

ORDINANCE NO. 1041

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
PROHIBITING RESIDENTIAL AND COMMERCIAL EVICTIONS ARISING FROM
INCOME LOSS OR SUBSTANTIAL MEDICAL EXPENSES RELATED TO THE
CORONAVIRUS PANDEMIC THROUGH MAY 31, 2020**

WHEREAS, the City of Capitola ("City") is authorized by Article XI, Section 7 of the California Constitution to make and enforce all regulations and ordinances using its police powers;

WHEREAS, Government Code sections 36934 and 36937 authorize ordinances to take effect immediately if they are for the immediate preservation of the public peace, health or safety, contain a declaration of the facts constituting the urgency, and are passed by a four-fifths vote of the City Council;

WHEREAS, the California Emergency Services Act (California Government Code section 8550, et. seq.) defines a local emergency as the existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a city, caused by conditions such as an epidemic, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of a city, and require the combined forces of other political subdivisions to combat;

WHEREAS, Chapter 8.08, section 8.08.020 of the City of Capitola ("City") Municipal Code defines an emergency as the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within this city caused by such conditions as air pollution, fire, flood, storm, epidemic, riot or earthquake, or other conditions, including conditions resulting from war or imminent threat of war, but other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment and facilities for this City, requiring the combined forces of other political subdivisions to combat;

WHEREAS, the State of California, including the City of Capitola, is experiencing an unprecedented and critical emergency related to the novel coronavirus ("COVID-19") pandemic;

WHEREAS, states of emergency have recently been proclaimed at the local, state, and federal government levels related to the COVID-19 pandemic;

WHEREAS, on March 12, 2020 the City Council declared that the existence and anticipated spread of COVID-19 is a local emergency, as defined by the California Emergency Services Act (California Government Code section 8550, et. seq.);

WHEREAS, due to the pandemic, Santa Cruz County schools have suspended in-person classes through April 10, 2020;

WHEREAS, on March 16, 2020, the Santa Cruz County Public Health Officer issued an order requiring County residents to shelter in place through April 7, 2020 in order to stop community spread of COVID-19, subject to exceptions for the provision and receipt of essential services, and this order may be continued as necessary to address the pandemic;

WHEREAS, on March 19, 2020, Governor Gavin Newsom issued a shelter in place order for the entire State of California;

WHEREAS, on March 22, 2010, the Governor's Office issued guidance on what constitutes an essential critical infrastructure worker;

WHEREAS, many businesses and commercial establishments are not comprised of essential critical infrastructure workers, and thus their employees cannot come to work during the shelter in place order without violating the order and exposing themselves and the community to COVID-19, and therefore these businesses may suffer significant economic losses, making them unable to pay rent, and

WHEREAS, even businesses and commercial establishments that are deemed to be in critical infrastructure sectors may suffer a reduction in productivity and a reduction in revenues, making them unable to pay rent;

WHEREAS, commercial evictions due a tenant's inability to pay rent have the likelihood of resulting in business owners and individuals engaging in activities (e.g. moving, board ups) that do not constitute critical infrastructure activities and increase the likelihood of the spread of COVID-19, leading to further health and safety risks to the community;

WHEREAS, evictions of commercial tenants have a high likelihood of resulting in the closure of those businesses, negatively impacting the Capitola economy;

WHEREAS, in order to comply with the shelter in place order, and for their own safety, City residents must have access to permanent housing;

WHEREAS, the COVID-19 pandemic and associated public health and shelter in place orders are expected to result in the closure of most local businesses until at least April 7, 2020, and result in extreme restrictions on other local businesses until then and possibly thereafter, possibly resulting in tenants suffering a decrease in income;

WHEREAS, many of the City's renters, including 70-85% of its low-income renters, spend over 30% of their annual income on rent already;

WHEREAS, on March 16, 2020, Governor Gavin Newsom issued Executive Order N-28-20, which authorizes local jurisdictions to suspend the evictions of tenants for the non-payment of rent if the non-payment is a result of the COVID-19 pandemic;

WHEREAS, without local protection, eviction notices for failure to pay rent are likely to surge as residents and businesses are unable to earn income due to the pandemic, or are forced to pay substantial medical expenses associated with the pandemic;

WHEREAS, particularly given the high cost of housing, evictions of tenants, particularly low-income tenants, could lead to long term or permanent displacement, impacting the health and safety of these tenants, as well as the City of Capitola;

WHEREAS, the City Council is concerned that, during the COVID-19 pandemic, eviction notices and threats of eviction will surge; and

WHEREAS, the City of Capitola has determined that it is appropriate to temporarily prohibit evictions, through May 31, 2020, for any commercial or residential tenant who can demonstrate that they are being evicted for the failure to pay rent and that such failure is a direct impact of the COVID-19 pandemic, as provided in Governor Newsom's Executive Order N-28-20.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPITOLA AS FOLLOWS:

Section 1: Interim Urgency Ordinance. The City Council of the City of Capitola incorporates the findings above by reference and adopts the Urgency Ordinance attached hereto as Attachment A.

Section 2: Effective Date. This Ordinance shall take effect and be in force immediately.

Section 3: Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 4: Codification. This urgency ordinance shall not be codified in the Capitola Municipal Code.

Section 5: CEQA. The City Council hereby finds that the action to adopt this Ordinance will not result in any change in the environment and thus is not a project subject to the requirements of CEQA. Further, even if the action to adopt this Ordinance was deemed to be a project subject to CEQA, the City Council finds the proposed Ordinance is exempt from CEQA under the common sense exemption set forth in Section 15061(b)(3), which provides that CEQA only applies to projects which have the potential for causing a significant effect on the environment, and thus where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Section 6: Authority Pursuant to the California Emergency Services Act and Capitola Municipal Code. Pursuant to Cal. Gov. Code Section 8610, the City, while in a state of emergency proclaimed by the Director of Emergency Services and ratified by the City Council, may establish rules and regulations for dealing with the local emergency. Pursuant to Capitola Municipal Code Section 8.08.060A.(6)(a), the Director of Emergency Services has the authority to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, so long as such rules and regulations must be confirmed at the earliest practicable time by the city council. The City Council also thus finds and determines that it has the authority to enact this ordinance pursuant to the California Emergency Services Act, the Capitola Municipal Code and the declaration of local emergency issued by the Capitola City Council on March 12, 2020.

Section 7: Urgency Clause. The City Council finds and declares that this ordinance is required for the immediate protection of the public peace, health and safety. Without it, City of Capitola tenants would suffer potentially irreversible displacement of tenants resulting from evictions arising from the COVID-19 pandemic. The Council, therefore, adopts this ordinance to become effective immediately, pursuant to California Government Code Section 36937.

This urgency ordinance was passed and adopted by the City Council of the City of Capitola on the 26th day of March, 2020, by the following vote:

AYES:	Council Members Bertrand, Bortorff, Brooks, Storey and Mayor Petersen
NOES:	None
ABSENT:	None
ABSTAIN:	None

APPROVED:

Kristen Petersen, Mayor

ATTEST:

Chloé Woodmansee, Interim City Clerk

ATTACHMENT A

SECTION 1: PURPOSE.

This section prohibits evictions, through May 31, 2020, of commercial and residential tenants who can demonstrate that they have received a notice of eviction for failure to pay rent, and that such failure is related to a substantial loss of income or substantial out-of-pocket medical expenses resulting from the 2020 novel coronavirus (COVID-19) pandemic or any local, state, or federal government response to the pandemic.

SECTION 2: DEFINITIONS.

The following words and phrases, whenever used in this section, shall be construed as follows:

1. "Commercial unit" means a structure or the part of a structure in which at least 50 percent of its floor space is used for commercial activities, such as retail, the providing of services, or food service.
2. "Dwelling Unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one or more persons who maintain a household or common household.
3. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Dwelling Unit, Commercial Unit, or portion thereof.
4. "Owner" means any person, acting as principal or through an agent, offering real property for rent, and includes a predecessor in interest to the owner.
5. "Pandemic" means the 2020 novel coronavirus (COVID-19) pandemic.
6. "Residential real property" means any dwelling or unit that is intended or used for human habitation.
7. "Tenant" means any person entitled by written or oral agreement, or by sufferance, to the use or occupancy of a Dwelling Unit or Commercial Unit.

SECTION 3: PROHIBITION ON EVICTIONS.

A. Through May 31, 2020, the owner of rental property shall not terminate a lawful tenancy for failure to pay rent if the tenant demonstrates that the failure to pay rent is directly related to a substantial loss of income or substantial out-of-pocket medical expenses associated with the coronavirus pandemic or any local, state, or federal government response to the pandemic.

B. This section shall also apply to an owner's action that constitutes constructive eviction under California law. An owner's failure to comply with this ordinance shall render any notice of termination of tenancy void. This section may be asserted as an affirmative defense in an unlawful detainer action. Terminations that are required to comply with an

order issued by a government agency or court requiring that the real property be vacated are excepted from this prohibition. An owner's failure to comply with this ordinance does not constitute a criminal offense but will subject an owner to civil fines and penalties as set forth in this Code.

C. To take advantage of the protections afforded under this section, a residential tenant must do all of the following:

1. Notify the landlord in writing before the day rent is due that the tenant has a covered reason for delayed payment.
2. Pay the portion of rent that the tenant is able to pay.
3. Demonstrate through documentation or other objectively verifiable means that the tenant has experienced:

(a) Substantial loss of income from: (a) job loss; (b) layoffs; (c) a reduction in the number of compensable hours of work; (d) a store, restaurant, office, or business closure; (e) a substantial decrease in business income caused by a reduction in opening hours or consumer demand; (f) the need to miss work to care for a home-bound school-age child or a family member infected with coronavirus; or (g) other similarly-caused loss of income that resulted from the pandemic; or

(b) Substantial out-of-pocket medical expenses related to the pandemic.

D. To take advantage of the protections afforded under this section, a commercial tenant must do all of the following:

1. Notify the landlord in writing before the day rent is due that the tenant has a covered reason for delayed payment.
2. Pay the portion of the rent that the tenant is able to pay.
3. Demonstrate through documentation or other objectively verifiable means that the tenant has experienced a substantial decrease in business income caused by a reduction in opening hours or consumer demand resulting from the pandemic.

E. Tenants who were afforded eviction protection under this section shall have up to ninety (90) days after the termination of this ordinance to pay their landlord all unpaid rent.

F. Nothing in this section waives a tenant's obligations to pay back rent owed once this ordinance is no longer effective.

G. Nothing in this section shall relieve a tenant of the obligation to pay rent, nor restrict a landlord's ability to recover rent due.

H. This section shall not apply to any of the following residential real property or residential circumstances:

1. Transient and tourist hotel occupancy as defined in subdivision (b) of Section 1940 of the California Civil Code.

2. Housing accommodations in a nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or an adult residential facility, as defined in Chapter 6 of Division 6 of Title 22 of the Manual of Policies and Procedures published by the State Department of Social Services.

3. Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school.

