, authorizes the customers of the restaurant to park, for free, for no longer than 10 minutes at a time during business hours; (2) posted by the City on spaces in a public parking lot designated by the Director of the Community Development Department or designee, authorizes customers of a restaurant to park, for free, for up to 30 minutes during the hours stated on the sign; or (3) if a parking meter is not adjacent to the restaurant, posted by the restaurant for a single space of on-street parking that is adjacent to or near the restaurant in compliance with Section 13 of this Order, authorizes the customers of the restaurant to park for no longer than 10 minutes at a time during business hours.
 - c. “Parking meter” shall have the same meaning as that term is defined in Santa Monica Municipal Section 3.16.020.
 - d. “Public parking lot” shall have the same meaning as that term is defined by Santa Monica Municipal Section 3.04.010,

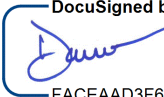
13. A restaurant posting a curbside pickup sign adjacent to on-street parking shall comply with the posting requirements for temporary no parking signs, available at https://www.smgov.net/uploadedFiles/Departments/PCD/Applications-Forms/TNP_Posting_Guidelines.pdf.
14. A restaurant shall not post a curbside pickup sign on an ADA accessible space, in a red or a loading zone, or on more than one parking meters or on-street parking spaces at any one time.
15. The Director of the Transportation Department or designee may promulgate regulations to implement Sections 12 through 17 of this Order. Such regulations may include, among other things, authorization for restaurants to share a curbside pickup sign posted by another restaurant so that customers visiting either restaurant may park, for free, no longer than 10 minutes during business hours at the metered parking space or on-street parking space with such a posted curbside pickup sign. Any person posting a curbside pickup sign shall comply with such regulations.
16. Chapters 3.04, 3.16, and 9.61 and Section 3.12.905 of the Santa Monica Municipal Code are hereby temporarily suspended to the extent necessary to accommodate the posting and use of a curbside pickup sign as authorized by this Order.
17. The temporary curbside pickup program set forth in Sections 12 through 16 shall be in effect until February 28, 2022. If COVID-19 conditions in the City are such that it is in the interest of public health and safety to thereafter resume this temporary curbside pickup program during the pendency of this Order, the Director of Transportation Department or designee is authorized to resume the temporary curbside pickup program for a set term (i.e., from March 1 to March 31, 2022), so long as the City publishes notice and issues a press release on of the resumption of the program, including the dates when the resumed program will be in place.

D. General Provisions

18. This Order shall take effect immediately and, unless extended or expressly superseded by a duly enacted Ordinance of the City Council or by a further Order by the Director of Emergency Services, this Order shall remain in effect through, whichever occurs earlier, the termination of the County Health Officer Order, including any amendments and successors thereto, or June 30, 2022, provided that City Council ratifies the need for continuing the local emergency due to COVID-19 every 60 days.

19. If any section, subsection, sentence, clause, or phrase of this Order is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Order. The City Manager hereby declares that he would have issued this Order, the Executive Order, and any Supplement or Revised or Corrected Supplement to the Executive Order, and each and every section, subsection, sentence, clause, or phrase of this Order, the Executive Order, and any Supplement or Revised or Corrected Supplement to the Executive Order not declared invalid or unconstitutional, without regard to whether any portion of this Order, the Executive Order, or any Supplement or Revised or Corrected Supplement to the Executive Order would be subsequently declared invalid or unconstitutional.

ADOPTED this 27th day of January 2022.

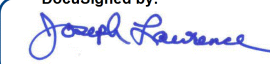
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DAVID WHITE
City Manager
Director of Emergency Services

ATTEST:

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DENISE ANDERSON-WARREN
City Clerk

APPROVED AS TO FORM:

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JOSEPH LAWRENCE
Interim City Attorney