

ORDINANCE NO. 2020-07

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS CALIFORNIA 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) with symptoms that include fever cough and shortness of breath ranging in severity from mild illness to death, was first detected in Wuhan City, Hubei Province in China in December 2019; and

WHEREAS, on January 30, 2020, World Health Organization declared COVID-19 to be a public health emergency of international concern; and

WHEREAS, on January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a Public Health Emergency for the United States to aid in the nation's health care community in responding to the COVID-19 virus; and

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

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, on March 16, 2020, the Governor of the State of California issued Executive Order N-28-20, which suspended "[a]ny 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 or commercial evictions" of certain tenants affected by the COVID-19 pandemic; and

WHEREAS, on March 18, 2020, the City of Encinitas ("City") City Council ratified the Emergency Services Director's proclamation of the existence of a local emergency in response to the COVID-19 pandemic; and

WHEREAS, the Centers for Disease Control and Prevention, the California Department of Health, and the San Diego County Health Officer have all issued recommendations including but not limited to social distancing, staying home if sick, canceling or postponing large group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus; 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, as a result of the public health emergency and the precautions recommended by health authorities, many residential and commercial tenants in the City have experienced or expect soon to experience sudden and unexpected income loss; and

WHEREAS, the eviction of commercial tenants results in the loss of local, family owned businesses, the loss of jobs for employees, and negative impacts surrounding to businesses, potentially leading to urban decay; and

WHEREAS, the Governor of the State of California has stated that individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19 and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks; and

WHEREAS, further economic impacts are anticipated, leaving residential and commercial tenants vulnerable to eviction; and

WHEREAS, during this local emergency, and in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement, to protect the City's affordable housing stock, 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 WHEREAS, in the interest of public peace, health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary for the City Council to exercise its authority to issue these regulations related to the protection of the public peace, health or safety.

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

Section 1. Findings: The City Council finds that each fact set forth in the preceding recitals is true and correct and incorporated by reference.

Section 2. Eviction Moratorium: That a temporary moratorium on evictions for nonpayment of rent by residential and commercial tenants in the City of Encinitas 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 27, 2020, if the tenant provided written notice to the landlord, on or before the date that each rent payment was due, that the tenant is unable to pay rent due to financial impacts related to COVID-19, except that for rent payments that were due from March 27, 2020, up to and including April 1, 2020, the tenant shall notify the landlord not later than April 7, 2020.
- (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, sick with COVID-19, caring for a household or family member

who was sick with a suspected or confirmed case of COVID-19, or caring for a child whose school was closed in response to COVID-19.

- (d) Within two (2) weeks of providing each 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 end of the period during which 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. Notwithstanding subsection (f), nothing in this Ordinance prohibits a landlord from collecting all rents that are due at the time a tenant moves out.
- (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 3. Duration. 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 4. Implementation. That the City Manager may adopt rules and regulations reasonably necessary to implement this Ordinance, including adopting definitions of substantial out-of-pocket medical expenses and substantial loss of 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 5. Conflict of Laws. 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 6. Interpretation. That the provisions of Title 1 of the Encinitas Municipal Code, including those relating to construction and interpretation, and enforcement of administrative remedies, shall apply to this Ordinance.

Section 7. Enforcement. That the City reserves the right to enforce the administrative remedies in Title 1, Chapter 1.08 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 8. Urgency. The City Council finds that the COVID-19 pandemic has increased the risk of housing displacement, loss of income, and homelessness for many people in the City of Encinitas and surrounding areas, as more fully described in the recitals of this Ordinance. The City Council further finds that, unless this Ordinance is effective and its regulations are immediately put in place, the public health, safety and welfare will be at risk. Therefore, the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937(b) and that it take effect immediately upon adoption its adoption by the affirmative vote of at least four (4) members of the City Council.

Section 8. Uncodified. That this Ordinance shall not be codified.

Section 9. Severability. That, if any provision of this Ordinance is held invalid by a court of competent jurisdiction, such provision shall be considered a separate, distinct and independent provision and such holding shall not affect the validity and enforceability of the other provisions of this Ordinance.

Section 10. Reading. 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 11. Certification. That the City Clerk shall certify to the adoption of this Ordinance, and the City Clerk shall cause this Ordinance or a summary thereof to be published as required by law.

PASSED, APPROVED AND ADOPTED at a special meeting of the City Council held on the 1st day of April 2020.



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Catherine S. Blakespear, Mayor  
City of Encinitas

APPROVED AS TO FORM:



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Leslie E. Devaney, City Attorney  
City of Encinitas

ATTESTATION AND CERTIFICATION:

CERTIFICATION: I, Kathy Hollywood, City Clerk of the City of Encinitas, California, do hereby certify under penalty of perjury that the foregoing ordinance was duly adopted at a special meeting of the City Council on the 1<sup>st</sup> day of April, 2020 by the following vote, to wit:

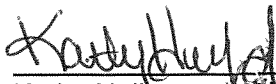
AYES: Blakespear, Hinze, Hubbard, Kranz, Mosca

NOES: None

ABSENT: None

ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Encinitas, California, this 2nd day of April, 2020



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Kathy Hollywood, City Clerk