

ORDINANCE NO. _____

**AN URGENCY ORDINANCE OF THE CITY
COUNCIL OF THE CITY OF MERCED,
CALIFORNIA, ADDING CHAPTER 9.75,
“DISPLACED TENANT PROTECTIONS,” TO THE
MERCED MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN
AS FOLLOWS:**

SECTION 1. AUTHORITY. This Ordinance is adopted pursuant to the provisions set forth in the Government Code Section 36937, subd. (b) for the immediate preservation of the public peace, health or safety. The facts that constitute the urgency are as follows:

A. Beginning on or around December 27, 2022, severe winter storms related to a series of atmospheric river systems struck the state of California, bringing high winds, significant precipitation, and river and urban flooding.

B. After December 27, 2022, additional and continuing storms related to the series of atmospheric river systems continued to threaten California, bringing heavy rainfall, flooding, strong winds and wind gusts, falling debris, downed trees, and widespread power outages.

C. The storms threatened and affected critical infrastructure, movement of resources, burn scars from recent wildfires potentially causing mud and debris flows; resulted in and threatened power outages to thousands of households and businesses; and caused and threatened river and urban flooding due to excessive and prolonged rainfall.

D. On January 4, 2023, the Governor of California proclaimed a state of emergency throughout the state due to conditions of extreme peril to the safety of persons and property due to the storms.

E. On January 7 and 14, 2023, the City’s Director of Emergency Services proclaimed local emergencies, as defined in section 8.20.010 of this Code, and pursuant to section 8.20.070, subdivision A. of this Code because of the above described storms and flooding.

F. On or about January 8, 2023, the above described series of storms and subsequent flooding resulted in City residents being displaced from their rental homes.

G. On or around January 9 and 10, 2023, the City issued discretionary and mandatory evacuation orders to City residents, and lifted the orders between January 12 and 16, 2023.

H. On January 17, 2023, the Council adopted Resolution No. 2023-08 ratifying the Director of Emergency Services' January 7 and 14, 2023, emergency proclamations.

I. On February 6, 2023, the Council adopted Resolution No. 2023-09 extending the local emergency for 60 days.

J. City staff estimate that approximately 1,600 residents were displaced from approximately 720 rental housing units.

K. Due to the extreme weather and resulting damage to rental homes, it is necessary to provide support to residents who have been suddenly displaced from their rental homes without warning or fault.

L. Aspects of public peace, health and safety are at risk for residents displaced from their rental homes in the City of Merced, and it is in the interest of the City and its residents to promote housing security for such residents.

M. In light of the concerns noted herein, including, but not limited to, the current and immediate threat to the public peace, health, and safety of the City's residents displaced from their rental homes and the adverse impacts that would result from further displacement and increases in rent, the City Council declares this emergency measure is necessary to preserve the public peace, health, and safety of the community by adopting this urgency ordinance.

N. The regulations of this Ordinance will allow the City to provide immediate temporary relief and protections to residents displaced from their rental homes because of the January 2023 storms and flooding.

O. For the reasons set forth above, this ordinance is declared by the City Council to be necessary for the immediate preservation of the public peace,

health, and safety, and the recitals above taken together constitute the City Council's statements of the reasons constituting such necessity and urgency.

SECTION 2. FINDINGS RELATING TO THE IMMEDIATE PRESERVATION OF HEALTH AND SAFETY. California Government Code Section 36937(b) provides that an ordinance for the immediate preservation of the public peace, health or safety containing a declaration of the facts constituting the urgency, passed by a four-fifths (4/5) vote of the City Council shall take effect immediately upon its passage. The City Council hereby finds the foregoing recitals to be true and correct and hereby incorporates such findings into this ordinance. The City Council further finds that there is a necessity to pass an emergency ordinance by the powers given to the City Council under California Government Code Section 36937 due to the displacement of residents and resulting financial strains that directly, threaten the welfare and public health of the City.

SECTION 3. ADDITION TO CODE. Chapter 9.75 – “Displaced Tenant Protections,” is hereby added to Title 9 of the Merced Municipal Code. Chapter 9.75 is to read as follows:

“9.75.010 – APPLICABILITY. The provisions of this Chapter shall apply to all Rental Units in whole or in part, that were damaged by the Emergency that occurred on or about January 8, 2023. However, to the extent that any of these Units are exempted from the requirements of a particular section by existing California law, the applicable Sections shall not apply to those Units.

9.75.020 – DEFINITIONS.

A. “At-Fault Just Cause,” as used herein, has the same definition as in California Civil Code Section 146.2(b).

B. “Emergency” means the severe weather and flooding that occurred on or about January 8, 2023, which resulted in the displacement of City tenants from their rental units.

C. “Immediate Family” means spouse, domestic partner, children, grandchildren, parents or grandparents.

D. "Landlord" means an owner of record, or lessor or sublessor of an owner of record, or any other person or entity entitled either to receive rent for the

use or occupancy of any rental unit or to maintain an action for possession of a rental unit, or an agent, representative, or successor of any of the foregoing.

E. "Owner of Record" means a natural person, who is an owner of record holding an interest equal to or greater than thirty-three percent (33%) in the property; but not including any lessor, sublessor, or agent of the owner of record.

F. "Property" means a parcel of real property, located in the city of Merced, that is assessed and taxed as an undivided whole.

G. "Rent" means the consideration, including any deposit, bonus, benefit, or gratuity demanded or received for, or in connection with, the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, moneys and fair value of goods or services rendered to or for the benefit of the landlord under the rental agreement, or in exchange for a rental unit or housing services of any kind.

H. "Rental Agreement" means an agreement, oral, written, or implied, between a landlord and a tenant for the use and/or occupancy of a rental unit.

I. "Rental Unit" (aka Unit, aka Premises) means any unit in any real property, regardless of zoning status, including the land appurtenant thereto, that is rented or available for rent for residential use or occupancy (regardless of whether the unit is also used for other purposes), together with all housing services connected with use or occupancy of such property, such as common areas and recreational facilities held out for use by the tenant.

J. "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or any group of renters, tenants, subtenants, lessees, sublessees of a rental unit, or any other person entitled to the use or occupancy of such rental unit, or any successor of any of the foregoing.

9.75.030 – PROHIBITIONS ON CERTAIN RESIDENTIAL EVICTIONS. A Landlord shall not terminate a residential tenancy without just case, including At-Fault Just Cause, of any Tenant who lawfully occupies the Property, regardless of the length of time.

A. Notwithstanding the foregoing, nothing in this section shall limit a Landlord's ability to terminate a residential tenancy for no-fault just cause, which includes any of the following reasons:

1. The owner is complying with an order issued by a government agency or court relating to habitability that necessitates vacating the residential real Property or an order by a government agency or court, or a local ordinance, that necessitates vacating the Property.

2. The owner or a member of their Immediate Family intends to occupy the Property.

3. The termination is necessary in order to remove the Property from the rental market, but only as authorized by Government Code Section 7060 et seq.

4. The owner intends to demolish, substantially remodel, or undertake necessary repairs to the Property or Unit.

B. If the owner intends to demolish, substantially remodel or repair the Property or Unit in accordance with Subsection (A)(4) above, the owner must comply with Sections 9.75.040 and 9.75.050 of this Chapter.

C. To the extent that state law is more protective of a residential tenancy than this section, those state law provisions shall apply to the residential tenancy. Nothing in this section shall be construed to supersede any applicable requirements in Civil Code section 1946.2 pertaining to relocation assistance or rent waiver.

9.75.040 – RIGHT OF FIRST REFUSAL. When the Owner of Record seeks in good faith to undertake substantial repairs that cannot be completed while the Unit is occupied, and that are necessary either to bring the Property into compliance with applicable codes and laws affecting the health and safety of Tenants of the building, or under an outstanding notice of code violations affecting the health and safety of Tenants of the building, the following shall apply.

A. Upon recovery of possession of the rental Unit, the Owner of Record shall proceed without unreasonable delay to affect the needed repairs.

B. Upon completion of the needed repairs, the Owner of Record shall offer Tenant the first right to return to the premises at the same Rent and pursuant to a Rental Agreement of substantially the same terms as the Tenant's previous Rental Agreement for the period identified in Section 9.75.050.

1. The Owner of Record must provide written notice to the Tenant regarding the Tenant's right to return at the time the Tenant is displaced or as soon as practical thereafter.

2. Within seven (7) days of the completion of the repairs, the Owner of Record must provide the Tenant with written notice, sent by first-class certified mail, that the repairs have been completed and that the Tenant may return to the Unit in accordance with this Subsection B.

3. Notice to the Tenant shall be sent to the address provided by the Tenant at the time of relocation.

4. The Tenant must respond in writing, within ten (10) days after the notice has been mailed by the owner, as to whether the Tenant will return to the premises.

9.75.050 – TEMPORARY MORATORIUM ON RENT INCREASES.

A Landlord may not increase Rent on a Property subject to Section 9.75.040 above, for six (6) months from the date that the Tenant returns to the respective Unit following completion of repair or rehabilitation.

A. A Property that is exempt from rent limits imposed by Civil Code section 1947.12 or Civil Code section 1954.50 et seq. is exempt from this section.

B. This section does not apply when a Unit becomes vacant following a Tenant's decision to decline their right to return and the Landlord sets the initial Rent for a new tenancy.

C. This section does not apply to a Property where one or more scheduled Rent increases occur pursuant to a written Rental Agreement that was entered into before January 8, 2023.

9.75.060 – REPORTING VIOLATIONS. Any Tenant who believes that their Landlord has violated the provisions of this Chapter may report the alleged violation to Code Enforcement.

9.75.070 – REMEDIES. Any violation of the provisions of this Ordinance or application thereof shall may result in some or all of the following:

A. The issuance of a correction notice and/or administrative citation in accordance with Chapter 1.10.

B. The issuance of a compliance order and subsequent administrative order in accordance with Chapter 1.11.

9.75.080 – SUNSET DATE. This Chapter shall remain in effect for six (6) months following the completion of repairs to all Rental Units subject to this Chapter, and as of that date is repealed, unless a later enacted ordinance deletes or extends the dates on which it becomes inoperative and is repealed. The City’s Chief Building Official shall determine the date upon which repairs to all Rental Units subject to this Chapter have been completed.

9.75.090 – EXEMPTIONS. To the extent this Ordinance conflicts with the Costa-Hawkins Rental Housing Act, the Ellis Act and/or the Tenant Protection Act of 2019, those acts shall prevail. Further, this Ordinance shall not supersede a valid Rental Agreement, nor shall this ordinance be construed to conflict with any requirements of the U.S. Department of Housing and Urban Development.

9.75.100 – FINDINGS. The City Council of the City of Merced hereby find and declare that the provisions of this Ordinance are more protective than the provisions of Civil Code 1946.2.”

SECTION 4. EFFECTIVE DATE. This Ordinance is an urgency ordinance adopted pursuant to Government Code Section 36937 and as such, shall become effective immediately if adopted by at least four-fifths (4/5) vote of the City Council.

SECTION 5. FINDINGS. The City Council of the City of Merced hereby find and declare that the provisions of this Ordinance are more protective than the provisions of Civil Code 1946.2.

SECTION 6. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections,

subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 7. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 20__, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 20__, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED:

Mayor

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:



3 · 29 · 23

City Attorney

Date

NOTICE OF POTENTIAL INTRODUCTION OF ORDINANCE

CITY OF MERCED

NOTICE IS HEREBY GIVEN that on _____, 20__, the City Council of the City of Merced is scheduled to consider the introduction of an Ordinance entitled:

**AN URGENCY ORDINANCE OF THE CITY
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at its regular meeting to be held at 6:00 pm in the City Council Chambers at 678 West 18th Street, Merced, California. The public is invited to provide any oral or written comments regarding this proposed Ordinance.

If adopted, this Ordinance would add a new chapter to Title 9 of the City of Merced Municipal Code in order to implement temporary tenant protections due to the large number of City of Merced residents who were displaced from their rental units due to the January 2023 weather related state of emergency.

A copy of the full text of the proposed Ordinance is available for review in the Office of the City Clerk, City of Merced, 678 West 18th Street, Merced, California, and on the City’s website at www.cityofmerced.org.

ASSISTANT CITY CLERK

PUBLISH:

PUBLIC NOTICE OF ADOPTION OF ORDINANCE

CITY OF MERCED

ORDINANCE NO. _____

NOTICE IS HEREBY GIVEN that on _____, 20__, the City Council of the City of Merced adopted Ordinance No. _____, entitled:

**AN URGENCY ORDINANCE OF THE CITY
COUNCIL OF THE CITY OF MERCED,
CALIFORNIA, ADDING CHAPTER 9.75,
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TO THE MERCED MUNICIPAL CODE**

Ordinance No. _____ adds a new chapter to Title 9 of the City of Merced Municipal Code in order to implement temporary tenant protections due to the large number of City of Merced residents who were displaced from their rental units due to the January 2023 weather related state of emergency.

Ordinance No. _____ was adopted by the following roll call vote of the City Council:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

A copy of the full text of Ordinance No. _____ is available for review in the Office of the City Clerk, City of Merced, 678 West 18th Street, Merced, California, and on the City’s website at www.cityofmerced.org.

ASSISTANT CITY CLERK

PUBLISH: