

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN EMERGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO PURSUANT TO CHARTER SECTION 295 ENACTING A TEMPORARY MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT FOR RESIDENTIAL AND COMMERCIAL TENANTS ARISING OUT OF A SUBSTANTIAL DECREASE IN INCOME OR SUBSTANTIAL OUT-OF-POCKET MEDICAL EXPENSES RESULTING FROM THE NOVEL CORONAVIRUS, COVID-19, OR GOVERNMENTAL RESPONSE TO COVID-19.

WHEREAS, a novel coronavirus, COVID-19, causes infectious disease and was first detected in December 2019; and

WHEREAS, COVID-19 symptoms include fever, cough, and shortness of breath, and those who have been afflicted have experienced anything from mild illness to death; and

WHEREAS, the Centers for Disease Control and Prevention considers COVID-19 to be a very serious public health threat and the World Health Organization declared the COVID-19 outbreak to be a pandemic; and

WHEREAS, on February 19, 2020, the County Board of Supervisors ratified a declaration of local health emergency related to COVID-19; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency in California as a result of the threat of COVID-19; and

WHEREAS, on March 12, 2020, Mayor Kevin Faulconer proclaimed the existence of a local emergency in the City of San Diego (City) as a result of COVID-19, which was ratified by the Council of the City of San Diego (Council) on March 17, 2020; and

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-20 suspending any provision of state law that would preempt or otherwise restrict a local

government's exercise of its police power to impose substantive limitations on residential and commercial evictions when the basis for eviction is nonpayment of rent arising out of a documented substantial decrease in household or business income or substantial out-of-pocket medical expenses caused by COVID-19 or by any local, state, or federal government response to COVID-19; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 ordering all individuals living in the State of California to stay home or at their place of residence, except to obtain essential services; and

WHEREAS, there are currently more than 230 confirmed cases of COVID-19 within San Diego County, more than 1642 in California, and at least 18 COVID-19-related deaths in California, and these statistics are increasing daily; and

WHEREAS, the effects of the COVID-19 pandemic on the global economy and supply chains are impacting many local companies due to overseas factories operating at reduced capacity and a drastic reduction in tourism; and

WHEREAS, COVID-19 is causing, and is expected to continue to cause, serious negative impacts on the local economy and serious financial impacts to local residents and businesses, including substantial loss of income due to the loss of compensable work hours or wages, layoffs, and business closures; and

WHEREAS, the Governor, the San Diego County Public Health Officer, and the Mayor have issued a variety of orders and directives to respond to the emergency, including closing or significantly curtailing certain business operations, prohibiting gatherings of 10 people or more, and cancelling conferences, sporting events, and other large group activities; and

WHEREAS, the cancellation of conferences and other large events will likely cause a significant loss of business opportunities locally, including an estimated \$220,000,000 in forecasted regional impact losses attributed to cancelled events at the San Diego Convention Center; and

WHEREAS, the County Superintendent of Schools and all district superintendents in the County have closed schools for three weeks beginning March 16, 2020, requiring many parents to adjust work schedules or take time off of work, whether paid or unpaid, to care for school-aged children; and

WHEREAS, loss of income as a result of COVID-19 may prevent City residents and businesses from fulfilling their financial obligations; and

WHEREAS, approximately 46 percent of the City's households rent their homes; and

WHEREAS, in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement during the emergency and to prevent housed-individuals from falling into homelessness; and

WHEREAS, displacement of residential tenants caused by eviction would create undue hardship on these tenants by making it difficult to follow public health orders and guidance of social distancing and isolation, and would further put them at risk of homelessness due to the City's documented shortage of affordable housing, putting these tenants and the general public at great risk; and

WHEREAS, this Ordinance enacts a temporary moratorium on residential evictions intended to promote economic stability and fairness within the City's rental market during the COVID-19 pandemic, to prevent avoidable homelessness, to preserve the public peace, health,

safety, and public welfare, and to enable tenants in the City whose income and ability to work is affected by COVID-19; and

WHEREAS, business closures and reduced business hours, in addition to public health orders to limit public gatherings and socially distance, will have a financial impact on local businesses, and displacement of commercial tenants caused by eviction would worsen the present crisis by causing financial instability for business owners and employees and by reducing the available jobs for City residents once the crisis is abated; and

WHEREAS, this Ordinance enacts a temporary moratorium on commercial evictions intended to promote economic stability and fairness, and to promote a stable business and job market for employers and employees to return to once the emergency is abated; and

WHEREAS, it is in the public interest to take steps to ensure people remain housed and to ensure local businesses are not evicted during this public health emergency; and

WHEREAS, on March 17, 2020, the Council adopted a resolution requesting the Mayor report to Council on a strategy to work with banks and lenders to halt mortgage payments or foreclosures for individuals and landlords who have suffered severe loss of wages and income due to COVID-19; and

WHEREAS, the Council further requests the County, State and Federal governments work with banks and lenders to alleviate financial hardships of property owners and landlords related to actions taken to address the COVID-19 pandemic; and

WHEREAS, the Council further requests that banks and lenders work with property owners and landlords to extend similar hardship protections for mortgage relief as found in this ordinance for tenants; and

WHEREAS, the Council finds that adopting this emergency Ordinance is necessary and appropriate to address the threats to the public health, safety, and welfare of its citizens related to the significant economic impacts of the COVID-19 pandemic, to protect residents and businesses from being evicted due to nonpayment of rent due to substantial lost income or substantial out-of-pocket medical expenses caused by COVID-19, or by complying with public health orders and recommendations related COVID-19; and

WHEREAS, San Diego Charter, Article III, section 11 vests all legislative authority for the City in the Council; and

WHEREAS, California Government Code section 8634 allows the Council, as the governing body, to make orders and regulations necessary to provide for the protection of life and property; and

WHEREAS, the Council finds that there is an emergency necessitating immediate adoption of this Ordinance pursuant to San Diego Charter section 295; and

WHEREAS, under San Diego Charter section 280(a)(3), this Ordinance is not subject to veto by the Mayor because it is an emergency Ordinance; and

WHEREAS, under San Diego Charter section 295(e), a supermajority vote of the Council is required for passage of this Ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That a temporary moratorium on evictions for nonpayment of rent by residential and commercial tenants in the City of San Diego who are directly impacted by the novel coronavirus disease, known as COVID-19, is imposed as follows:

(a) No landlord shall take action to evict a tenant for not timely paying rent that was due on or after March 12, 2020, if the tenant provided written notice to the landlord, on or before the

date the rent was due, that the tenant is unable to pay rent due to financial impacts related to COVID-19.

(b) As used in this Ordinance, “financial impacts” means a substantial decrease in household income for a residential tenant, or in business income for a commercial tenant, 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.

(c) As used in this Ordinance, “written” has the same definition as in San Diego Municipal Code section 11.0210, and includes email or text communications to a landlord or landlord’s representative or agent with whom the tenant has previously corresponded by email or text.

(d) Within one week of providing notice under subsection (a), the tenant shall provide the landlord documentation or objectively verifiable information that the tenant is unable to pay rent due to financial impacts related to COVID-19.

(e) If a tenant complies with the requirements of this Ordinance, a landlord shall not take any of the following actions based on the tenant’s nonpayment of rent: charge or collect any late fees for rent that is delayed for the reasons set forth in this Ordinance, serve a notice, file, or prosecute any action to obtain possession of the property rented by that tenant or otherwise endeavor to evict that tenant for nonpayment of rent, including resorting to notice pursuant to California Code of Civil Procedure sections 1161, 1161.1, or 1162, filing or prosecuting any unlawful detainer action based on a three-day pay or quit notice, or pursuing a no-fault eviction.

(f) Tenants who were afforded eviction protection under this Ordinance shall have up to six months from the date this Ordinance is effective or the withdrawal of Governor Newsom's Executive Order N-28-20, whichever occurs soonest, to pay their landlords all unpaid rent. The Council may extend this Ordinance by subsequent resolution if conditions at that time warrant an extension. During that time period, the protections against eviction in this Ordinance shall apply. At the end of this six month period, a landlord may evict a tenant who has not paid all outstanding rent and resort to all remedies available to the landlord under the lease and the law.

(g) Nothing in this Ordinance relieves the tenant of liability for unpaid rent after expiration of the provisions of this Ordinance.

(h) A tenant with financial impacts related to COVID-19 may use the protections afforded in this Ordinance as an affirmative defense in an unlawful detainer action.

Section 2. That this moratorium shall last until the local emergency is terminated or the withdrawal of Governor Newsom's Executive Order N-28-20, whichever occurs sooner, but the Council may extend the time periods in this Ordinance by adoption of a subsequent resolution.

Section 3. That the City Manager may adopt rules and regulations reasonably necessary to implement this Division, including adopting definitions of substantial out-of-pocket medical expenses and substantial loss of income, but in no event shall the definition of substantial loss of income exceed a 30 percent reduction in income. In the event the State of California issues law or guidance on implementing an eviction moratorium or defining these terms, that law or guidance shall control over the City Manager's adopted rules and regulations.

Section 4. That this Ordinance is intended to supplement, not to duplicate or contradict, applicable state and federal law and shall be construed in light of that intent.

Section 5. That the provisions of Article 1, Division 2 of the San Diego Municipal Code, including those relating to construction and interpretation, and enforcement of administrative remedies, shall apply to this Ordinance.

Section 6. That the City reserves the right to enforce the administrative remedies in Article 1, Division 2 of the San Diego Municipal Code and to pursue any other remedies legally available against individuals knowingly or intentionally violating the provisions of this Ordinance or falsifying information to qualify for the relief granted in this Ordinance.

Section 7. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 8. That this Ordinance is declared to be an emergency measure required for the immediate preservation of the public peace, safety, health, and welfare pursuant to San Diego Charter section 295, and shall take effect immediately from the day of adoption by the affirmative vote of at least six members of the City Council.

APPROVED: MARA W. ELLIOTT, City Attorney

By _____
Heather Ferbert
Deputy City Attorney

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