

ORDINANCE NO. 2020-XXXX

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA, EXTENDING THE TEMPORARY MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT FOR RESIDENTIAL AND COMMERCIAL TENANTS IMPACTED BY THE NOVEL CORONAVIRUS (COVID-19), AND MODIFYING A TERM THEREOF

WHEREAS, the novel coronavirus (COVID-19) is a respiratory disease that may result in serious illness or death, and is easily transmissible from person to person; and

WHEREAS, on January 31, 2020, the United States Department of Public Health Human Services Secretary Alex Azar declared a public emergency for COVID-19 beginning on January 27, 2020; and

WHEREAS, on February 14, 2020, the San Diego County Public Health Officer declared a local health emergency due to the threat of COVID-19; and

WHEREAS, on February 19, 2020, the County Board of Supervisors ratified the February 14, 2020 Declaration of Local Health Emergency; and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom declared a state of emergency in the State of California as a result of the threat of COVID-19; and

WHEREAS, on March 12, 2020, Governor Newsom issued Executive Order N-25-20 exercising authority under the Emergency Services Act, Government Code section 8572, to ensure adequate facilities to address the impacts of COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency in response to the COVID-19 pandemic; and

WHEREAS, on March 16, 2020, the City Manager, acting in his capacity of Director of Emergency Services of the City, did proclaim the existence of a Local Emergency related to COVID-19 within the City; and

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-20, which delegated to local jurisdictions the authority to enact temporary moratoria on commercial and residential evictions based on impacts related to COVID-19 and extended the time limitation set forth in Penal Code section 396, subdivision (f) concerning protections against residential eviction until May 31, 2020; and

WHEREAS, on March 20, 2020, the City Council adopted Resolution No. 2009-7140, ratifying the declaration of the Director of Emergency Services and declaring the existence of an ongoing local emergency pursuant to COVID-19; and

WHEREAS, on March 16, 2020, the San Diego Superior Court issued a news release, announcing that all non-emergency services would be suspended, and all Unlawful Detainer matters would be rescheduled, except for emergency ex parte lockout proceedings; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, which remains in place until further notice and requires that all individuals living in the State of California remain at their place of residence, except as needed to maintain continuity of operation of the federal critical infrastructure sectors; and

WHEREAS, on March 24, 2020, the City Council adopted Ordinance No. 2020-1485, which imposed a temporary moratorium on evictions due to nonpayment of rent for residential and commercial tenants impacted by the novel coronavirus (COVID-19) until May 31, 2020; and

WHEREAS, on March 27, 2020, Governor Newsom issued Executive Order N-37-30, which remains in effect until May 31, 2020, unless extended, and extends the time in which tenants must respond to an eviction action for a period of 60 days and prohibits the enforcement of any writ for eviction during that period of time; and

WHEREAS, the Health Officer of the County of San Diego issued an order on April 10, 2020, which was extended on April 30, 2020 and remains in effect until further notice, requiring individuals to remain at their place of residence, except for employees or customers travelling to and from essential businesses or activities; prohibiting all public or private gatherings; closing all non-essential businesses; and prohibiting all schools from holding classes or school activities; and

WHEREAS, on April 29, 2020, the San Diego Superior Court issued a news release announcing that the San Diego Superior Court will extend the suspension of all non-emergency services through May 22, 2020; and

WHEREAS, as of May 2, 2020, the numbers of reported positive cases of COVID-19 and related deaths in San Diego County have increased to 3,927 and 139, respectively, and both numbers are expected to increase; and

WHEREAS, Penal Code section 396, subsections (e) and (f) provide that after the proclamation of a state emergency by the President or Governor, or upon the declaration of a local emergency by a local authority, it is unlawful to increase the rental price of housing or to begin to evict any tenant of residential housing for a 30 day period, which can be extended by local proclamation or by extension of the proclamation of the President or the Governor; and

WHEREAS, as a result of the public health emergency, the closures or reduced operations of many local businesses, the closures of all schools in San Diego County, and the “stay at home” orders issued by the Governor Newsom and the San Diego County Health Officer, many tenants in San Marcos have experienced or will soon experience sudden and unexpected income loss, hindering their ability pay their rent; and

WHEREAS, further economic impacts are anticipated, leaving residential and commercial tenants vulnerable to eviction; and

WHEREAS, during this local emergency, and in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to allow residents to stay at their place of residence, to avoid unnecessary housing displacement, to protect the City's affordable housing stock, and to prevent housed individuals from falling into homelessness; and

WHEREAS, the City Council has the power under Government Code sections 36934 and 36937 to adopt an ordinance that takes effect immediately if it is an ordinance for the immediate preservation of the public peace, health or safety, contains a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the City Council; and

WHEREAS, the City finds it is necessary for the City Council to adopt this Ordinance as such an urgency ordinance, as set forth in the above recitals, which are incorporated herein by reference, and pursuant to the powers under Government Code sections 36934 and 36937, for the immediate preservation of the public health and safety, as affected by the emergency caused by the spread of COVID-19; and

WHEREAS, this ordinance is exempt from review under the California Environmental Quality Act (CEQA; California Public Resources Code Section 2100 et seq.) and CEQA regulations (Title 14, California Code of Regulations Section 15000, et seq.) because this ordinance is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3));

NOW, THEREFORE, the City Council of the City of San Marcos, California, in accordance with the freedom afforded to charter cities generally, and by the Charter of the City of San Marcos specifically, does ordain as follows:

Section 1. The foregoing recitals are true and correct and are incorporated herein as though set forth in full at this point.

Section 2. Resolution 2009-7140 ratifying the local emergency declaration of the Emergency Services Director and declaring the existence of an ongoing local emergency related to COVID-19, and Ordinance No. 2020-1485 enacting a temporary moratorium on evictions due to nonpayment of rent for residential and commercial tenants impacted by the novel coronavirus (COVID-19), are each hereby incorporated into this Ordinance as if fully set forth herein.

Section 3. Pursuant to the authority prescribed by state law, including, but not limited to State Executive Order N-28-20, State Executive Order N-37-20, the San Marcos Municipal Code and the ongoing federal, state and local emergency, the City Council hereby extends the temporary moratorium imposed by Ordinance No. 2020-1485 on evictions of residential and commercial tenants for non-payment of rent impacted by the COVID-19 pandemic, modified in

part (b), below to provide that from and after the date of this Ordinance, tenants are to notify landlords and document their claim within seven (7) days after the date that rent is due, rather than the thirty (30) day period effective from March 24, 2020 until the date of this Ordinance, to conform with State Executive Order N-37-20, as follows:

- a. No landlord in the City shall evict a residential or commercial tenant who demonstrates both of the following:
 1. the basis for eviction is nonpayment of rent arising out of a substantial decrease in household or business income (including but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or a substantial decrease in business income caused by a reduction in opening hours or consumer demand), or substantial out-of-pocket medical expenses; and
 2. the decrease in household or business income or the out-of-pocket medical expenses described in subsection (a)(1) was caused by the COVID-19 pandemic.
- b. A landlord who knows that a residential or commercial tenant cannot pay some or all of the rent temporarily for the reasons set forth in Paragraph a, above, shall not serve a notice pursuant to Code of Civil Procedure section 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for nonpayment of rent. A landlord knows of a residential or commercial tenant's inability to pay rent within the meaning of this Ordinance if the residential or commercial tenant, within seven (7) days after the date that rent is due, notifies the landlord in writing of lost income and inability to pay full rent due to financial impacts related to COVID-19 and provides documentation to support the claim. For purposes of this Ordinance, "in writing" 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. Any medical or financial information provided to the landlord shall be held in confidence and only used for evaluating the residential or commercial tenant's claim.

Section 4. This Ordinance applies to nonpayment eviction notices and unlawful detainer actions for residential and commercial tenants based on such notices, served or filed on or after the date on which a local emergency was proclaimed (March 16, 2020).

Section 5. Nothing in this Ordinance shall relieve a tenant of the obligation to pay rent, nor restrict a landlord's ability to recover rent due, including any late fees imposed by an underlying rental agreement.

This Ordinance shall be punishable as set forth in San Marcos Municipal Code section 1.14.030 and any other applicable section. In addition, this Ordinance grants a defense in the event that an unlawful detainer action is commenced in violation of this Ordinance.

Section 6. Unless extended by City Council, this Ordinance shall remain in effect until close of business on June 30, 2020.

Section 7. This is not a project within the meaning of Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because there is no potential for it to result in a physical change in the environment, either directly or indirectly. In the event this Ordinance is found to be subject to CEQA, it is exempt from CEQA pursuant to the exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility of a significant effect on the environment.

Section 8. If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted the Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 9. Pursuant to Government Code section 36937, this Ordinance shall be effective immediately upon its adoption. Within fifteen (15) days following its adoption, the City Clerk shall certify to the passage of this Ordinance and cause the same to be published, or the title thereof as a summary, in accordance with the provisions of State law in a newspaper of general circulation designated for legal notices publication in the City of San Marcos.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Marcos, California, held on the 12th day of May, 2020, by the following roll call vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

APPROVED:

Rebecca D. Jones, Mayor
City of San Marcos

ATTEST:

Phillip Scollick, City Clerk
City of San Marcos

APPROVED AS TO FORM:

Helen Holmes Peak, City Attorney
City of San Marcos