

## ORDINANCE NO. 2020-008

### **AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN PABLO TEMPORARILY PROHIBITING EVICTIONS OF RESIDENTIAL AND COMMERCIAL REAL PROPERTY TENANTS IMPACTED BY THE COVID-19 PANDEMIC AND ESTABLISHING A MORATORIUM ON RENT INCREASES**

THE CITY COUNCIL OF THE CITY OF SAN PABLO DOES ORDAIN AS FOLLOWS:

#### **SECTION 1. Findings.**

- A. On January 23, 2020, the Centers for Disease Control activated the Emergency Response System and determined that Novel Coronavirus COVID-19 ("COVID-19") represents a serious and imminent threat given the modes of transmission, factors facilitating transmission, the extent of asymptomatic viral shedding, the groups most at risk of serious illness, the attack rate, and the case fatality rate.
- B. On January 30, 2020, the World Health Organization declared the outbreak of a "COVID-19", a public health emergency of international concern.
- C. On January 31, 2020, as the result of confirmed cases of COVID-19, the U.S. Secretary of Health and Human Services declared a public health emergency nationwide.
- D. On March 3, 2020, Contra Costa Health Services announced the first case of local transmission of the virus causing COVID-19 in Contra Costa County.
- E. On March 4, 2020, Governor Gavin Newsom proclaimed the existence of a state of emergency in California under the California Emergency Services Act, Gov. Code § 8550 et seq., and reported that as of that date, there were more than 94,000 cases of COVID-19 worldwide, resulting in more than 3,000 deaths, with 129 confirmed cases of COVID-19 in the United States, including 53 in California.
- F. On March 10, 2020, the Contra Costa Board of Supervisors found that due to the introduction of COVID-19 in the County, conditions of disaster or extreme peril to the safety of persons and property had arisen, commencing on March 3, 2020. Based on these conditions, pursuant to Government Code section 8630, the Contra Costa Board of Supervisors adopted Resolution No. 2020/92, proclaiming the existence of a local emergency throughout the County.
- G. On March 11, 2020, the World Health Organization (WHO) declared COVID-19 to be a pandemic; and on March 13, 2020, the President of the United States declared a national emergency due to COVID-19.
- H. On March 16, 2020, in conjunction with six San Francisco Bay Area Counties and the City of Berkeley Health Departments, the Contra Costa County Health

Officer issued an order requiring County residents to shelter at their places of residence through April 7, 2020, in order to slow community transmission of COVID-19, subject to exceptions for the provision and receipt of essential services while complying with social distancing requirements to the maximum extent possible. All businesses, except Essential Businesses as defined in the order, were required to cease all activities except for Minimum Basic Operations, as defined in the order.

- I. On March 16, 2020, pursuant to Resolution No. 2020-034, City Council for the City of San Pablo declared a state of local emergency finding that conditions of extreme peril to the health and safety of persons and property have arisen within the City of San Pablo caused by COVID-19.
- J. On March 16, 2020, Governor Gavin Newsom issued Executive Order N-28-20, which authorizes local jurisdictions to suspend the evictions of residential and commercial Tenants for the non-payment of rent if the non-payment is a result of the COVID-19 pandemic. The protections in Executive Order N-28-20 extend through May 31, 2020.
- K. On March 19, 2020, Governor Gavin Newsom issued Executive Order N-33-20, which directs residents of California to follow state public health directives to stay home or at their place of residence to preserve the public health and safety and capabilities of the healthcare delivery system.
- L. On March 27, 2020, Governor Gavin Newsom issued Executive Order N-37-20, which prohibits landlords throughout California from evicting residential Tenants for nonpayment of rent when the inability to pay is due to COVID-19, and the Tenant has provided notice to the landlord and has documentation showing the nonpayment is because of the COVID-19 pandemic. The protections in Executive Order N-37-20 extend through May 31, 2020.
- M. On March 31, 2020, in conjunction with five other San Francisco Bay Area Counties and the City of Berkeley Health Departments, the Contra Costa County Health Officer issued Order No. HO-COVID19-03 extended the order requiring County residents to shelter at their places of residence through May 3, 2020, and further restricted access and essential business and governmental operations, which the Contra Costa Health Department has indicated will be extended.
- N. On April 6, 2020, pursuant to Resolution No. 2020-042, the City Council for the City of San Pablo extended the state of local emergency finding that conditions of extreme peril to the health and safety of persons and property have arisen within the City of San Pablo caused by COVID-19 and confirmed the actions taken by the Director of Emergency Services.
- O. On April 6, 2020, pursuant to Resolution No. 2020-043, the City Council for the City of San Pablo added “Explore protections for Tenants who may be potentially displaced from current COVID-19 pandemic impacts” to the City Council’s Priority Workplan; and on

April 20, 2020, the City Council provided direction to City staff regarding an urgency ordinance and other actions to address evictions and rental increases during COVID-19.

- P. On April 20, 2020, pursuant to Resolution No. 2020-051, the City Council for the City of San Pablo extended the state of local emergency finding that conditions of extreme peril to the health and safety of persons and property have arisen within the City of San Pablo caused by COVID-19 and confirmed the actions taken by the Director of Emergency Services.
- Q. As of April 20, 2020, there are 707 confirmed cases of COVID-19 in Contra Costa County and 22 deaths, with 36 reported cases in San Pablo, which has a population of 29,884 and thus an apparent high level of confirmed cases. As of April 19, 2020, there are 30,978 confirmed cases of COVID-19 in California with 1,208 deaths. As of April 20, 2020, there are 74,625 cases of COVID-19 in the United States with 39,083 deaths and all of those numbers are expected to continue to rise.
- R. On April 21, 2020, following the example of many cities and counties in California, the Contra Costa County Board of Supervisors adopted an Urgency Ordinance 2020-14 Temporarily Prohibiting Evictions of Residential and Commercial Real Property Tenants in Contra Costa County Impacted by the COVID-19 Pandemic and Establishing a Moratorium on Rent Freezes, which is applicable within the City of San Pablo unless San Pablo adopts its own ordinance;
- S. The COVID-19 pandemic and associated public health orders are expected to result in a substantial loss of income to a widespread portion of the local population that depend on wages or business income to pay rent and result in substantial medical expenses for certain San Pablo residents, in a community that already has a significant percentage of residents (approximately 20%) living below the poverty line.
- T. The COVID-19 pandemic and associated public health orders have resulted in the closure of many local businesses until at least May 3, 2020, and have imposed extreme restrictions on other local businesses until then, and possibly thereafter. Businesses affected by the COVID-19 may be unable to pay rent and, therefore, may be evicted resulting in negative impact on the local economy through layoffs, lost income and healthcare for employees, lost products and services for residents, and increased risk of life-threatening COVID-19 exposure.
- U. San Pablo, like other communities in the San Francisco Bay Area, was already experiencing a housing affordability crisis, which is driving homelessness and displacement of residents.
- V. Many San Pablo residents are experiencing or will experience substantial losses of income as a result of the local emergency and shelter-in-place orders, hindering their ability to pay rent and leaving them vulnerable to eviction.
- W. Many of the City's renters are rent-burdened, paying over 30 percent of their income on rent, and some renters are severely rent-burdened, paying over 50 percent of their income on rent, which leaves less money for families to spend

on other necessities like food, healthcare, transportation, and education.

- X. Without local protection, eviction notices, including notices for failure to pay rent, are likely to surge as residents and businesses are unable to earn income due to the COVID-19 pandemic, or are forced to pay substantial medical expenses associated with the COVID-19 pandemic.
- Y. Housing displacement due to rent increases and evictions occurring during the local emergency would hinder individuals from complying with state and local directives to shelter in place, from learning of further federal, state and local directives and access public health and safety information and services, and would lead to increased spread of COVID-19, overburdening the healthcare delivery system and potentially resulting in greater loss of life, as well as the viability of businesses and the economic recovery after the emergency.
- Z. The City Council desires to maintain the economic infrastructure to that “Essential Businesses,” as that term is defined in the Contra Costa County Health Department orders, may remain open and continue operations uninterrupted in support of residents who are sheltering in place, and so that all businesses have the ability to recover from the impacts of COVID-19 and continue to provide employment and generate tax revenues and so that economic recovery is possible after the emergency is over, all of which are in the interest of public health, safety and welfare.
- AA. The provisions in this Ordinance are consistent with or more protective than the Tenant Protection Act of 2019 as enacted by Assembly Bill 1482.
- BB. Pursuant to California Constitution, Article XI, Section 7, California Government Code section 36937 and San Pablo Municipal Code Chapter 2.36, there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health and safety that warrants the City to enact substantive limitations on evictions and enact a temporary moratorium on rent increases to protect the health, safety, and welfare of its residents in light of the emergency declared regarding the COVID-19 pandemic, including the need to keep residents in their homes during the time that they need to shelter-in-place. This determination is based on the facts stated in these findings, the staff reports and testimony referenced above and the staff reports dated April 20, 2020 and April 27, 2020, as well as any written or oral testimony at the City Council meetings on April 20, 2020 and April 27, 2020.

**SECTION 2. Definitions.** For purposes of this ordinance, the following words and phrases have the following meanings:

- A. "Commercial Real Property" means any developed real property that is used as a place of business, income-producing purposes or any purpose other than for residential use.
- B. "Immediate Family" means a person's spouse, domestic partner, children,

grandchildren, parents, or grandparents.

- C. "No Fault Cause for Eviction" means any eviction for which the notice of termination of Tenancy is not based on an alleged fault of the Tenant, including but not limited to eviction notices served pursuant to California Code of Civil Procedures sections 1161(1), 1161(5) or 1161(c) or California Civil Code 1946.
- D. "Owner" means any natural person, partnership, corporate or fictitious entity, acting as a lessor or sublessor, whether as a principal or through an agent, who receives or is entitled to receive Rent in exchange for the use or occupancy of any Residential or Commercial Real Property for rent.
- E. "Rent" means the financial obligation or monetary payment a Tenant owes an Owner for the occupancy or use of Commercial or Residential Real Property whether by written or oral agreement.
- F. "Residential Real Property" means any dwelling unit that is intended or used for human habitation.
- G. "Tenancy" means the lawful occupancy of Residential or Commercial Real Property by agreement on a month-to-month basis or for a fixed term in excess of 30 days.
- H. "Tenant" means the lawful occupant of residential or Commercial Real Property whether by lease, sublease, or other agreement.

### **SECTION 3. Prohibitions on Residential and Commercial Evictions.**

- A. Through May 31, 2020, and any subsequent extensions approved by the City Council in conjunction with the Governor's extension of Order N-28-20, an Owner of Residential Real Property or Commercial Real Property shall not terminate a Tenancy, including but not limited to any such action under California Code of Civil Procedure 1161 or California Civil Code sections 1940 et seq. or 1954.25 et seq., 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 COVID-19 pandemic or any local, state, or federal government response to the pandemic.
- B. For the protections of this subsection (A) to apply, a Tenant must:
  - (1) Notify Owner before the Rent is due, or within a reasonable period of time afterwards not to exceed 14 days, by email, text or mail, that the Tenant needs to delay all or some payment of Rent because of an inability to pay the full amount due to reasons related to COVID-19 as set forth in this Section; and

(2) Demonstrate through documentation or other objectively verifiable means:

- a. Substantial loss of income from: (i) job loss; (ii) layoffs; (iii) a reduction in the number of compensable hours of work; (iv) a store, restaurant, office, or business closure; (v) a substantial decrease in business income caused by a reduction in opening or working hours, consumer demand, or staff reporting to work; (vi) the need to miss work to care for a homebound school-age child or a family member infected with COVID-19; or (vii) other similarly-caused loss of income, where the conditions listed in (i) through (vii) resulted from the COVID-19 pandemic or related guidance or public health orders from local, State, or federal authorities; or
- b. Substantial out-of-pocket medical expenses for themselves or their Immediate Family related to the COVID-19 pandemic.

"Adequate documentation" of lost income or out-of-pocket medical expenses from the COVID-19 pandemic includes but is not limited to a declaration signed by the Tenant under penalty of perjury, letters from employers citing the COVID-19 pandemic or related government action as the basis for termination of employment or reduced work, employer paycheck stubs, bank statements, or letters or notifications from schools in which the Tenant has a dependent enrolled regarding COVID-19-related closures that substantially affected the Tenant's income. Any medical or financial information provided to the Owner shall be held in confidence, unless needed to apply for financial assistance or mortgage deferral from governmental agency, nonprofit or financial institution. Documentation may include texts, emails or paper.

- c. Courts shall have the sole discretion to determine in an unlawful detainer action or other eviction action whether the Tenant's notice and documentation are sufficient to show a "substantial loss of income" or "substantial out-of-pocket medical expenses."

(3) Tenant shall have been current on payment of Rent as of March 16, 2020.

- C. Through May 31, 2020, and any subsequent extensions approved by the City Council, an Owner of Residential Real Property or Commercial Real Property shall not terminate a Tenancy for any No Fault Cause for Eviction.
- D. Through May 31, 2020, and any subsequent extensions approved by the City Council, an Owner of Residential Real Property shall not terminate a Tenancy on the basis of a Tenant allowing an unauthorized occupant to live in the dwelling unit, if the occupant is a member of the Tenant's Immediate Family living in the dwelling unit as a result of the COVID-19 pandemic.

E. Except as set forth in this Section 3, this ordinance does not limit an Owner's ability to terminate a Tenancy for a lawful just cause reason pursuant to California Code of Civil Procedure section 1161 and does not limit an Owner's ability to terminate a Tenancy for any of the following reasons:

- (1) The termination is necessary to protect the Owner's health or safety or any other Tenant's health or safety.
- (2) The termination is necessary where the Owner or a member of the Owner's Immediate Family intends to occupy the Residential Real Property.

#### **SECTION 4. Notices of Termination of Tenancy.**

- A. An Owner's failure to comply with this ordinance shall render any notice of termination of Tenancy, where the termination would be in violation of this ordinance, void. Any notice of termination served on a Tenant during the COVID-19 pandemic must contain the reason for the termination of the Tenancy. Any notice of termination served on a Tenant during the COVID-19 pandemic must also include a notice of the Tenant's rights under this ordinance and a notice of emergency rental assistance programs.
- B. A Tenant eligible for protection under this ordinance must provide written notice of that eligibility to the Owner within 14 days after receiving a notice of termination of Tenancy from the Owner.

**SECTION 5. Late Fees.** For a period of 365 days after the expiration of the moratorium in Section 3 of this ordinance, which is currently on May 31, 2020 but includes any subsequent extensions approved by the City Council, an Owner may not charge or collect a late fee for unpaid rent due from a Tenant who meets the requirements of Section 3(B) of this ordinance.

**SECTION 6. Grace Period.** A Tenant who meets the requirements of Section 3(B) of this ordinance shall pay all past due rent that the Tenant is able to pay as due each month with the full amount of deferred rent due within 365 days after the expiration of the moratorium in Section 3 of this ordinance, which is currently May 31, 2020, but includes any subsequent extensions approved by the City Council, unless the Owner agrees to a longer repayment period. This ordinance does not relieve a Tenant of the obligation to pay rent and does not restrict an Owner's ability to recover rent due.

**SECTION 7. Moratorium on Rent Increases.** An Owner may not increase rent through May 31, 2020, and any subsequent extensions approved by the City Council. An Owner who believes such provision precludes a fair return on investment must seek a waiver from the City Manager or designee in writing with all justification within 30 days of adoption of this ordinance. A Residential Real Property that is exempt from the rent

limits imposed by Civil Code sections 1946.2 or 1947.12 is exempt from this section.

**SECTION 8. Remedies.**

- A. The provisions of this ordinance may be asserted as an affirmative defense in an unlawful detainer action.
  
- B. If an Owner attempts to recover possession or recovers possession of Residential Real Property or Commercial Real Property in violation of this ordinance, retaliates against a Tenant for the exercise of any rights under this ordinance, or attempts to prevent a Tenant from acquiring any rights under this ordinance, the Tenant may institute a civil proceeding for injunctive relief, money damages of not more than three times actual damages (including damages for mental or emotional distress), and whatever other relief a court deems appropriate. If damages are awarded for mental or emotional distress, the award shall only be trebled if the trier of fact finds that the Owner acted in knowing violation of or in reckless disregard of the provisions of this ordinance. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.

**SECTION 9. Retroactivity.** This ordinance applies to eviction notices, and unlawful detainer actions based on these notices, served or filed after March 16, 2020, except to the extent a Tenant has surrendered possession of its premises, or an unlawful detainer lawsuit was finally adjudicated on or before March 16, 2020. The facts justifying the retroactive application of this ordinance are set forth in Section 1.

**SECTION 10. Expiration Date.** The moratoriums in this ordinance shall expire as of May 31, 2020, unless shortened or extended by the City Council based on the existence of a local emergency and extension of the Governor's Order N-28-20.

**SECTION 11. CEQA.** This ordinance is deemed not a project under the provisions of the California Environmental Quality Act, (CEQA) pursuant to CEQA Guidelines Section 15378(b)(5): Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. If deemed a project, then the approval of the ordinance is deemed exempt from CEQA pursuant to the following separate and independent basis: Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that the ordinance has no potential to cause a significant effect on the environment; and Section 15269(c) because adoption of this ordinance is to prevent or mitigate an emergency.

**SECTION 12. Severability.** If any sections, subsections, sentences, clauses, phrases or portions of this ordinance are for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or



clause of this ordinance whether or not any one or more sections, subsections, phrases or clauses may be declared invalid or unconstitutional on their face or as applied.

**SECTION 13. Effective Date; Publication.** This ordinance shall become effective upon adoption by not less than four-fifths vote of the San Pablo City Council as an urgency ordinance necessary for the immediate preservation of the public peace, health, and safety for the reasons set forth in Section 1. The City Clerk's Office shall publish and post the ordinance in accordance with California Government Code section 36933 to the extent feasible during the COVID-19 emergency.

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ADOPTED at an adjourned regular meeting/special meeting of said City Council held on the 27th day of April 2020, by the following votes:

AYES:	COUNCILMEMBERS:	Kinney, Pineda, Xavier, Pabon-Alvarado and Cruz
NOES:	COUNCILMEMBERS:	None
ABSENT:	COUNCILMEMBERS:	None
ABSTAIN:	COUNCILMEMBERS:	None

ATTEST: APPROVED:



LaTanya Fisher, Acting Deputy City Clerk



Arturo M. Cruz, Mayor