

**Proposed Houston Eviction Ordinance**  
(redlined from Dallas Ordinance 31521 passed April 22, 2020)

ORDINANCE NO.

An ordinance providing for a COVID notice of possible eviction by residential landlords before a notice to vacate a residential tenancy due to the COVID-19 pandemic; creating a COVID hardship notice for tenants; creating an offense; providing a penalty not to exceed \$500; and providing an effective date.

WHEREAS, on March 11, 2020, the Mayor of the City of Houston signed a proclamation declaring a Local State of Disaster Due to a Public Health Emergency to help contain and mitigate COVID-19 from spreading; and

WHEREAS, on March 13, 2020, Governor Abbott 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 Texans; and

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

WHEREAS, on March 15, 2020, the Centers for Disease Control and Prevention ("CDC") recommended the organizers (whether groups or individuals) cancel or postpone in-person events that consist of 50 people or more throughout the United States; and

WHEREAS, on March 16, 2020, President Trump acknowledged the gravity of the COVID-19 Pandemic, releasing strict guidelines to limit people's interactions, including that Americans should avoid groups of more than 10 people; and

WHEREAS, on March 19, 2020, Governor Abbott issued Executive Order GA-08 Relating to COVID-19 Preparedness and Mitigation taking certain actions to minimize the exposure to COVID-19; and

WHEREAS, in order to comply with federal guidance, Governor Abbott's

Executive Orders, and the City's Emergency Regulations, and to avoid person-to-person contact, individuals may be unable to work and may incur COVID-19 related expenses, which may impact a tenant's ability to pay rent, fees, or other charges associated with the tenant's lease; and

WHEREAS, residential landlords provide shelter, facilities and services deemed to be essential pursuant to the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency in its Guidance on the Essential Critical Infrastructure Workforce, version 3.1, and providing residential shelter, facilities and services is a matter of public health, safety, and welfare and serves the public including safeguarding residents in the City of Houston from the detriments of the COVID-19 pandemic.

WHEREAS, on March 19, 2020, the Supreme Court of Texas issued its Fourth Emergency Order regarding the COVID-19 state of disaster stating that, 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: (i) no trial, hearing, or other proceeding may be conducted, and all deadlines are tolled, until after April 19, 2020; and (ii) a writ of possession may issue, but the posting of the warning required by §24.0061(d)(1) of the Property Code and the execution of the writ of possession may not occur until after April 26, 2020, and the deadlines in Rules 510.8(d)(1)-(d)(2) are tolled while the Order remained in effect.

WHEREAS, on May 14, 2020, the Supreme Court of Texas issued its Fifteenth Emergency Order regarding the COVID-19 state of disaster stating that beginning May 19, 2020, eviction proceedings may resume and deadlines are no longer tolled, and

beginning May 26, 2020, warnings may be posted and writs of possession may be executed.

WHEREAS, on June 29, 2020, the Supreme Court of Texas issued its Eighteenth Emergency Order regarding the COVID-19 state of disaster stating that, subject to constitutional limitations, all courts in Texas may in any case, civil or criminal – and must to avoid risk to court staff, parties, attorneys, jurors, and the public – without a participant’s consent, modify or suspend any and all deadlines and procedures, whether prescribed by statute, rule or order, for a stated period ending no later than September 30, 2020.

WHEREAS, July 21, 2020, the Supreme Court of Texas issued its Twentieth Emergency Order regarding the COVID-19 state of disaster amending part of the Fifteenth Emergency Order.

WHEREAS, it is found that if a landlord provides a COVID notice of possible eviction, a tenant will have an opportunity to cure overdue rent, fees, or other charges associated with the tenant's lease, or to negotiate a modification to the lease before the tenant loses housing, which will reduce person-to-person contact with individuals outside of the tenant's household; and

WHEREAS, it is found that establishing a notice provision prior to evicting residential tenants during the COVID-19 Pandemic, will enable landlords and tenants to work collaboratively to permit tenants to remain in their homes while at the same time ensuring that landlords will maintain a level of revenue that will permit them to continue to provide housing options for tenants is a matter of public health, safety, and welfare and serves the public purpose of safeguarding all City of Houston

residents from the detriments of the COVID-19 Pandemic; Now, Therefore,

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

**SECTION 1. DEFINITIONS.**

(1) COVERED PERIOD means the period of time beginning on the date of enactment of this Ordinance and ending the earlier to occur of: (i) the later of the termination of the Governor's declared state of disaster due to the COVID-19 Pandemic or the Mayor's declared state of local disaster due to the COVID-19 Pandemic; or (ii) September 30, 2020.

(2) COVID FINANCIAL IMPACT means a substantial decrease in household income for a residential tenant related to COVID-19, due to business closure, loss of compensable hours of work or wages, layoffs, or substantial out-of-pocket medical expenses. A financial impact is "related to COVID-19" if it is caused by the COVID-19 Pandemic or any governmental response to the COVID-19 Pandemic, including complying with any public health orders or recommended guidance related to COVID-19 from local, state, or federal governmental authorities.

(3) COVID HARDSHIP NOTICE means a written objectively verifiable notice a tenant may provide to the tenant's landlord of the tenant's COVID financial impact, in the form of an email, text, letter, or any other form of written communication, evidencing any loss of income or increase in expenses, and a statement from the tenant that the loss of income or increase in expenses is due to financial impacts related to COVID-19.

(4) COVID IMPACTED TENANT means a person, or a member of a person's household, who is authorized by a lease to occupy residential property to the exclusion of others and suffers a COVID-19 financial impact and provides documentary proof to the tenant's landlord to that effect.

(5) COVID NOTICE OF POSSIBLE EVICTION means a notice to precede the statutory notice to vacate described in Texas Property Code Section 24.005 that a residential landlord shall send to a residential tenant notifying the tenant of the landlord's possible intent to evict for the tenant's non-payment of rent during the COVID-19 Pandemic.

(6) LANDLORD means a person who rents residential real property to a tenant. The Landlord is responsible for compliance by Landlord's agents.

(7) NOTICE TO VACATE means the statutory notice to vacate required by Texas Property Code Section 24.005 that must precede the filing of an

eviction suit.

(8) PERSON means an individual, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity, but does not include the city.

(9) TENANT means a person who rents a residential real property from a landlord.

## **SECTION 2. NOTICE REQUIREMENTS.**

(a) If a residential tenant fails to pay rent during the covered period, a landlord shall deliver to the tenant a COVID notice of possible eviction that notifies the tenant of the tenant's rent delinquency and provides the tenant the right to respond as described in Subsections (c) and (g)(5) below, which includes curing any delinquent payments, before giving a tenant a notice to vacate.

(b) If a COVID impacted tenant provides a COVID hardship notice to the landlord before a COVID notice of possible eviction delivered by the landlord, and provides the objectively verifiable documentation described in Subsection (c) below, the landlord shall provide the tenant the right to respond as described in Subsection (g)(5) below, which includes curing any delinquent payments, before giving a tenant a notice to vacate. After receipt by the landlord, the notice and objectively verifiable documentation described in Subsection (c) will create a rebuttable presumption that a tenant is unable to pay the full rent due to financial impacts related to COVID-19.

(c) Within the minimum time period in Subsection (g)(5) below, the tenant shall provide the landlord with the COVID hardship notice showing that the tenant is unable to pay rent due to a COVID-19 financial impact.

(d) If a landlord and tenant agree to the terms of a rental assistance program, and the tenant makes an application and is approved for participation in a rental assistance program, the landlord shall accept the program schedule for repayment and not take action on any eviction proceedings against the tenant instituted after the effective date of this ordinance, except for a breach of the lease other than due to a nonpayment of rent or fees, or as provided in Section 4 below. A landlord's acceptance can be shown either by delivery in writing by the landlord to the tenant, or by the tenant's receipt of notice from a rental assistance program of the landlord's agreement to participate in a rental assistance program on the tenant's behalf.

(e) If a tenant does not provide a COVID hardship notice to the landlord within 21 days after a notice of possible eviction is delivered to the tenant, the landlord may pursue any enforcement action in accordance with state and local laws.

(f) If a tenant complies with Section 2(d) above, a landlord shall not send

a notice to vacate except as provided for in Section 4 below.

(g) A COVID notice of possible eviction must be in writing substantially in the form attached to this ordinance as Exhibit A and include the following:

- (1) notice to the tenant of the tenant's rental delinquency with a request for a response from the tenant;
- (2) a statement that complies with Subsection (m);
- (3) a right for the COVID impacted tenant to respond, which includes curing any delinquent payments or providing a payment plan;
- (4) options for the tenant to resolve the rent delinquency, which may include:
  - (A) negotiating a payment plan directly with the landlord, or
  - (B) submitting an application for and receiving rental assistance; and
- (5) the minimum time period of 21 days to respond.

(h) Except as provided in this section, a COVID notice of possible eviction must be delivered to a tenant in person or by mail at the premises in question. Notice in person may be by personal delivery to the tenant or any person residing at the premises who is 16 years of age or older or personal delivery to the premises and affixing the notice to the inside of the main entry door. Notice by mail may be by regular mail, by registered mail, or by certified mail, return receipt requested, to the premises in question. The COVID notice of possible eviction is considered delivered under this subsection on the date the notice is delivered to a tenant in person or by mail at the premises in question.

(i) As an alternative to the procedures in Subsection (h), a landlord may deliver a COVID notice of possible eviction by securely affixing to the outside entrance of the main entry door a sealed envelope that contains the COVID notice of possible eviction and on which is written the tenant's name, address, and in all capital letters, the words "IMPORTANT DOCUMENT" or substantially similar language and, not later than 5:00 p.m. of the same day, depositing in the mail in the same county in which the premises in question is located a copy of the COVID notice of possible eviction to the tenant if:

- (1) the premises has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises to affix the COVID notice of possible eviction to the inside of the main entry door; or

(2) the landlord reasonably believes that harm to any person would result from personal delivery to a tenant or a person residing at the premises or from personal delivery to the premises by affixing the COVID notice of possible eviction to the inside of the main entry door.

(j) A COVID notice of possible eviction is considered delivered under Subsection (i) on the date the envelope is affixed to the outside of the door and is deposited in the mail, regardless of the date the COVID notice of possible eviction is received.

(k) A COVID impacted tenant who responds to a COVID notice of possible eviction within the time period described in Subsection (g)(5) has 60 days from the date of delivery of the COVID notice of possible eviction to enter a payment plan, apply for rental assistance, or make other plans for curing delinquent rent.

(l) A COVID impacted tenant who provides the tenant's landlord with a COVID hardship notice before the landlord sending a COVID notice of possible eviction, has 60 days from the date of sending the COVID hardship notice to enter a payment plan, apply for rental assistance, or make other plans for curing delinquent rent.

(m) The statement described in Subsection (g) must:

(1) be in 16-point font, bold typeface, and underlined;

(2) be placed at the top of the first page of the COVID notice of possible eviction in English and Spanish; and

(3) include the following text:

**"THIS NOTICE IS TO PROVIDE YOU WITH AN OPPORTUNITY TO PAY DELINQUENT RENTS INCURRED WHILE THERE IS A STATE OF DISASTER BECAUSE OF THE COVID-19 PANDEMIC TO AVOID EVICTION. YOU DO NOT HAVE TO MOVE WHEN YOU GET THIS NOTICE BUT YOU MAY HAVE TO MOVE IF YOU AND YOUR LANDLORD DO NOT WORK OUT AN AGREEMENT REGARDING THE PAYMENT OF DELINQUENT RENT. THIS NOTICE DOES NOT EXCUSE YOUR OBLIGATION TO PAY AND YOU CAN BE EVICTED IF YOU FAIL TO PAY AS REQUIRED UNDER THE LEASE. YOU ARE REQUESTED TO DISCUSS THIS NOTICE WITH YOUR LANDLORD AS SOON AS POSSIBLE BUT NO LATER THAN 21 DAYS FROM WHEN YOU RECEIVE THIS NOTICE."**

(n) A notice to vacate that is given before the expiration of the time periods provided in Subsections (g)(5), (k), or (l) of this section has no legal effect.

**SECTION 3. NO EXCUSE FROM THE PAYMENT OF RENT OR FEES.**

Nothing in this ordinance should be construed as relieving a tenant from the requirement to pay rent or fees under a lease.

**SECTION 4. EVICTIONS DUE TO BREACHES OF THE LEASE OTHER THAN NONPAYMENT OF RENT OR FEES; IMMINENT THREAT OF PHYSICAL HARM; OR CRIMINAL ACTIVITY.**

The requirement to send a COVID notice of possible eviction does not apply to the case where a landlord initiates eviction proceedings against a tenant, members of the tenant's household, or guests who (1) breach the terms of the lease other than due to nonpayment of rent or fees; (2) pose an imminent threat of physical harm to any person, including children and elders within the same household as well as the landlord's employees or management representatives; or (3) engage in any criminal activity including abatable crime and squatting, and the reason is stated in the notice to vacate as the grounds for the eviction.

**SECTION 5. VOLUNTARY MEDIATION.**

The city encourages landlords and tenants to utilize mediation to attempt to resolve disputes that may arise between them that they cannot resolve themselves. Mediation is a process where an impartial mediator facilitates a settlement conference between the parties so that they can discuss ways to resolve their differences. This section does not impose a mandatory requirement that landlords and tenants participate in mediation. However, landlords and tenants are encouraged to utilize mediation as a potential means to resolve their disputes while this ordinance is in effect. Landlords and tenants should take advantage of no cost or low-cost mediators to help reduce costs to both the landlord and the tenant.

**SECTION 6. OFFENSE AND PENALTY.**

(a) A landlord commits an offense punishable by a fine not to exceed \$500 if the landlord or landlord's agent who knows of facts that provide a tenant with an affirmative defense to eviction under this ordinance, and who nonetheless in bad faith endeavors to evict a tenant.

(b) It is a defense to prosecution that a landlord or property owner initiates eviction proceedings for any tenant, members of the tenant's household, or guests if they pose an imminent threat of (1) physical harm to any person, including children and elders within the same household as well as the landlord's employees, or management representatives or (2) any criminal activity including abatable crime and squatting.

**SECTION 7. EXPIRATION.**

This ordinance expires on the earlier to occur: (i) the later of the termination of the Governor's declared state of disaster due to the COVID-19 Pandemic or the Mayor's declared state of local disaster due to the COVID-19 Pandemic ; or (ii) September 30, 2020.

**SECTION 8. SAVINGS.**

That any notice given or act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced on or after the effective date of this ordinance or before the amendment or repeal of this ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of this ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if this ordinance, should it be amended or repealed, or part thereof, had remained in force.

**SECTION 9. EFFECTIVE DATE.**

That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Houston, and it is accordingly so ordained and shall not apply to any eviction proceedings instituted prior to the effective date of this ordinance, including any notice to vacate given prior to the effective date of this ordinance.

APPROVED AS TO FORM:

By: \_\_\_\_\_, City Attorney

Passed \_\_\_\_\_

## Exhibit A

### COVID NOTICE OF POSSIBLE EVICTION

**THIS NOTICE IS TO PROVIDE YOU WITH AN OPPORTUNITY TO PAY DELINQUENT RENTS INCURRED WHILE THERE IS A STATE OF DISASTER BECAUSE OF THE COVID-19 PANDEMIC TO AVOID EVICTION. YOU DO NOT HAVE TO MOVE WHEN YOU GET THIS NOTICE BUT YOU MAY HAVE TO MOVE IF YOU AND YOUR LANDLORD DO NOT WORK OUT AN AGREEMENT REGARDING THE PAYMENT OF DELINQUENT RENT. THIS NOTICE DOES NOT EXCUSE YOUR OBLIGATION TO PAY AND YOU CAN BE EVICTED IF YOU FAIL TO PAY AS REQUIRED UNDER THE LEASE. YOU ARE REQUESTED TO DISCUSS THIS NOTICE WITH YOUR LANDLORD AS SOON AS POSSIBLE BUT NO LATER THAN 21 DAYS FROM WHEN YOU RECEIVE THIS NOTICE.**

**The above statement will also be provided in Spanish.**

You are in default for not paying your rent as required in your lease.

You should contact your landlord and immediately attempt to work out a payment plan or lease modification in order to stay in your residence. If you have not responded within 21 days of this notice, Landlord can proceed with a Notice to vacate and file an eviction proceeding to remove the residents from the subject property.

If you are in default because of financial hardship caused by COVID-19, and you can provide verifiable documentation to your landlord, your response to this notice will give you up to 60 days before an eviction will be filed. However, you are responsible for full payment of all rents through this time unless and until you negotiate a binding agreement with your landlord.

You may also apply for rental assistance to help you pay the required rent from any local, state, federal, or nonprofit organization who may be offering assistance during this COVID-19 pandemic and beyond. For information about rental assistance programs, contact United Way at <http://www.unitedwayhouston.org/our-211-helpline> or call 211.

Please note that the landlord may still institute eviction proceedings immediately if you, members of your household or guests pose an immediate threat or physical harm to any person or engage in criminal activity.

Please do not ignore this notice as your failure to respond may result in the landlord sending a Notice to Vacate requesting you to vacate the premises, followed by a judicial action before the Justice of the Peace to evict you.

This notice was served by: (check

one): mail

\_\_\_\_\_hand delivery to a person over 16 years of age answering the door

\_\_\_\_\_affixing the notice to the inside of the main entry door

\_\_\_\_\_affixing the notice to the outside of the main entry door and mailing notice

On \_\_\_\_\_(date) by

\_\_\_\_\_(signature of person delivering notice).

Witness: \_\_\_\_\_(signature of person witnessing delivery).