

ORDINANCE NO. 2020-07

AN EMERGENCY ORDINANCE OF THE CITY OF SANTA CRUZ TO ENACT A TEMPORARY MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT FOR RESIDENTIAL AND COMMERCIAL TENANTS WHERE THE FAILURE TO PAY RENT RESULTS FROM INCOME OR BUSINESS LOSSES RESULTING FROM THE NOVEL CORONAVIRUS (COVID-19), AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

WHEREAS, on December 31, 2019, the World Health Organization (WHO) China Country Office was informed of several cases of pneumonia of unknown cause detected in the Hubei Province of China. Between December 31, 2019 to January 3, 2020 the WHO received a total of 44 case-patient reports with pneumonia of unknown causes from the national authorities in China; and

WHEREAS, on January 7, 2020, a novel coronavirus now known as COVID-19 was identified as the likely source of the illness; and

WHEREAS, On January 21, 2020, the Centers for Disease Control (CDC) confirmed reports from Washington state of the first U.S. resident with COVID-19 infection; and

WHEREAS, as infections began to rapidly increase in China and other countries throughout the world, on January 30, 2020, WHO declared the COVID-19 outbreak a Public Health Emergency of International Concern; and

WHEREAS, on January 31, 2020 the Secretary of U.S. Public Health and Human Services declares a Public Health Emergency for the United States for 2019 Novel Coronavirus; and

WHEREAS, during the month of February 2020, Santa Cruz County (“County”) Public Health Services Agency acknowledged the spread of Coronavirus in surrounding Bay Area counties with close connections to the resident and visitor populations in the County and continued to monitor the community for spread of COVID-19.

WHEREAS, on March 4, 2020, California Governor Gavin Newsom 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 a broader spread of COVID-19. The proclamation comes as the number of positive California cases rises and following one official COVID-19 death; and

WHEREAS, also on March 4, 2020, although there had as yet been no confirmed cases of COVID-19 in the County, the County Health Officer, based on the rapidly changing conditions related to the novel coronavirus noted by international, national, state, and Bay Area health agencies, issued a local health emergency to inform and protect the public.

WHEREAS, on March 9, 2020 with mounting concern about the spread of COVID-19 and two confirmed cases in the County, the Board of Supervisors voted unanimously to declare a local state of emergency and ratified the County Public Health Officer's declaration of a local health emergency.

WHEREAS, on March 10, 2020, due to an escalating increase in the number of coronavirus cases in the world and evidence of community spread in the Bay Area, the Santa Cruz City Council approved a Declaration of Local Emergency, which determines the legal, operational and recovery resources available for the City of Santa Cruz to respond to the COVID-19 public health emergency; and

WHEREAS, as of March 19, 2020, the County reported that there are fourteen (14) cases of persons testing positive for COVID-19, an increase of twelve (12) cases in ten (10) days. In response, the County, pursuant to its authority under California Health and Safety Codes sections 101040, 101085, and 120175, issued interim guidance on social distancing (the "Guidance") effective through March 31, 2020. The Guidance recommends to cancel or postpone all non-essential public gatherings in enclosed facilities attended by 50 or more persons, to limit outings by vulnerable populations, to minimize exposure at businesses and workplaces, to implement school safety policies and procedures, to outline cleaning procedures for public and shared transportation, to avoid health care facilities to protect the vulnerable, and to outline steps to prevent the spread of COVID-19. This guidance was based upon evidence of increasing transmission of COVID-19 within the County, scientific evidence regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect vulnerable members of the public from avoidable risk of serious illness or death resulting from exposure to COVID-19; and

WHEREAS, the effects of COVID-19 on the global economy and supply chains are impacting many Bay Area companies in both technology and non-technology sectors. Companies such as Apple and HP Inc. have indicated that quarterly earnings will be negatively impacted due to overseas factories operating at two-thirds their capacity, thus leading to missing their growth targets, potentially leading to personnel and other expense cuts. Some companies are having their employees work remotely or from home in order to prevent exposure in the workplace. With more businesses moving towards working from home, less of the workforce will be patronizing restaurants and other retail establishments that employ hourly workers, which is expected to lead to hourly cutbacks and employee terminations; and

WHEREAS, on March 16, 2020, the County Health Officer issued a Shelter in Place Order (the "Order") mandating people stay in their homes except as needed to provide or receive essential services or engage in essential activities to mitigate the spread of COVID-19. Additionally, the County Superintendent of Schools and all district superintendents in the County have decided to close schools to students for three weeks beginning Monday, March 16, 2020. These school closures will cause children to have to remain at home, leading to many parents adjusting their work schedules to take time off work, whether paid or unpaid. Hourly wage earners are unlikely to be paid for time off. The inability to work due to school closures

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will economically strain those families who cannot afford to take time off from work to stay at home; and

WHEREAS, Also on March 16, 2020, Governor Gavin Newsom issued Executive Order N-28-20, which authorizes local jurisdictions to suspend the evictions of tenants for the non-payment of rent and take other measures if the non-payment is a result of the COVID-19 pandemic; and

WHEREAS, the COVID-19 pandemic and associated public health orders are expected to result in a severe loss of income to a widespread portion of the local population that depend on wages or business income to pay rent. The County of Santa Cruz is already experiencing a homelessness crisis as one of the least affordable communities in the world, creating a housing affordability crisis, which is driving homelessness and displacement of residents. Many of the County'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; and

WHEREAS, pursuant to section 611 and 612 of the City Charter, "Any ordinance declared by the City Council to be necessary as an emergency measure for preserving the public peace, health, safety or property, and containing a statement of the reasons for its urgency, may be introduced and adopted at one and the same meeting if passed by at least five (5) affirmative votes." and

WHEREAS, this Ordinance is a temporary moratorium intended to promote stability and fairness within the rental market in the City during the COVID-19 pandemic outbreak, and to prevent avoidable homelessness thereby serving the public peace, health, safety, and public welfare and to enable tenants in the City whose income and ability to work is affected due to COVID-19 to remain in their homes; and

WHEREAS, displacement through eviction destabilizes the living situation of tenants and impacts the health of Santa Cruz's residents by uprooting children from schools, disrupting the social ties and networks that are integral to citizens' welfare and the stability of communities within the City; and

WHEREAS, displacement through eviction creates undue hardship for tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing; and

WHEREAS, during the COVID-19 pandemic outbreak, affected tenants who have lost income due to impact on the economy or their employment may be at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SANTA CRUZ AS FOLLOWS:

SECTION 1. The Ordinance set out in the attached Exhibit A is hereby approved and adopted.

SECTION 2. The City Council of the City of Santa Cruz hereby finds that 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, or safety that warrants this urgency measure, which finding is based upon the facts stated in the recitals above, as well any oral and written testimony at the March 24, 2020 City Council meeting.

SECTION 3. This Ordinance and any moratorium that may be established thereunder is declared by the City Council to be an emergency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth and referenced in Section 2 of this Ordinance.

SECTION 4. 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 Board of Supervisors 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. California Environmental Quality Act (CEQA) Compliance

This ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly.)

SECTION 6. This Emergency Ordinance shall become effective immediately upon its adoption pursuant to Section 612 of the Charter of the City of Santa Cruz and shall expire on May 31, 2020, the expiration date in Governor Newsom's Executive Order N-28-20, or on the expiration date of any subsequent order extending the expiration date of Executive Order N-28-20.

PASSED FOR ADOPTION as an emergency ordinance this 24th day of March, 2020, by the following vote: AYES: Councilmembers Watkins, Mathews, Brown, Glover, Krohn; Vice Mayor Meyers; Mayor Cummings. NOES: None. ABSENT: None. DISQUALIFIED: None. APPROVED: ss/Mayor Cummings. ATTEST: ss/Bonnie Bush, City Clerk Administrator.

EXHIBIT A
TEMPORARY MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT FOR
RESIDENTIAL AND COMMERCIAL TENANTS WHERE THE FAILURE TO PAY RENT
RESULTS FROM MONETARY LOSS DUE TO THE NOVEL CORONAVIRUS (COVID-19)

Section 1. Purpose

This Ordinance prohibits evictions through May 31, 2020, for any tenant who can demonstrate that they have received a notice of eviction for failure to pay rent, and that such failure is related to a substantial loss of income or substantial out-of-pocket medical expenses resulting from the 2020 novel coronavirus pandemic or any local, state, or federal government response to the pandemic.

Section 2. Definitions

- A. “Commercial real property” means any real property that is used for business or income-producing purposes.
- B. “Owner” means any person, acting as principal or through an agent, providing residential or commercial real property for rent, and includes a predecessor in interest to the owner.
- C. “Residential real property” means any dwelling or unit that is intended or used for human habitation.
- D. “Tenancy” means the lawful occupation of residential or commercial real property and includes a lease or sublease.

Section 3. Prohibition on Evictions Stemming from Coronavirus Pandemic Losses

- A. Through May 31, 2020, the owner of residential or commercial real property shall not terminate a tenancy 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 coronavirus pandemic or any local, state, or federal government response to the pandemic.
- B. In order for this section to apply, a tenant must demonstrate through documentation or other objectively verifiable means:
 - 1. Substantial loss of income from (a) job loss; (b) layoffs; (c) a reduction in the number of compensable hours of work; (d) a store, restaurant, office, or business closure; (e) a substantial decrease in business income caused by a reduction in opening hours or consumer demand; (f) the need to miss work to care for a home-bound school-age child or a family member infected with coronavirus; or (g) other similarly-caused loss of income that resulted from the pandemic; or
 - 2. Substantial out-of-pocket medical expenses related to the pandemic.

- C. This prohibition shall also apply to an owner's action that constitutes constructive eviction under California law. An owner's failure to comply with this ordinance shall render any notice of termination of tenancy void. This section may be asserted as an affirmative defense in an unlawful detainer action. Terminations that are required to comply with an order issued by a government agency or court requiring that the real property be vacated are excepted from this prohibition. An owner's failure to comply with this ordinance does not constitute a criminal offense but will subject an owner to civil fines and penalties as set forth in this Code.
- D. Nothing in this ordinance shall relieve a tenant of the obligation to pay rent, nor restrict a landlord's ability to recover rent due. Tenants and landlords may negotiate payment plans that identify a set timeline for unpaid rent. This timeline could extend for up to six months. Tenants shall pay all of the portion of the rent that the tenant is able to pay.
- E. This ordinance shall be liberally construed to provide the broadest possible protection for tenants in the City of Santa Cruz. This ordinance acknowledges state and federal policy changes will be forthcoming and this ordinance will be updated with all expediency to protect tenants.