

ORDINANCE NO. _0405_____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO
EXERCISING THE COUNTY'S POLICE POWER TO PROHIBIT RESIDENTIAL
EVICTIONS WITHOUT JUST CAUSE AND TO ENACT
A MORATORIUM ON CERTAIN RESIDENTIAL RENT INCREASES

The County of San Diego Board of Supervisors ordains as follows:

Section 1. Findings.

- (a) International, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2," and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19").
- (b) On January 30, 2020, the World Health Organization ("WHO") declared a Public Health Emergency of International Concern as a result of the COVID-19 virus. On January 31, 2020, the United States Secretary of Health and Human Services also declared a Public Health Emergency of the COVID-19 virus.
- (c) On February 14, 2020, the San Diego County Health Officer declared a Local Health Emergency due to COVID-19, leading to the San Diego County Chief Administrative Officer serving as the San Diego (County) Director of Emergency Services and as the Coordinator of the Unified San Diego County Emergency Services Organization, issued a Proclamation of Local Emergency due to the COVID-19 pandemic which was ratified by the County of San Diego Board of Supervisors on February 19, 2020.
- (d) 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 declaration was issued as the number of positive California cases continued to rise and following one official COVID-19 death.
- (e) The World Health Organization announced on March 11, 2020 that it has characterized COVID-19 as a pandemic.
- (f) 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.

- (g) The Centers for Disease Control and Prevention, the California Department of Public Health, and the San Diego County Department of Public Health 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.
- (h) On March 18, 2020, the Federal Housing Administration (FHA) enacted a 60-day moratorium on foreclosures and evictions for single family homes with FHA-insured mortgages, and the Federal Housing Finance Agency suspended foreclosures and evictions for single family homes with mortgages backed by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) for 60-days.
- (i) On March 19, 2020 an Executive Order and Public Health Order directed all Californians to stay home except to go to an essential job or to shop for essential needs. It was modified on May 4, 2020.
- (j) On August 28, 2020, the State released the Blueprint for a Safer Economy to permit gradual reopening of certain businesses and activities. Counties are assigned tiers that are updated weekly and determined by the county's case rate and test positivity rate. The County is currently in the red tier.
- (k) On December 3, 2020, and December 6, 2020 Governor Gavin Newsom signed regional stay at home orders that further expanded local shelter in place orders in regions where intensive care unit (ICU) capacity dropped below fifteen percent. The order was lifted on January 25, 2021.
- (l) The Governor of the State of California has stated that individuals exposed to COVID-19 may be temporarily unable 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;
- (m) Many County of San Diego residents are experiencing substantial losses of income as a result of business closures, the loss of hours or wages, or layoffs related to COVID-19, hindering their ability to keep up with rent payments.
- (n) Those residents financially impacted due to COVID-19 may not be able to make timely rent payments or may be forced to choose between making rent payments and having sufficient funds for food, medical care or other necessities for themselves and their families.
- (o) Without sufficient and long-term eviction protections, many tenants "self-evict" and move out even without adequate replacement housing, rather than face future legal eviction that could impact their ability to find new housing; while others are forced to move out of their

housing without adequate replacement housing may move into overcrowded living situations or become homeless.

- (p) The County of San Diego is experiencing a severe housing affordability crisis and approximately forty-six percent of San Diego County housing units are occupied by renters, who would not be able to locate affordable housing within the County if they lose their housing.
- (q) In response to the housing affordability crisis, in 2019 Governor Newsom signed into law Assembly Bill 1482, a statewide response to the problem of rent gouging that further burden tenants, some of whom cannot afford exorbitant rent increases and who might be at risk of self-evicting if faced with rent amounts that they can no longer pay.
- (r) Because experiencing homelessness can exacerbate vulnerability to COVID-19, it is necessary to take measures to preserve and increase housing security for San Diego County residents; and to protect public health and prevent transmission of COVID-19, it is essential to avoid unnecessary displacement and homelessness.
- (s) An urgency ordinance that requires just cause for termination of a residential tenancy during the COVID-19 crisis would help ensure that residents stay safely housed during the pandemic and would therefore reduce opportunities for transmission of the virus
- (t) On August 31, 2020, Governor Gavin Newsom signed into law Assembly Bill 3088 (AB 3088), which included COVID-19 eviction protections for some California tenants;
- (u) AB 3088 prohibits residential tenants from being evicted for failure to pay rent because of a COVID-19-related hardship occurring between March 1 and August 31, 2020, as long as the tenant provides the landlord with a written declaration of hardship. Residential tenants who experience a new COVID-19-related hardship between September 1, 2020, and January 31, 2021, are also protected from eviction as long as they pay 25 percent of the rent due by January 31, 2021.
- (v) Senate Bill 91, approved by Governor January 29, 2021 (hereinafter “SB 91”), extends the protections of the AB 3088 through June 30, 2021.
- (w) AB 3088 and SB 91 leave certain tenants unprotected from eviction, such as tenants who were unable to pay rent before the COVID-19 pandemic and tenants who are facing eviction for certain reasons other than nonpayment of rent.
- (x) During the tenure of AB 3088 and SB 91, San Diego County Superior Court has continued to process new eviction filings, hold hearings on existing eviction cases, and enter eviction judgments during the Local Emergency due to COVID-19.
- (y) The County of San Diego Sheriff’s department has continued to physically evict tenants from their homes during the COVID-19 Local Emergency.

- (z) A June 16, 2020 report by the San Diego Association of Governments found that more than two-thirds of Black (67%) and Hispanic (70%) residents in the San Diego region live in ZIP codes with higher than average unemployment rates.
- (aa) A June 16, 2020 report by San Diego Association of Governments found that approximately half of Black (52%) and Hispanic (49%) residents in the San Diego region live in ZIP codes with higher than average COVID-19 cases.
- (bb) A June 16, 2020 report by San Diego Association of Governments found that when compared to the white population, Black and Hispanic residents of the San Diego region are four times as likely to live in areas that have been impacted by COVID-19 and unemployment.
- (cc) On January 12, 2021 the San Diego County Board of Supervisors adopted a Resolution Declaring Racism as a Public Health Crisis.
- (dd) Legal Aid San Diego has reported a 30% increase in housing related cases from 2019 to 2020; and a 50% increase in housing related cases since January 2021.
- (ee) SB 91 does not alter a county's authority to extend, expand, renew, reenact, or newly adopt an ordinance that requires just cause for termination of a residential tenancy, consistent with subdivision (g) of Section 1946.2 of the Civil Code.
- (ff) This ordinance requires just cause for termination of a residential tenancy and provides additional tenant protections that are not prohibited by any other provision of law, and will serve justice and promote racial equity for renters in the County of San Diego and serves to preserve the public health and safety which is threatened by COVID-19 and to keep the residents of the County of San Diego housed.
- (gg) This Ordinance offers more protection to tenants than Civil Code section 1946.2 does, and is binding as required by Civil Code section 1946.2(g)(1)(B)(iii).

Section 2. Definitions.

- (a) "Change in CPI" means the percentage change from April 1 of the prior year to April 1 of the current year in the regional Consumer Price Index for the San Diego area, as published by the United States Bureau of Labor Statistics.
- (b) "Imminent health or safety threat" is a hazard to the health or safety of other tenants or occupants of the same property, taking into account (1) the risk of potential spread of coronavirus caused by the eviction, in case of a Local Emergency due to COVID-19, (2) any public health or safety risk caused by the eviction, and (3) all other remedies available to the landlord and other occupants of the property, against the nature and degree of health and safety risk posed by the tenant's activity. An imminent health or safety threat cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

- (c) "Landlord" includes owners, lessors, or sublessors (of any level) of either residential rental property, and the agent, representative, or successor of any of the foregoing.
- (d) "Local Emergency" includes any period of local emergency declared by the County of San Diego in response to the COVID-19 pandemic.
- (e) "Residential unit" is a unit that is occupied by a tenant as their place of residence, including but not limited to apartments, houses, rooms, and residential hotels. A unit is considered a residential unit if it is used for residential occupation regardless of its permitting status.
- (f) "Tenant" includes a tenant, subtenant, lessee, sublessee (of any level), or any other person entitled to use or occupancy of residential property, including occupants who are holding over after the expiration of the term of a written or oral lease and current occupants who occupied the property with the current or prior consent of the property's landlord or a prior owner. This shall also include a prior homeowner residing in a residential unit post-foreclosure.

Section 3. Moratorium Prohibiting Residential Evictions Without Just Cause.

- (a) The ordinance is effective until 60 days after the Governor lifts all COVID-19-related stay-at-home and work-at-home orders.
- (b) For purposes of this section, "just cause" requires a showing that the Tenant is an imminent health or safety threat, as defined in Section 2 above.
- (c) In the absence of just cause, no Landlord may lawfully terminate a residential tenancy and are therefore prohibited from engaging in any of the following behaviors with respect to a Tenant of a residential unit:
 - (1) Serve a notice of termination of tenancy;
 - (2) File or serve an unlawful detainer lawsuit, ejectment action, or other action to recover possession of a residential unit;
 - (3) Evict a Tenant or require a Tenant to vacate a residential unit, including by seeking the entry of an eviction judgment or by causing or permitting a writ of possession to be executed, including in the case of judgments entered prior to the date of this ordinance; or
 - (4) Take any other action in reliance on a notice of termination of tenancy that expired during the Local Emergency or attempt to induce a tenant to vacate based on such a notice. Any notice of termination of tenancy served or expiring during the Local Emergency or within sixty (60) days afterward shall be deemed invalid and insufficient to support an action in unlawful detainer during the Local Emergency or at any time afterward; or

- (5) Represent to a Tenant that the Tenant is required to move out of their unit by law.
- (d) Actions to recover an unpaid COVID-19 rental debt, as defined in Section 1179.02 of the Code of Civil Procedure, is governed by SB 91, and nothing in this ordinance shall be construed to supersede or conflict with SB 91.
- (e) To the extent state law is more protective of a residential tenancy than this section, those state law provisions shall apply to the residential tenancy. Nothing in this section shall be construed to supersede any applicable requirements in Civil Code section 1946.2 pertaining to relocation assistance or rent waiver.
- (f) No Landlord shall be permitted to recover possession of a rental unit or prevail in an unlawful detainer action unless the Landlord is able to provide notice of termination of tenancy does fully complies with all of the terms of this Section 3 and that the lawsuit was served and filed complying with all terms of this Section.
- (g) Nothing in this section shall be construed to reduce or eliminate a Landlord’s duty to make a reasonable accommodation for disability in rules, policies, practices, or services that may be necessary to afford a person equal opportunity to use and enjoy a dwelling, including remedies such as the reinstatement of a terminated tenancy.
- (h) Nothing in this section shall be construed to supersede any applicable requirements in Civil Code section 1946.2 pertaining to relocation assistance or rent waiver.
- (i) In addition to complying with any other applicable notice requirements under local, state, or federal law, any notice of termination of tenancy served on a Tenant with respect to a residential unit during the Local Emergency and sixty (60) days afterward shall:
- (1) Include the following statement in bold underlined 12-point font: **“The Emergency Eviction Moratorium is currently in effect. Other than for failure to pay rent or an imminent health or safety threat, evictions are restricted during the Local Emergency declared by the County of San Diego]. Tenants who are being evicted for failure to pay rent may have additional protections under California law. You may contact Legal Aid Society of San Diego (1-877-534-2524) or the Legal Referral and Information Service of the San Diego County Bar Association at 619-231-8585 or 800-464-1529. For additional information and referrals or visit <https://www.lassd.org>.”**
 - (2) Include the reason for termination amounting to just cause or a different basis for eviction authorized under this ordinance and must set forth specific facts to permit a determination of the date, place, witnesses, and circumstances concerning the reason for eviction.
 - (3) Be written in all languages that the Landlord and/or the Landlord’s agents normally use for verbal communications with the Tenant.

- (j) In order to prevail in an action to recover possession of a residential unit, a Landlord must prove strict compliance with all applicable notice requirements or any applicable portion of this ordinance.
- (k) Nothing in this ordinance shall relieve a Tenant of the obligation to pay rent, nor restrict a Landlord's ability to recover rent due.

Section 4. Moratorium on Residential Rent Increases.

- (a) From the effective date of this Ordinance until July 1, 2021, no Landlord may increase a Tenant's rent by any amount greater than the CPI for the previous year.
- (b) Just cause, as defined in Section 3 of this ordinance, does not include a Tenant's failure to pay any increase in rent from the effective date of this Ordinance until July 1, 2021.
- (c) A residential real property that is exempt from the rent limits imposed by Civil Code section 1947.12 is exempt from this section.
- (d) This section does not apply when a unit becomes vacant and the Landlord sets the initial rent for a new tenancy for a new Tenant.

Section 5. No Waiver of Rights.

Any agreement to waive any rights under this ordinance, including a stipulation, settlement agreement, or lease agreement, shall be void as contrary to public policy

Section 6. Right to Education, Outreach, and Organizing.

- (a) No Landlord may take any adverse action against a Tenant, including increasing the Tenant's rent, attempting to evict the Tenant, removing services provided to a Tenant, or threatening to do any of the foregoing because of any of the following reasons:
 - (1) the Tenant disseminated information about Tenant rights ordinances;
 - (2) the Tenant disseminated information about a Tenant rights organization; or
 - (3) the Tenant belonged to or participated in a Tenant rights organization.
- (b) Just cause, as defined in Section 3 of this ordinance, does not include termination of a tenancy for performing activities protected by subdivision (a) of this section.

Section 7. Remedies.

- (a) No Landlord shall be permitted to recover possession of a rental unit or prevail in an unlawful detainer action, ejectment action, or other action to recover possession of a residential unit unless the Landlord is able to prove strict compliance with any applicable provision of this ordinance, including all notice requirements. A Landlord's lack of strict

compliance with the terms of subsections 3(g), and all other noncompliance constituting a fatal defect to the Landlord's case shall entitle a Tenant to judgment.

- (b) The provisions of this ordinance may be asserted as an affirmative defense in an unlawful detainer action, ejectment action, or any other action to recover possession of a residential unit.
- (c) If a Landlord attempts to recover possession or recovers possession of a residential 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 aggrieved Tenant may institute a civil proceeding for injunctive relief, money damages (including damages for mental or emotional distress as specified below), and all other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the Landlord acted in knowing violation of or in reckless disregard of this Ordinance. The remedy available under this section shall be in addition to any other existing remedies which may be available to the Tenant under local, state or federal law.
- (d) The remedies provided by this ordinance are cumulative and in addition to any other remedies available at law or in equity, including sanctions for violating an order issued pursuant to the Emergency Services Act (Government Code section 8550 et seq.) and all remedies provided for in Government Code section 25132 or for authorized for violations of the San Diego County Code of Regulatory Ordinances.

Section 8. Applicability.

- (a) Government Code section 8634 authorizes the Board of Supervisors to promulgate countywide orders and regulations necessary to provide for the protection of life and property during a local emergency. Pursuant to Government Code section 8634, the regulations in this ordinance shall apply to cities within the County of San Diego and unincorporated area of the county, subject to subsections (b) and (c) below.
- (b) If the governing body of a city has enacted an ordinance that has stronger protections for Tenants during the COVID-19 emergency, the Tenant may apply the city ordinance in lieu of the county ordinance, to the extent its ordinance is stronger.
- (c) To the extent the city ordinance is not stronger, the county ordinance protecting Tenants shall apply despite contrary provisions or silence on the subject in the city ordinance.

Section 9. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase

thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

Section 10. Effective Date.

- (a) The ordinance shall take effect 30 days after final passage.
- (b) The ordinance is effective until 60 days after the Governor lifts all COVID-19-related stay-at-home and work-at-home orders.