

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 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 other countries 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 global 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, former Mayor Kevin Faulconer proclaimed the existence of a local emergency in the City of San Diego (City) as a result of COVID-19, which the Council of the City of San Diego (Council) ratified 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, since March 2020, State and County public health officials have responded to the pandemic with a series of orders, including ordering all individuals living in the City of San Diego stay home or at their place of residence, except to obtain essential services; 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, 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 among members of separate households, and cancelling conferences, sporting events, and other large group activities; and

WHEREAS, the County Superintendent of Schools and all district superintendents in the County have closed schools for three weeks beginning March 16, 2020, and since then, the majority of public schools serving City of San Diego students have been closed for in-person learning for all or part of the 2020-2021 school year; and

WHEREAS, school and childcare closures have required 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 residential tenants from fulfilling their financial obligations under their lease or force them to make difficult choices between rent or other necessities; and

WHEREAS, the October 2020 report from the San Diego Association of Governments estimated the San Diego region experienced a \$12.4 billion reduction in regional gross domestic product and \$4.8 billion loss in wages across nearly all sectors in the first six months of the pandemic; 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, on June 30, 2020, the Council adopted Resolution R-313133 creating an emergency rental assistance program administered by the San Diego Housing Commission to provide financial support to eligible tenants and landlords affected by the COVID-19 pandemic; and

WHEREAS, the City and Housing Commission are pursuing additional funds to support continued operation of the rental assistance program; and

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

WHEREAS, it is in the public interest to take steps to ensure people remain housed during this public health emergency; 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 as a result of complying with public health orders and recommendations related to COVID-19; and

WHEREAS, this Ordinance is intended to prevent tenants from being evicted due to suffering a financial impact related to COVID-19 or any government response to COVID-19. As compared to the just cause protections of the California Tenant Protection Act of 2019, Assembly Bill 1482 (Act), this Ordinance further limits the permissible reasons for termination of a residential tenancy and provides additional tenant protections. The Council intends that this Ordinance be more protective than the Act and that this Ordinance shall apply rather than the Act; 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 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) Except for eviction actions authorized by the COVID-19 Tenant Relief Act of 2020 (codified in California Code of Civil Procedure sections 1179.01 through 1179.07), no landlord shall evict, or endeavor to evict, a tenant for not timely paying rent that initially became due during the time period beginning on the effective date of this Ordinance and ending 60 days after the end of the local state of emergency as declared by the Mayor, where the tenant's failure to pay is due to financial impacts related to COVID-19 and the tenant provided written notice to the landlord on or within seven days after the rental payment due date that they are unable to pay rent in full.

(b) Within seven days of providing notice under subsection (a), the landlord may request the tenant provide documentation or objectively verifiable information that the tenant is unable to pay rent due to financial impacts related to COVID-19. The tenant shall have 14 days from the date of the landlord's request to provide the requested documentation. If the tenant does not provide timely notice or evidence of financial impacts related to COVID-19, the landlord may pursue any enforcement action in accordance with state and local laws unless the tenant can demonstrate timely compliance was impossible due to hospitalization or other incapacity of the tenant in which case the protections of this Ordinance shall apply to the tenant.

(c) As used in this Ordinance, "financial impacts" means a substantial loss of household income due to business closure, a substantial reduction in compensable hours of work or wages, layoff, or substantial out-of-pocket medical expenses. A financial impact is "related to COVID-19" if it is caused by the COVID-19 pandemic, including caring for an immediate family member with a positive COVID-19 diagnosis, or if it is caused by any governmental response to the COVID-19 pandemic, complying with any public health orders, school or childcare closures, or recommended guidance related to COVID-19 from local, state, or federal authorities.

(d) 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.

(e) As used in this Ordinance, "endeavor to evict" shall include a landlord taking or attempting to 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,

threatening to or actually serving a notice, filing, or prosecuting any action to obtain possession of the property rented by that tenant or otherwise endeavoring 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) Nothing in this Ordinance relieves the tenant of the obligation to pay rent or restricts the landlord's ability to recover rent due.

(g) Nothing in this Ordinance is intended to prevent or discourage landlords and tenants from developing repayment agreements or modifying their leases to address hardships related to COVID-19.

(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, except for the provisions of Section 3, this Ordinance shall be effective on the later of February 1, 2021 or the date any state law applicable to the City that prohibits adoption of local measures to protect tenants from eviction expires, as may be amended, and shall remain in effect for 60 days after the end of the local state of emergency as declared by the Mayor. Section 3 of this Ordinance shall be effective on February 1, 2021 and shall remain in effect for 60 days after the end of the local state of emergency as declared by the Mayor.

Section 3. That the Mayor or his designee is authorized, to the extent legally permissible, to negotiate appropriate rent relief with City tenants who would qualify for protection under this Ordinance and to execute any lease amendments that may be necessary depending on the relief negotiated without seeking further Council approval.

Section 4. That the Mayor may adopt rules and regulations reasonably necessary to implement this Ordinance and guidelines related to appropriate rent relief for City tenants. In the event the State of California issues law or guidance defining these terms, that law or guidance shall control over the Mayor's adopted rules and regulations.

Section 5. 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. Further, this Ordinance is found to be more protective of tenants than the California Tenant Protection Act of 2019, Assembly Bill 1482, (Act) and shall apply over the Act to tenants who qualify for protection under this Ordinance.

Section 6. 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 7. That the provisions of this Ordinance, being necessary for the welfare of the City of San Diego and its residents, shall be liberally construed to effectuate its purpose, which is to protect tenants from being evicted for missing rent payments due to the COVID-19 pandemic.

Section 8. 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 9. 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 10. 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 M. Ferbert
Chief Deputy City Attorney

HMF:soc
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