

- 1 E. On March 16, 2020, the City Council of the City of Albany proclaimed the existence
2 of a local emergency to ensure the availability of mutual aid and the legal powers to
3 provide an effective response to “COVID-19”.
4
- 5 F. On March 16, 2020, the Governor of the State of California issued Executive Order
6 N-28-20, authorizing local governments’ through their police power to impose
7 substantive limitations on residential or commercial evictions for nonpayment of rent
8 for tenants financially impacted by COVID-19 through May 31, 2020.
9
- 10 G. On March 16, 2020, the Alameda County Public Health Officer issued an order
11 countywide that (1) requires all individuals living within the County of Alameda to
12 shelter at the place of their residence, (2) requires all businesses, except “essential
13 businesses,” to cease all activities at facilities located within the County, except
14 “minimum basic operations” and remote work, (3) prohibits all public and private
15 gatherings of any number of people occurring outside a household or living unit, and
16 (4) prohibits all travel, except “essential travel” and “essential activities.”
17
- 18 H. As of March 18, 2020, nine counties within the Bay Area, consisting of Alameda,
19 Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Sonoma and
20 Solano counties, had issued “shelter in place” directives, anticipated to terminate on
21 or about April 7, 2020.
22
- 23 I. On Thursday, March 19, 2020, the Governor of the State of California issued
24 Executive Order N-33-20 ordering all individuals living in California to stay home
25 or at their place of residence except as needed to maintain continuity of operations of
26 outlined federal critical infrastructure sectors, with no specific termination date.
27
- 28 J. The Centers for Disease Control and Prevention, the California Department of
29 Health, and the Alameda County Department of Public Health have all issued
30 recommendations including but not limited to social distancing, canceling or

1 postponing group events, working from home, and other precautions to protect
2 public health and prevent transmission of this communicable virus.

3
4 K. As of the date of this ordinance and in order to prevent further exposure, many
5 businesses have imposed work from home policies; meetings, events and social
6 gatherings have been cancelled as people remain at home; customers are not
7 patronizing restaurants and stores or travelling, which is expected to lead to hourly
8 cutbacks and employee terminations.

9
10 L. As a result of the public health emergency and the precautions recommended by
11 health authorities and the Governor, many tenants in Albany have experienced or
12 expect soon to experience sudden and unexpected income loss.

13
14 M. Individuals directly affected by COVID-19 may experience potential loss of income,
15 health care and medical coverage, and have difficulty paying for housing and basic
16 needs, thereby placing increased demands on already strained regional and local
17 health and safety resources, including shelters and food banks.

18
19 N. Most, if not all, local schools are closed to prevent further spread of COVID-19.
20 These school closures will cause children to have to remain at home, leading to
21 many parents adjusting their work schedules to take time off work, whether paid or
22 unpaid. Hourly wage earners are unlikely to be paid for time off. The inability to
23 work due to school closures will economically strain those families who cannot
24 afford to take off time from work to stay at home.

25
26 O. Increases in residential or commercial rents will exacerbate the potential economic
27 strain on residents and businesses, and further threaten the public peace, health,
28 safety, and welfare by threatening housing security and increasing the potential of
29 homelessness as well as make it more challenging for businesses to comply with the
30 various state and local orders, which can exacerbate the vulnerability to COVID-19
31 exposure.

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P. The situation is unprecedented and evolving rapidly. Further economic impacts are anticipated, leaving tenants vulnerable to eviction.

Q. This ordinance is temporary in nature and only intended to protect the public health and safety during the COVID-19 pandemic outbreak, and to prevent avoidable homelessness thereby serving the public peace, health, safety, and public welfare and to enable tenants in the City whose income and ability to work is affected due to COVID-19 to remain in their homes.

R. 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 authority to adopt this ordinance related to the protection of life and property, to ensure renters can remain in their homes and prevent proliferation of homelessness and further spread of COVID-19. Displacement through eviction creates undue hardship for tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing, and lack of moving services and supplies as stores and businesses close. During the COVID-19 pandemic outbreak, affected tenants who have lost income due to impact on the economy or their employment may be at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted.

S. People experiencing homelessness are especially vulnerable to the spread of COVID-19 due to an inability to practice social distancing and a lack of access to health care. The Governor has ordered the State to take extraordinary measures to secure shelter for homeless populations during this emergency to limit exposure to and spreading of COVID-19. Widespread evictions of tenants vulnerable to eviction due to financial hardship occurring due to COVID-19 would exacerbate the challenge of sheltering the homeless during this emergency, and increase the risk of spread of COVID-19.

1 T. Promoting stability amongst commercial tenancies is also conducive to public
2 health, allowing businesses to follow the advice and directives of public health
3 officials to close, and allowing employees to avoid public contact, during times of a
4 public health crisis without fear of imminent eviction.

5
6 U. The City Council desires to maintain economic infrastructure so that “essential
7 businesses” may remain open and continue operations uninterrupted in support of
8 residents who are sheltering in place, and so that all businesses have the ability to
9 recover from the impacts of the COVID-19 pandemic outbreak and continue to
10 provide employment and generate tax revenue and so that economic recovery is
11 possible after the emergency is over, all of which are in the interest of the public
12 peace, health, safety and welfare.

13
14 V. The City desires to prohibit evictions due to nonpayment of rent for residential and
15 commercial tenants where the failure to pay rent or proposed rent increases results
16 from income loss resulting from COVID-19.

17
18 W. This Ordinance is adopted pursuant to the City's police powers and powers afforded
19 to the city in time of national, state, county and local emergency during an
20 unprecedented health pandemic, such powers being afforded by the State
21 Constitution, State law and the Section 2-16 of the Albany Municipal Code to
22 protect the peace, health, and safety of the public. The Albany City Council finds
23 that this ordinance is necessary for the preservation of the public peace, health, and
24 safety of residents living within the City and finds urgency to approve this ordinance
25 immediately based on the facts described herein, and detailed in the staff report.
26 Under Government Code Section 8634, this ordinance is necessary to provide for the
27 protection of life and property.

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1 **SECTION 2: TEMPORARY MORATORIUM ON EVICTIONS FOR NON-PAYMENT OF**
2 **RENT BY RESIDENTIAL TENANTS IMPACTED BY THE COVID-19 CRISIS**

3
4 A. During the term of the ordinance, no landlord shall evict a tenant for nonpayment of rent
5 if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to
6 COVID-19.

7
8 B. A landlord who knows that a tenant cannot pay some or all of the rent temporarily for the
9 reasons set forth above shall not serve a notice pursuant to Code of Civil Procedure §1161(2), file
10 or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to
11 evict for nonpayment of rent. A landlord knows of a tenant’s inability to pay rent within the
12 meaning of this ordinance if the tenant, within 30 days after the date that rent is due, notifies the
13 landlord in writing of lost income and inability to pay full rent due to financial impacts related to
14 COVID-19, and provides documentation to support the claim. For purposes of this ordinance, “in
15 writing” includes e-mail or text communications to a landlord or the landlord’s representative with
16 whom the tenant has previously corresponded by e-mail or text. Any medical or financial
17 information provided to the landlord shall be held in confidence, and only used for evaluating the
18 tenant’s claim.

19
20 C. For purposes of this ordinance “financial impacts related to COVID-19” include, but are
21 not limited to, tenant lost household income as a result of any of the following: (1) being sick with
22 COVID-19, or caring for a household or family member who is sick with COVID-19; (2) lay-off,
23 loss of hours, or other income reduction resulting from business closure or other economic or
24 employer impacts of COVID-19; (3) compliance with a recommendation from a government health
25 authority to stay home, self-quarantine, or avoid congregating with others during the state of
26 emergency; (4) extraordinary out-of-pocket medical expenses related to COVID-19; or (5) child
27 care needs arising from school closures related to COVID-19.

28
29 D. This ordinance applies to nonpayment eviction notices and unlawful detainer actions
30 based on such notices, served or filed on or after the effective date of this ordinance.

31

1 E. This ordinance grants a defense in the event that an unlawful detainer action is
2 commenced in violation of this ordinance.

3
4 F. Nothing in this ordinance shall relieve the tenant of liability for the unpaid rent, which the
5 landlord may seek after expiration of the local emergency, and the tenant must repay within six
6 months of the expiration of the local emergency. A landlord may not charge or collect a late fee for
7 rent that is delayed for the reasons stated in this ordinance. A landlord shall not commence an
8 eviction for non-payment of rent during the six months after the end of the local emergency, so long
9 as the tenant pays rent in a timely manner after the period of local emergency and is repaying the
10 past due rent that accrued during the emergency period. Landlords are strongly encouraged to offer
11 payment plans to tenants after the period of local emergency.

12
13 G. No other legal remedies available to landlord are affected by this ordinance.

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15 **SECTION 3: TEMPORARY MORATORIUM ON EVICTIONS FOR NON-PAYMENT OF**
16 **RENT BY COMMERCIAL TENANTS IMPACTED BY THE COVID-19 CRISIS**

17
18 A. During the term of the ordinance, no commercial landlord shall evict a tenant for
19 nonpayment of rent if the tenant demonstrates that the tenant's businesses is subject to the Orders
20 referenced in Section 1 above or is otherwise limited or closed (voluntarily or by mandate) to
21 prevent or reduce the spread of COVID-19 and the tenant demonstrates lost income and inability to
22 pay rent as a result of such limitation or closure or other demonstrated financial impact related to
23 COVID-19.

24
25 B. A landlord knows of a tenant's lost income and inability to pay rent within the meaning
26 of this ordinance if the tenant, within 30 days after the date that rent is due, notifies the landlord in
27 writing of the lost income and inability to pay rent due to a limitation or closure of the tenant's
28 business related to COVID-19, with appropriate supporting documentation. If a tenant suffers only
29 a partial loss of income, the tenant shall pay the pro-rated share of its rent that corresponds to the
30 income it generated during the period of loss. For purposes of this ordinance, "in writing" includes
31 e-mail or text communications to a landlord or the landlord's representative with whom the tenant

1 has previously corresponded by e-mail or text. All financial information provided to the landlord
2 shall be kept in confidence and only used for evaluating the tenant’s claim or enforcing this
3 provision.

4
5 C. This ordinance applies to nonpayment eviction notices and unlawful detainer actions
6 based on such notices, served or filed on or after the effective date of this ordinance.

7
8 D. This ordinance grants a defense in the event that an unlawful detainer action is
9 commenced in violation of this ordinance.

10
11 E. Nothing in this ordinance shall relieve the tenant of liability for the unpaid rent, which
12 the landlord may seek after expiration of the local emergency, and the tenant must pay within six
13 months of the expiration of the local emergency. A landlord may not charge or collect a late fee for
14 rent that is delayed for the reasons stated in this ordinance. A landlord shall not commence an
15 eviction during the six months after the end of the local emergency for non-payment of rent, so long
16 as the tenant pays rent in a timely manner after the period of local emergency and is repaying the
17 past due rent that accrued during the emergency period. Landlords are strongly encouraged to offer
18 payment plans to tenants after the period of local emergency.

19
20 F. No other legal remedies available to landlord are affected by this ordinance.

21
22 **SECTION 4: RECOMMENDATION TO TEMPORARILY SUSPEND RESIDENTIAL**
23 **AND COMMERCIAL FORECLOSURES**

24
25 A. Pursuant to Executive Order N-28-20, the City Council hereby urges mortgagees to not
26 initiate or proceed with any foreclosure action against a property owner during the term of the
27 ordinance in the City of Albany for any mortgagor with a demonstrated financial impact related to
28 COVID-19. Nothing in this ordinance shall relieve the mortgagor of liability for any unpaid
29 mortgage payments, which should be paid back within 90 days of the date of local emergency.
30 Mortgagees are strongly encouraged to offer payment plans to mortgagors to avoid foreclosure after
31 the period of local emergency. It is encouraged that the respective rights and obligations of the

1 parties in any foreclosure proceeding be adjudicated in the appropriate court of law with jurisdiction
2 over the matter at the conclusion of the local emergency or rescission of this ordinance.

3
4 **SECTION 5: TEMPORARY MORATORIUM ON RENT INCREASES FOR CERTAIN**
5 **RESIDENTIAL TENANTS IMPACTED BY THE COVID-19 CRISIS**

6
7 A. During the term of the ordinance, no landlord shall collect rent increases provided in, or
8 proposed for, the lease or rental agreement if the tenant demonstrates that the tenant is unable to pay
9 the increased rent due to financial impacts related to COVID-19. This ordinance does not regulate
10 initial rent at which any residential unit or property is offered at the outset of any new tenancy.
11 This moratorium on rent increases shall not apply (a) if the unit or property is subject to rent limits
12 under California Civil Code §1947.12; (b) if the unit or property is exempt from rent control under
13 California Civil Code, Chapter 2.7 (commencing with Section 1954.50); or (c) if the unit or
14 property is otherwise exempt from local rent control under State law.

15
16 B. A landlord who knows that a tenant cannot pay some or all of the increased rent
17 temporarily for the reasons set forth above shall not serve a notice pursuant to Code of Civil
18 Procedure §1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit
19 notice, or otherwise seek to evict for nonpayment of rent. A landlord knows of a tenant's inability
20 to pay increased rent within the meaning of this ordinance if the tenant, within the longer of the
21 applicable period of notice provided under California Civil Code §827 or 30 days, notifies the
22 landlord in writing of lost income and inability to pay the proposed rent increase due to financial
23 impacts related to COVID-19, and provides documentation to support the claim. For purposes of
24 this ordinance, "in writing" includes e-mail or text communications to a landlord or the landlord's
25 representative with whom the tenant has previously corresponded by e-mail or text. Any medical or
26 financial information provided to the landlord shall be held in confidence, and only used for
27 evaluating the tenant's claim.

28
29 C. For purposes of this ordinance "financial impacts related to COVID-19" include, but are
30 not limited to, tenant lost household income as a result of any of the following: (1) being sick with
31 COVID-19, or caring for a household or family member who is sick with COVID-19; (2) lay-off,

1 loss of hours, or other income reduction resulting from business closure or other economic or
2 employer impacts of COVID-19; (3) compliance with a recommendation from a government health
3 authority to stay home, self-quarantine, or avoid congregating with others during the state of
4 emergency; (4) extraordinary out-of-pocket medical expenses related to COVID-19; or (5) child
5 care needs arising from school closures related to COVID-19.

6
7 D. This ordinance grants a defense in the event that an unlawful detainer action is
8 commenced in violation of this ordinance.

9
10 E. Nothing in this ordinance shall relieve the tenant of liability for payment of the increased
11 rent, which the landlord may seek after expiration of the local emergency, and the tenant must repay
12 within six months of the expiration of the local emergency. A landlord may not charge or collect a
13 late fee for rent that is delayed for the reasons stated in this ordinance. A landlord shall not
14 commence an eviction due to non-payment of rent during the six months after the end of the local
15 emergency, so long as the tenant pays rent in a timely manner after the period of local emergency
16 and is repaying the past due increased rent that accrued during the emergency period. Landlords are
17 strongly encouraged to offer payment plans to tenants after the period of local emergency.

18
19 G. No other legal remedies available to landlord are affected by this ordinance.

20
21 **SECTION 6: TEMPORARY MORATORIUM ON RENT INCREASES FOR**
22 **COMMERCIAL TENANTS IMPACTED BY THE COVID-19 CRISIS**

23
24 A. During the term of the ordinance, no commercial landlord shall collect rent increases
25 provided in, or proposed for, the lease or rental agreement if the tenant demonstrates that the
26 tenant's businesses is subject to the Orders referenced in Section 1 above or is otherwise limited or
27 closed (voluntarily or by mandate) to prevent or reduce the spread of COVID-19 and the tenant
28 demonstrates lost income and inability to pay increased rent as a result of such limitation or closure
29 or other demonstrated financial impact related to COVID-19. This ordinance does not regulate
30 initial rent at which any commercial unit or property is offered at the outset of any new tenancy.

1 This moratorium on rent increases shall not apply if the unit or property is exempt from local rent
2 control pursuant to State law.

3
4 B. A landlord knows of a tenant's lost income and inability to pay rental increases within
5 the meaning of this ordinance if the tenant, within the longer of the applicable period of notice of
6 rent increase provided under California Civil Code §827 or 30 days, notifies the landlord in writing
7 of the lost income and inability to pay increased rent due to a limitation or closure of the tenant's
8 business related to COVID-19, with appropriate supporting documentation. If a tenant suffers only
9 a partial loss of income, the tenant shall pay the pro-rated share of its increased rent that
10 corresponds to the income they generated during the period of loss. For purposes of this ordinance,
11 "in writing" includes e-mail or text communications to a landlord or the landlord's representative
12 with whom the tenant has previously corresponded by e-mail or text. All financial information
13 provided to the landlord shall be kept in confidence and only used for evaluating the tenant's claim
14 or enforcing this provision.

15
16 C. This ordinance grants a defense in the event that an unlawful detainer action is
17 commenced in violation of this ordinance.

18
19 D. Nothing in this ordinance shall relieve the tenant of liability for the unpaid increased
20 rent, which the landlord may seek after expiration of the local emergency, and the tenant must pay
21 within six months of the expiration of the local emergency. A landlord may not charge or collect a
22 late fee for rent that is delayed for the reasons stated in this ordinance. A landlord shall not
23 commence an eviction during the six months after the end of the local emergency for non-payment
24 of increased rent, so long as the tenant pays rent in a timely manner after the period of local
25 emergency and is repaying the past due increased rent that accrued during the emergency period.
26 Landlords are strongly encouraged to offer payment plans to tenants after the period of local
27 emergency.

28
29 F. No other legal remedies available to landlord are affected by this ordinance.
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1 **SECTION 7: RECOMMENDATION FOR STATEWIDE TENANT PROTECTIONS**

2
3 Although the City Council adopted this ordinance that applies only within the City of
4 Albany, the City Council recommends that the Governor adopt similar protections for residential
5 and commercial tenants statewide, and if that should not occur that the County adopt such
6 protections Countywide to provide uniform protections for tenants.
7

8 **SECTION 8: ENFORCEMENT**

9
10 Any person who violates any provision of this ordinance is guilty of a misdemeanor unless,
11 in the discretion of the prosecuting attorney, the violation is charged as an infraction or made
12 subject to administrative citation and penalties pursuant to Section 1-11 of the Albany Municipal
13 Code. Any misdemeanor violation shall be punishable by a fine of not more than one thousand
14 dollars (\$1,000.00), or by imprisonment for a term not exceeding six (6) months, or by both such a
15 fine and imprisonment.
16

17 **SECTION 9: DURATION; SUSPENSION**

18
19 In accordance with the Governor of the State of California’s Executive Order N-28-20, this
20 ordinance shall remain in effect until May 31, 2020. In order to prevent inconsistencies, the
21 Director of Emergency Services may suspend the effectiveness of any provision in this ordinance in
22 the event that the President of the United States, Congress, Governor of the State of California or
23 California State Legislature or other body with jurisdiction adopts an order or legislation that
24 similarly prohibits evictions and foreclosures for failure to pay rent by individuals impacted by the
25 COVID-19 crisis.
26

27 **SECTION 10: SEVERABILITY**

28
29 If any section, subsection, sentence, clause, phrase or word of this ordinance is found to be
30 unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not
31 affect the remaining provisions of this ordinance.

1 **SECTION 11: ENVIRONMENTAL REVIEW**

2
3 The City Council finds that adoption and implementation of this ordinance is not a “project”
4 for purposes of the California Environmental Quality Act (CEQA), as that term is defined by
5 CEQA guidelines (Guidelines) sections 15061(b)(3), and 15378(b)(5). The effect of the proposed
6 amendment will be to maintain the status quo. No new development will result from the proposed
7 action. No impact to the physical environment will result. The City Council also alternatively finds
8 that the adoption and implementation of this ordinance is exempt from the provisions of CEQA as
9 an administrative activity by the City of Albany, in furtherance of its police power, that will not
10 result in any direct or indirect physical change in the environment, per sections 15061(b)(3), and
11 15378(b)(5) of the CEQA Guidelines, as well as CEQA Guidelines section 15064(e) (economic
12 regulations).

13
14 **SECTION 12: URGENCY DECLARATION; EFFECTIVE DATE**

15
16 The City Council finds and declares that the adoption and implementation of this ordinance
17 is necessary for the immediate preservation and protection of the public peace, health and safety as
18 detailed above and as the City and public would suffer potentially irreversible displacement of
19 commercial and residential tenants resulting from evictions and foreclosures for failure to pay rent
20 or rent increases during the COVID-19 crisis. During this local emergency, and in the interest of
21 protecting the public health and preventing transmission of COVID-19, it is essential to avoid
22 unnecessary housing displacement, to protect the City’s affordable housing stock, and to prevent
23 housed individuals from falling into homelessness. Promoting stability for commercial tenancies is
24 also conducive to public health, allowing businesses to follow the advice and directives of public
25 health officials and the Governor to close and allowing employees to avoid public contact, during
26 times of a public health crisis without fear of imminent eviction or foreclosure. Loss of income as a
27 result of COVID-19 may inhibit City residents and businesses from fulfilling their financial
28 obligations, including payment of rent and mortgages. Under Government Code Section 8634 and
29 Albany Municipal Code Section 2-16, this ordinance is necessary to provide for the protection of
30 life and property for the reasons set out herein. The Council therefore finds and determines that the
31 immediate preservation of the public peace, health and safety, and protection of life and property,

1 require that this Ordinance be enacted as an urgency ordinance pursuant to Government Code
2 section 36937 and take effect immediately upon adoption by four-fifths of the City Council.

3
4 **SECTION 13: CERTIFICATION**

5
6 The City Clerk shall certify to the passage and adoption of this ordinance and shall cause the
7 same, or the summary thereof, to be published or posted in the manner required by law.

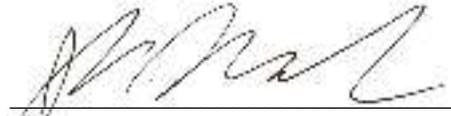
8
9 **PASSED, APPROVED AND ADOPTED** by the City Council of the City of Albany at its special
10 meeting on the 26th day of March 2020 by the following vote:

11
12 AYES: Council Members Barnes, Maass, McQuaid, Nason & Mayor Pilch

13 NOES:

14 ABSENT:

15 ABSTAIN:

16
17 

18 NICK PILCH, MAYOR



City of Albany

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ORDINANCE NO. 2020-03

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

The 26th day of March, 2020, by the following votes:

AYES: Council Members Barnes, Maass, McQuaid, Nason and Mayor Pilch

NOES: none

ABSENT: none

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY,

this 27th day of March, 2020.

Anne Hsu
CITY CLERK