

ORDINANCE NO. 2020-XXXX

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

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, 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 11, 2020, the World Health Organization declared COVID-19 to be a pandemic; 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 12, 2020, the Health Officer of the County of San Diego issued an order prohibiting gatherings of 250 or more people in any space or room at the same time effective Friday, March 13, 2020 and continuing until 11:59 p.m. on March 31, 2020; 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 15, 2020, Governor Newsom issued guidelines to further contain the spread of COVID-19, in which he urged seniors sixty-five (65) and older and persons with chronic health conditions to isolate themselves during the COVID-19 pandemic, as well as the closure of bars, wineries, nightclubs and brew pubs, and Los Angeles Mayor Eric Garcetti imposed the closure of gyms, movie theaters, bowling alleys and arcades in that city, as well as a prohibition against anything other than pickup, delivery, and drive-through service at restaurants; and

WHEREAS, the CDC issued guidance as of March 15, 2020, to the effect that in-person events consisting of fifty (50) persons or more should be canceled for the next eight (8) weeks, and that gatherings of more than ten (10) persons for organizations that serve higher-risk populations should be canceled; and

WHEREAS, on March 16, 2020, the Health Officer of the County of San Diego issued an Amended Order and Emergency Regulations, which prohibited gatherings of 50 or more persons in a single room or space at the same time, and which provided for the closure of all bars and entertainment establishments, prohibited all on-site dining, and limited restaurants and food service providers to take out, drive-through or delivery; and

WHEREAS, on March 16 2020, the City Manager, acting in his capacity of Director of Emergency Services of the City, proclaimed the existence of a Local Emergency related to COVID-19 within the City, and activated the San Marcos Emergency Operations Center on that date; and

WHEREAS, on March 17, 2020, the Health Officer of the County of San Diego issued an Amended Order and Emergency Regulations, which provided that all public or private schools, colleges and universities shall not hold classes or other activities where students gather on campus; and

WHEREAS, as of March 18, 2020, San Diego County has increased to seventy-six (76) cases which have tested positive or are presumptive positive for COVID-19, and the number is expected to increase; 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, 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, 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, as a result of the public health emergency, the closures or reduced operations of many local businesses, and the precautions recommended by health authorities, many tenants in San Marcos have experienced or expect soon to experience sudden and unexpected income loss; and

WHEREAS, the Governor of the State of California has stated that individuals exposed to COVID-19 may be temporarily unable to report 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; and

WHEREAS, further economic impacts are anticipated, leaving both 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 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 is 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, the San Marcos Municipal Code and the ongoing federal, state and local emergency, the City Council hereby enacts a temporary moratorium on evictions of residential and commercial tenants for non-payment of rent impacted by the COVID-19 pandemic 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 30 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 commercial and residential 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 not 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.

Section 6. 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 7. Unless extended by City Council, this Ordinance shall remain in effect until close of business on May 31, 2020.

Section 8. 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 9. 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 10. Pursuant to Government Code section 36936, 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 24<sup>th</sup> day of March, 2020, by the following roll call vote:

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

APPROVED:

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Rebecca D. Jones, Mayor  
City of San Marcos

ATTEST:

APPROVED AS TO FORM:

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Phillip Scollick, City Clerk  
City of San Marcos

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Helen Holmes Peak, City Attorney  
City of San Marcos