

ORDINANCE NO. 20-

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAYWARD AMENDING THE TEMPORARY MORATORIUM ON COMMERCIAL EVICTIONS TO EXTEND THE MORATORIUM, WHICH WAS INITIALLY ADOPTED IN ORDINANCE NO. 20-07 AND SUBSEQUENTLY EXTENDED IN ORDINANCES NOS. 20-11 and 20-17, IN THE CITY OF HAYWARD FOR NON-PAYMENT OF RENT CAUSED BY THE CORONAVIRUS (COVID-19) PANDEMIC, OR FOR A NO-FAULT REASON UNLESS THE EVICTION IS NECESSARY FOR THE IMMINENT HEALTH AND SAFETY OF THE TENANT OR LANDLORD EFFECTIVE THROUGH JUNE 30, 2021

THE CITY COUNCIL OF THE CITY OF HAYWARD hereby ordains as follows:

SECTION 1. Extension of Temporary Moratorium on Commercial Evictions.

On April 7, 2020, City Council adopted an ordinance establishing a Temporary Moratorium on Commercial and Residential Evictions due to the COVID-19 pandemic. The Council extended both the commercial and residential eviction moratoria on June 30, 2020, until September 30, 2020. On August 31, 2020, the State legislature enacted the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (i.e., Assembly Bill 3088) that put into place a statewide moratorium on residential evictions until January 31, 2021. The State legislation prohibited local jurisdictions from extending already established moratoria on residential evictions after expiration. As a result, on September 22, 2020, the City Council extended only the commercial eviction moratorium through January 31, 2021, and the local residential eviction moratorium sunset on September 30, 2020. The State legislature has yet to extend the residential eviction protections related to the COVID-19 pandemic set forth in the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020. The commercial eviction moratorium is necessary to ensure protection of Hayward tenants from eviction related to non-payment of rent related to COVID-19 and no cause evictions.

SECTION 2. Findings and Statement of Urgency.

- A. Pursuant to Article XI, Sections 5 and 7 of the California Constitution, Government Code Sections 36934 and 36937, and section 617 of the Charter of the City of Hayward, the City may make and enforce all regulations and ordinances using its police powers to regulate municipal affairs and may enact emergency ordinances for the immediate preservation of the public peace, health, or safety.
- B. In late-December 2019, several cases of unusual pneumonia began to emerge in the Hubei province of China. On January 7, 2020, a novel coronavirus now known as COVID-19 was identified as the likely source of the illness.
- C. On January 30, 2020, the World Health Organization ("WHO") declared COVID-19 a Public Health Emergency of International Concern. On January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency.

- D. On March 4, 2020, the Governor of California declared a State of Emergency due to the COVID-19 pandemic.
- E. On March 11, 2020, the City Manager, in her capacity as Director of Emergency Services, declared a Local Emergency in the City of Hayward due to the COVID-19 pandemic, which was affirmed by resolution of the Hayward City Council on March 17, 2020.
- F. On March 13, 2020, the President of the United States declared a National Emergency due to the COVID-19 pandemic.
- G. On March 16, 2020, the health officers of seven jurisdictions in the San Francisco Bay Area, including the County of Alameda, issued an Order to all residents of the respective jurisdictions to shelter in their homes in an effort to slow the progression of the COVID-19 pandemic. As of 5:00 p.m. on March 15, 2020, 15 cases of COVID-19 were known to exist in Alameda County, as well as at least 258 confirmed cases and at least three deaths in the seven Bay Area jurisdictions jointly issuing the Order, including a significant and increasing number of suspected cases of community transmission and likely further increases in transmission.
- H. On March 16, 2020, the Governor issued Executive Order N-28-20, authorizing local jurisdictions to prohibit commercial and residential evictions due to non-payment of rent or mortgage payments, where failure to pay is related to the COVID-19 pandemic. The Executive Order also requested all financial institutions holding mortgages to implement an immediate moratorium on foreclosures and related evictions when the default by the borrower was caused by the COVID-19 pandemic and directed certain state agencies to work with financial institutions to identify tools to be used to afford borrowers relief from the threat of residential foreclosures.
- I. On March 24, 2020, the Hayward City Council adopted Ordinance No. 20-06, an emergency ordinance imposing a moratorium on residential evictions where non-payment of rent is due to a substantial decrease in household (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 substantial out-of-pocket medical expenses caused by the COVID-19 pandemic, or by any local, state, or federal government response to the COVID-19 pandemic, or evictions for a no-fault reason unless the eviction is necessary for the imminent health and safety of the tenant and landlord.
- J. On April 7, 2020, the Hayward City Council repealed Ordinance No. 20-06, and adopted Ordinance 20-07, an emergency ordinance imposing a new temporary moratorium for non-payment of rent or mortgage payments caused by the COVID-19 pandemic, which includes prohibitions on commercial evictions, lender evictions of homeowners, and retaliation against tenants and homeowners.
- K. On June 30, 2020, the Hayward City Council adopted Ordinance 20-11, which extended the moratorium until September 30, 2020.
- L. On August 31, 2020, the State enacted legislation the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (i.e., Assembly Bill 3088) that put into place a statewide moratorium on residential evictions until January 31, 2021, and precluded local governments from extending any existing moratoria on residential evictions beyond their already enacted expiration dates.
- M. On September 22, 2020, the Hayward City Council adopted Ordinance 20-17, which extended the moratorium on Commercial Evictions until January 31, 2021.

- N. On September 23, 2020, the Governor issued Executive Order N-80-20 extending Executive Order N-28-20 through March 31, 2021, with respect to commercial evictions only.
- O. During the COVID-19 pandemic outbreak, as a result of the State of Emergency declarations and the Shelter in Place Order, bars and restaurants have been ordered to only serve food for delivery or pick-up; many other businesses have been determined to be non-essential, and thus ordered to effectively cease operations. Consequently, many businesses have experienced sudden income loss due to reduced business hours, business closure, or reduced consumer demand, and further income impacts are anticipated.
- P. The loss of income caused by the effects of COVID-19 and the public health orders have, and will, impact commercial tenants' ability to pay rent when due, leaving them vulnerable to eviction.
- Q. Providing commercial tenants with short-term protection from eviction due to the inability to pay rent will help avoid further business closures and job losses
- R. Eviction of commercial tenants disrupts the social ties and networks that are integral to the community's welfare and the stability of communities within the City.
- S. Eviction of commercial tenants creates undue hardship for business owners through additional relocation costs, stress and anxiety, and the threat of losing residential housing due to lack of business income.
- T. The City Council finds and determines that during this state of emergency the public interest in preserving peace, health, and safety and preventing further transmission of COVID-19, would be served by avoiding unnecessary displacement and homelessness.
- U. The City Council further finds and determines that extension of the temporary moratorium on commercial evictions is necessary to protect public health and safety, where inability to pay is due to a substantial decrease in business income (including a substantial decrease in business income caused by a reduction in opening hours or consumer demand) or by any local, state, or federal government response to the COVID-19 pandemic, or evictions for a no-fault reason unless the eviction is necessary for the imminent health and safety of the tenant and landlord.
- V. Based upon the above-described facts and circumstances, and for these same reasons, the City Council finds that this ordinance is necessary as an emergency measure for preserving the public peace, health and safety, and therefore it may be introduced and adopted at one and the same meeting, and shall become effective immediately upon its adoption by five (5) or more affirmative votes of the Hayward City Council through June 30, 2021, or the date of the expiration of the Governor's Executive Order N-28-20 and any extensions thereof, whichever is earlier, unless repealed earlier.

SECTION 3. Definitions.

- A. Commercial Rental Agreement. An oral, written, or implied agreement between a Landlord and a Tenant for use or occupancy of a Commercial Rental Unit.
- B. Commercial Rental Unit. Any building, structure, or part thereof, or appurtenant thereto, or any other rental property rented or offered for rent, other than for living or dwelling purposes.

- C. **Covered Reason for Delayed Payment.** A tenant's inability to pay rent or mortgage payments which arises from 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 was unable to work because their children were out of school, 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 the decrease in household or business income or the out-of-pocket medical expenses were caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented.
- D. **Landlord.** Any owner, lessor, or sublessor of real Property who receives or is entitled to receive Rent for the use or occupancy of any Commercial Rental Unit or portion thereof in the City of Hayward, and the designated representative, agent, or successor of such owner, lessor, or sublessor.
- E. **Moratorium Period.** For Commercial Rental Units, the moratorium previously in effect is hereby extended through June 30, 2021, or the date of the expiration of the Governor's Executive Order N-28-20 and any extensions thereof, whichever is earlier, unless repealed earlier unless repealed earlier.
- F. **No-Fault Eviction.** No-fault eviction refers to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant, including but not limited to, the circumstances described in Hayward Municipal Code section 12-1.13(b)(7) – (10) or any notice served pursuant to Code of Civil Procedures 1161, et seq, or other applicable law.
- G. **Rent.** All periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed or services rendered to or for the benefit of the Landlord for a Commercial Rental Unit under a Commercial Rental Agreement, as the case may be.
- H. **Tenant.** A Tenant, subtenant, lessee, sublessee, or a person entitled under the terms of a Commercial Rental Agreement, to the use a Commercial Rental Unit.

SECTION 4. Imposition and Extension of Temporary Moratorium on Certain Non-Payment and No-Fault Evictions

- A. During the Moratorium Period, no Landlord shall evict a tenant under either of the following circumstances: (1) for nonpayment of rent if the tenant demonstrates that inability to pay arises out of a substantial decrease in household or business income (including but not limited to a substantial decrease in business income caused by a reduction in opening hours or consumer demand) and the decrease in business income was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented, or (2) for a no-fault eviction unless necessary for the imminent health and safety of tenants, neighbors, or the landlord.

- B. A landlord who reasonably knows that a tenant cannot pay some or all of the rent payments temporarily for the reasons set forth in paragraph A of this section shall not serve a notice informing a tenant of the termination of their right to occupy a Commercial Rental Unit in accordance with applicable California law, including but not limited to a 3- or 30-day notice to pay or quit, or otherwise seek to evict for nonpayment of rent payments. A landlord or lender knows of the tenant's inability to pay within the meaning of this Ordinance if the tenant notifies the landlord in writing of lost income and inability to pay full rent and is able to provide documentation to support the claim. Requirements to notify the landlord do not preclude the tenant from protections under the Moratorium if the tenant was unable to notify the landlord in writing.
- C. For purposes of this section, "in writing" includes email or text communications to the landlord, or the landlord's representative with whom the tenant has previously corresponded by email or text.
- D. For the purposes of this section, documentation to support a claim of inability to pay due to the COVID-19 pandemic may include, without limitation: a statement signed under penalty of perjury that the inability to pay is due to a Covered Reason for Delayed Payment as defined herein; documents showing reduced business income; correspondence by a business owner citing COVID-19 as a basis for reduced business hours or business closure. Any financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim.
- E. Nothing in this Ordinance shall relieve the tenant of liability for the unpaid rent payments, which the landlord may seek after expiration of the moratorium, unless the parties agree otherwise. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance.

SECTION 5. Application

- A. This Ordinance applies to all commercial rental units in the City of Hayward.
- B. This Ordinance applies to nonpayment eviction notices, no-fault eviction notices, unlawful detainer actions under California Code of Civil Procedure section 1161, petition for writ of possession, or any other action to recover possession of the Commercial Rental Unit or to otherwise cause tenants to vacate the Commercial Rental Unit based on such notices served or filed during the effective period of this Ordinance. With respect to delayed payment covered by this Ordinance, a landlord may seek such rent after expiration of the moratorium. No landlord may institute unlawful detainer proceedings under California Code of Civil Procedure section 1161, petition for writ of possession, or any other action to recover possession of the Commercial Rental Unit or to otherwise cause tenants to vacate the Commercial Rental Unit for non-payment for a period of 180 days after expiration of the moratorium, unless the tenant has breached the terms of a rental payment agreement negotiated during the term of this

moratorium. In any event the landlord must meet and confer with the tenant prior to commencement of any proceedings described in this section.

- C. Non-compliance by a landlord with any applicable provision of this Ordinance shall constitute an affirmative defense for a tenant against any proceeding instituted by a landlord described in this section.

SECTION 6. Retaliation Prohibited.

A landlord shall not retaliate against a tenant for nonpayment of rent payments caused by COVID-19 or for exercising their rights under this Ordinance, including but not limited to shutting off any utilities or reducing services or amenities to which the tenant would otherwise be entitled.

SECTION 7. Enforcement

The City, at its sole discretion, may choose to enforce the provisions of this ordinance through administrative fines and any other administrative procedure set forth in Hayward Municipal Code Chapter 1, section 1-3.00. Violations of the provisions of this ordinance may be subject to fines of up to \$4,000. The City's decision to pursue or not pursue enforcement of any kind shall not affect a tenant's rights to pursue civil remedies. The City Attorney is authorized to institute a civil action or pursue criminal prosecution to enforce any provisions of this Ordinance.

SECTION 8. Civil Remedies.

A Tenant may bring a civil suit in the courts of the state alleging that a Landlord has violated any of the provisions of this Ordinance or any regulations promulgated hereunder. In a civil suit, a Landlord found to violate this Ordinance shall be liable to the Tenant for all actual damages, which may include an award for mental and/or emotional distress and/or suffering, or for minimum damages in the sum of one thousand dollars (\$1,000.00), whichever is greater, and whichever other relief the court deems appropriate. A prevailing Tenant in a civil action brought to enforce this Ordinance shall be awarded reasonable attorneys' fees and costs. Additionally, upon a showing that the Landlord has acted willfully or with oppression, fraud, or malice, the Tenant shall be awarded treble damages. No administrative remedy need be exhausted prior to filing suit pursuant to this Section.

SECTION 9. Severability.

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 10. Effective Date and Expiration Date.

This Ordinance shall become effective immediately upon its adoption by five (5) or more affirmative votes of the Hayward City Council and shall be in effect through For Commercial Rental Units, the moratorium previously in effect is hereby extended through June 30, 2021, or the date of the expiration of the Governor's Executive Order N-28-20 and any extensions thereof, whichever is earlier, unless repealed earlier unless repealed earlier.

SECTION 11. California Environmental Quality Act (CEQA)

The City Council independently finds and determines that this action is exempt from CEQA pursuant to Public Resources Code section 21065, based on the finding that this Ordinance is not a "project" within the meaning of Section 15378 of the CEQA Guidelines. The City Council further independently finds and determines that this action is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ____ day of January, 2021, upon motion of _____ and by the following votes of members of said City Council:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MAYOR: _____
Barbara Halliday

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward