

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE CITY OF STOCKTON ENACTING A TEMPORARY MORATORIUM ON EVICTIONS OF CERTAIN NON-RESIDENTIAL TENANTS WHERE THE FAILURE TO PAY RENT RESULTS FROM THE NOVEL CORONAVIRUS (COVID-19)

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; and

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; and

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

On March 12, 2020, the County of San Joaquin ("County") declared a public health emergency; and

On March 12, 2020, due to an escalating increase in the number of cases in San Joaquin County, under Stockton Municipal Code section 2.82.060, City Manager Harry Black signed a Proclamation of the Existence of a Local Emergency, which determines the legal, operational, and recovery resources available for the City to respond to the COVID-19 public health emergency; and

On March 13, 2020, the County issued guidance for mass gatherings, which encourages the postponement or cancellation of gatherings of 250 people or more and recommends that all non-essential smaller gatherings be cancelled or postponed. These recommendations may be interpreted to also recommend that persons at higher risk of severe illness should stay home and away from crowded social gatherings of people as much as possible such as parades, conferences, sporting events, and concerts where large numbers of people are within arm's length of one another; and

On March 16, 2020, the Counties of Alameda, Contra Costa, San Francisco, Marin, San Mateo, and Santa Clara ("Bay Area Counties") have issued orders for their residents to "shelter at home" which limited social and business activities to only those that are essential; and

The "shelter at home" orders of the Bay Area Counties have a significant impact on the many City of Stockton residents that work in those counties who will be forced to reduce

their working hours and therefore will suffer economic hardships; and

Both large and small events across the County and the Bay Area Counties have cancelled or postponed due to the orders and recommendations at all levels of government to cancel public gatherings amid concerns over spread of the virus. These cancellations and postponements cause loss in revenue for the event, as well as surrounding local businesses who rely on such events to bring in patrons to their businesses; and

Due to the cancellation of conferences and other large-attendance events, there has been a significant loss of business opportunities that will impact City of Stockton businesses and residents that work locally and in the Bay Area Counties; and

The effects of COVID-19 on the global economy and supply chains are impacting many companies in Stockton; and

Some companies are having their employees work remotely or from home in order to prevent exposure in the workplace. With more businesses moving toward working from home, less of the workforce will be patronizing restaurants and other retail establishments in the City of Stockton, which may lead to acute economic distress for many local businesses; and

Displacement through eviction could create severe economic hardships to local businesses and local residents employed by those businesses as well as contributing to a lengthening and deepening of the economic impacts of this emergency; and

On March 19, 2020, the State Public Health Officer issued a statewide “stay at home” order requiring that persons in the state remain at home unless they are required to leave to perform or access essential services or to obtain food or other essential materials or supplies; and

On March 20, 2020, the County of San Joaquin Director of Emergency Services issued a “stay at home” order limiting all non-essential travel and the operation of non-essential businesses and activities; and

On March 22, 2020, the State of California received a Presidential Major Disaster Declaration in support of the state’s response to the COVID–19 pandemic; and

On July 13, 2020, the State Public Health Officer issued a new statewide order, imposing renewed restrictions on activities after a gradual loosening of restrictions beginning May 7, 2020; and

On August 28, 2020, the Governor announced the Blueprint for a Safer Economy (“Blueprint”), a statewide plan to reduce the spread of COVID-19 tightening and loosening restrictions and permissible activities in the counties based on trending epidemiological data. The Blueprint places counties into four tiers of restrictions based on various metrics, from most to least restrictive being Purple, Red, Orange, and Yellow. San Joaquin County

was initially placed in the Purple tier, indicating widespread presence of COVID-19; and

On September 29, 2020, the County of San Joaquin was moved down to the Red tier, indicating a substantial presence of COVID-19; and

On November 16, 2020, based on revised Blueprint guidelines from the California Department of Public Health, the County of San Joaquin moved back to the Purple tier indicating widespread presence of COVID-19. Purple tier restrictions vary by business activity, but include closures, capacity restrictions as low as 20%, prohibitions on indoor operations, and other modifications; and

On December 3, 2020, the Acting State Public Health Officer issued a Regional Stay at Home Order ("RSAHO"). The RSAHO places counties into region groups, and where a region's adult ICU bed capacity availability is less than 15%, the RSAHO's restrictions are imposed and supersedes all other orders, directives, and guidance of the California Department of Public Health, including the Blueprint for a Safer Economy; and

On December 6, 2020, the RSAHO went into effect for the San Joaquin Valley region, which includes the County of San Joaquin, as adult ICU capacity was at 8.6%; and

On December 16, 2020, the aforementioned Bay Area Counties fell under the RSAHO. At that time the County of San Joaquin, Bay Area Counties, and 55 of all California's 58 counties are in the Purple tier; and

The Ordinances are temporary and not a general ordinance to be codified pursuant to Section 509 of the City Charter; and

Pursuant to Section 508 of the City Charter, the Urgency Ordinance must be declared by the Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety, containing a statement of the facts constituting such urgency and adopted by a 2/3 vote of the members of the City Council; and

The Ordinances are a temporary moratorium intended to promote stability and fairness within the non-residential rental market in the City during the COVID-19 pandemic outbreak, and to prevent avoidable displacement of local businesses thereby serving the public peace, health, safety, and public welfare and to enable tenants in the City whose income is affected due to COVID-19 to remain in their tenancies; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON AS FOLLOWS:

SECTION 1. Title

This Ordinance shall be known as the "COVID-19 Non-Residential Eviction Moratorium Ordinance."

SECTION 2. Policy and Purposes Declaration

The purposes of this Ordinance are to promote stability in the commercial sector of the local economy during the COVID-19 pandemic and to prevent avoidable closure of businesses within the City of Stockton. This Ordinance is necessary for the immediate preservation of the public peace, health, or safety because the COVID-19 pandemic has the potential for destabilizing the local economy and the non-residential rental market for all the reasons described herein. It is intended to enable non-residential tenants in the City whose income has been affected by the COVID-19 pandemic to be temporarily exempt from eviction for non-payment of rent and to reduce the risk that these events will lead to anxiety, stress, and potential closure of local businesses thereby serving the public peace, health, safety, and public welfare. The temporary moratorium on evictions for non-payment imposed by this Ordinance is created pursuant to the City's general police powers to protect the health, safety, and welfare of its residents and exists in addition to any rights and obligations under state and federal law.

SECTION 3. Termination Date

This Ordinance shall remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted.

SECTION 4. Definitions

“Affected Non-Residential Tenant” shall mean a Non-Residential Tenant that as a result of COVID-19 pandemic, or declaration of the County Public Health Officer, or other local, State or Federal Authority, suffered a substantial loss in income through forced closure, or a decrease in sales or other business income due to COVID-19 and who is unable to pay rent as a result thereof and has provided their Landlord with documentation or other objectively verifiable proof of the same.

“Landlord” means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Non-Residential Rental Unit, and the agent, representative, or successor of any of the foregoing.

“Non-Residential Rental Unit” means a structure or the part of a structure that is used as a commercial space, and for which a Non-Residential Tenant pays rent for the use and occupancy for periods in excess of seven days whether or not the use is a conforming use permitted under the Stockton Municipal Code.

“Non-Residential Tenant” means a tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupancy of a Non-Residential Rental Unit.

SECTION 5. Scope

This Ordinance applies to Affected Non-Residential Tenants and Landlords of Affected Non-

Residential Tenants.

SECTION 6. Moratorium on Certain Terminations of Tenancies

During the term of this Ordinance, a Landlord may not terminate the tenancy of an Affected Non-Residential Tenant unless the Landlord can demonstrate that the termination is for a cause other than the non-payment of rent.

SECTION 7. Affirmative Defense to Eviction; Penalties and Remedies

A. Affirmative Defense. Each Landlord that seeks to terminate a tenancy of an Affected Non-Residential Tenant must comply with this Ordinance. Non-compliance with any applicable component of this Ordinance shall constitute an affirmative defense for an Affected Non-Residential Tenant against any unlawful detainer action under California Code of Civil Procedure section 1161, as amended. Nothing herein is intended to reduce or otherwise alter any person's obligation to pay rent as per the applicable rental agreement.

To assert this defense, an Affected Non-Residential Tenant shall have provided their Landlord with written documentation or other objectively verifiable information establishing that the Affected Non-Residential Tenant has, as a result of the COVID-19 pandemic or declaration of County Public Health Officer, or other local, State or Federal Authority, suffered a forced closure and/or substantial loss of income caused by the COVID-19 pandemic. The following documents shall create a rebuttable presumption that the Affected Non-Residential Tenant has met the documentation requirement set forth above, however, they are not the exclusive form of documentation demonstrating impacts to income due to COVID-19:

1. Bank Statements or other documentation of income;
2. Notices or other evidence that the business being operated in the Non-Residential Rental Unit was forced to close and/or restrict operations during the COVID-19 pandemic.

B. Civil Remedies.

Any Landlord that fail(s) to comply with this Ordinance may be subject to civil proceedings for displacement of Affected Non-Residential Tenant(s) initiated by the City or the Affected Non-Residential Tenant for actual and exemplary damages.

Whoever is found to have violated this Ordinance shall be subject to appropriate injunctive relief and shall be liable for damages, costs, and reasonable attorneys' fees.

Treble damages shall be awarded for a Landlord's willful failure to comply with the obligations established under this Ordinance.

Nothing herein shall be deemed to interfere with the right of a Landlord to file an action

against a tenant or non-tenant third party for the damage done to said Landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.

SECTION 8. URGENCY FINDINGS AND EFFECTIVE DATE

The City Council of the City of Stockton 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, and in the staff report that accompanies this matter, as well any oral and written testimony at the January 12, 2021 City Council meeting.

This ordinance shall take effect immediately after its passage.

ADOPTED: _____

EFFECTIVE: _____

KEVIN J. LINCOLN, II
Mayor of the City of Stockton

ATTEST:

ELIZA R. GARZA, CMC
City Clerk of the City of Stockton