

ORDINANCE NO. _____

AN UNCODIFIED EMERGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA ENACTING A TEMPORARY MORATORIUM ON EVICTIONS FOR NONPAYMENT OF RENT BY RESIDENTIAL AND COMMERCIAL TENANTS WHO HAVE BEEN HARMED FINANCIALLY AS A RESULT OF COVID-19

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings and Determinations.

This ordinance is an exercise of the City's police power to enact emergency limitations on residential and commercial evictions, notwithstanding the any preemptive or restrictive provision of state law, as authorized by the Governor's Executive Order N-28-20. This ordinance is necessary as an emergency measure to be effective immediately for the immediate preservation of the public peace, health and safety for the facts and reasons set forth in City Council Resolution No. 20-021, ratifying and proclaiming the existence of a local emergency, which facts and reasons are incorporated by this reference.

SECTION 2. Residential Tenancies.

A. The owner of residential real property or the owner's agent shall grant a rent or lease payment deferral to a tenant who has notified the owner or the owner's agent of a Significant Negative Change to Their Household Financial Condition as provided in Subsection B. below. Upon receipt of such notice, the owner or agent shall not take any action to terminate the tenancy for nonpayment of rent, or to evict a tenant for nonpayment of rent, if the tenant's notice states that they are unable to pay all or part of their rent (including lease payments) because of a Significant Negative Change to Their Household Financial Condition as a result of COVID-19 or any private or governmental actions resulting from COVID-19, including but not limited to termination of employment, significantly reduced hours of employment, lay-off, or significant salary reduction.

B. A residential tenant may invoke the protections provided by this ordinance by notifying the property owner or the owner's agent in writing (including email if commonly used) of the Significant Negative Change to Their Household Financial

Condition within twenty days after a rent or lease payment is due. The tenant's notice must describe the Significant Negative Change to the Tenant's Household Financial Condition and shall include the amount of the rent or lease payment that the tenant believes they can make on a current monthly basis and the amount the tenant seeks to defer during the emergency. The tenant's written notice shall include documentation that establishes the Significant Negative Change to Their Household Financial Condition. An owner or the owner's agent shall keep confidential all medical or financial information contained in a notice, except when disclosure is both necessary to enforce the owner's rights under this ordinance and otherwise lawful.

C. Upon request of the tenant, any residential tenancy which would by its terms, expire before May 31, 2020, shall be extended on the same terms until May 31, 2020, or such later date as specified by action of the City Council that extends the expiration date of this ordinance. At that time, unless the lease specifies that it would have converted to a month-to-month tenancy, the lease will end. The owner shall offer a one-year lease extension pursuant to Santa Barbara Municipal Code Chapter 26.40 at that time, but may deduct from that extension the amount of time from the original termination date of the prior lease to May 31, 2020.

D. Any rents or lease payments that are deferred pursuant to this ordinance shall remain the lawful debt and obligation of the tenant.

SECTION 3. Commercial Tenancies.

A. The owner of commercial real property or the owner's agent shall grant a rent or lease payment deferral to a tenant who has notified the owner or the owner's agent of Unforeseeable Emergency Commercial Conditions as provided in Subsection B. below. Upon receipt of such notice, the owner or agent shall not take any action to terminate the tenancy for nonpayment of rent, or to evict a tenant for nonpayment of rent, if the tenant's notice states that they are unable to pay all or part of their rent (including lease payments) because of a Significant Negative Change to Their Household Financial Condition as a result of COVID-19 or any private or governmental actions resulting from COVID-19.

B. A commercial tenant may invoke the protections provided by this ordinance by notifying the property owner or the owner's agent in writing (including email if commonly used) of the Significant Negative Change to Their Household Financial Condition within twenty days after a rent or lease payment is due. The tenant's notice must describe the Unforeseeable Emergency Commercial Conditions and shall include the amount of the rent or lease payment that the tenant believes they can make on a current monthly basis and the amount the tenant seeks to defer during the emergency.

The tenant's written notice shall include documentation that establishes the Unforeseeable Emergency Commercial Conditions. An owner or the owner's agent shall keep confidential all medical or financial information contained in a notice, except when disclosure is both necessary to enforce the owner's rights under this ordinance and otherwise lawful.

C. Upon request of the tenant, any residential tenancy which would by its terms, expire before May 31, 2020, shall be extended on the same terms until May 31, 2020, or such later date as specified by action of the City Council that extends the expiration date of this ordinance. At that time, unless the lease specifies that it would have converted to a month-to-month tenancy, the lease will end. The owner shall offer a one-year lease extension pursuant to Santa Barbara Municipal Code Chapter 26.40 at that time, but may deduct from that extension the amount of time from the original termination date of the prior lease to May 31, 2020.

D. Any rents or lease payments that are deferred pursuant to this ordinance shall remain the lawful debt and obligation of the tenant.

SECTION 4. General Terms and Remedies.

A. Nothing in this ordinance shall relieve a tenant of liability for deferred rent and the tenant must pay the deferred rent to the owner in full within six months of the expiration of this ordinance, or such later date as established by action of the City Council. The tenant must pay a monthly amount to the owner beginning with the first month after the expiration of this ordinance. An owner may not charge a late fee for rent that is deferred and repaid in a timely manner pursuant to this ordinance.

B. If a tenant fails to pay deferred rent, an owner may enforce the tenant's obligation by any remedy available at law or in equity.

C. If a tenant who has invoked the protections of this ordinance and received a rent deferral wishes to terminate their tenancy, all deferred rent or lease payments shall be immediately due and payable to the owner or the owner's agent upon the effective date of the termination.

D. Definitions. For the purposes of this ordinance, the following words and phrases shall be defined as set forth below:

1. Deferred Rent. Any rent or lease payments which are deferred under this ordinance.

2. Unforeseeable Emergency Commercial Conditions. A substantial decrease in business income or substantial out-of-pocket medical expenses, or reduced hours of operation or modes of operation.

3. Significant Negative Change to Their Household Financial Condition. A substantial decrease in household income as a result of any of the following:

- a. Being sick with COVID-19, or caring for a household or family member who is sick with COVID-19;
- b. Lay-off, loss of compensable work hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19;
- c. Compliance with an order or recommendation from a government authority to stay home, self-isolate or quarantine, or avoid congregating with others during the state of emergency;
- d. Extraordinary out-of-pocket medical expenses as a result of COVID-19; or
- e. Child care needs arising from school closures related to COVID-19.

E. Non-compliance with this ordinance may be asserted as an affirmative defense in an unlawful detainer action or other litigation. A tenant asserting an affirmative defense bears the burden of demonstrating a Significant Negative Change to Their Household Financial Condition or Unforeseeable Emergency Commercial Condition, as applicable.

F. The owner shall have a cause of action for repayment of any deferred rent or lease payment, in addition to any other remedies provided by law, which arises upon the occurrence of both i) failure of the tenant to repay any rent or lease payment deferred under this ordinance and, ii) termination of the local emergency.

G. This ordinance shall not apply to eviction notices served on or before March 17, 2020.

H. This ordinance shall not be interpreted to diminish the rights of tenants pursuant to State law nor to prohibit lawful terminations of tenancies for just cause other than nonpayment of rent.

I. This ordinance shall be enforceable as provided in Santa Barbara Municipal Code Chapters 1.25 and 1.28.

J. Severability. If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance which can be implemented without the invalid provisions, and to this end, the provisions of this ordinance are declared to be severable. The City Council hereby declares that it would have adopted this ordinance and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional or otherwise unenforceable.

SECTION 5. Expiration.

Sections 2.A. and 3.A. of this ordinance will expire on May 31, 2020, unless extended by action of the City Council.