

ORDINANCE NO. 2020-1492

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA, ADOPTING A TEMPORARY MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT FOR RESIDENTIAL 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 San Diego County Board of Supervisors ratified the Declaration of Local Health Emergency and Proclamation of Local Emergency arising out of the COVID-19 outbreak; 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, which exercised authority pursuant to the Emergency Services Act, Government Code section 8550, et. seq., including an order to ensure adequate facilities exist 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 as 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 on that date; and

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-20, which is currently in effect until September 30, 2020, and which delegated to local jurisdictions the authority to enact temporary moratoria on 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; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 ("Stay-at-Home Order"), which required 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 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 24, 2020, the City Council adopted Ordinance No. 2020-1485, which enacted 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 expired on May 31, 2020, and which extended the time in which tenants could respond to an eviction action for a period of 60 days and prohibited the enforcement of any writ for eviction during that period of time; and

WHEREAS, on April 6, 2020, the California Judicial Council adopted Emergency Rule Number 1, which was initially effective until 90 days after the termination of the state of emergency related to COVID-19, and which prevents courts from issuing summons on unlawful detainer complaints or issuing defaults in such actions, unless the plaintiff can show the need to proceed on public health and safety grounds; and continues trials in any unlawful detainer actions for at least 60 days, with no new trials to be set until at least 60 days after a request for trial is filed; and

WHEREAS, on May 12, 2020, the City Council adopted Ordinance No. 2020-1486, which extended the temporary moratorium on evictions due to nonpayment of rent for residential and commercial tenants impacted by the novel coronavirus (COVID-19) until June 30, 2020 and modified it in part to conform with State Executive Order N-37-30; 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 August 8, 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 on campus; and

WHEREAS, on August 11, 2020, the California Judicial Council issued Order CO-20-13, which modified the term of Emergency Rule 1, such that it will now terminate after September 1, 2020; and

WHEREAS, as of August 22, 2020, the numbers of reported positive cases of COVID-19 and related deaths in San Diego County have increased to 36,540 and 660, respectively, and both numbers are expected to continue 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 experience sudden and unexpected income loss, hindering their ability pay their rent; and

WHEREAS, further economic impacts are anticipated, leaving residential tenants vulnerable to eviction just as the protections against unlawful detainer actions offered by Judicial Council Emergency Rule Number 1 have lapsed, and before it is known whether pending State legislation intended to provide renter protection for those affected by the COVID-19 pandemic will be approved by the Legislature and signed by the Governor; 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 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 adopts a temporary moratorium on evictions of residential tenants for non-payment of rent impacted by the COVID-19 pandemic, as follows:

- a. No landlord in the City shall evict a residential tenant for nonpayment of rent due on or after the effective date of this Ordinance if the tenant notifies the landlord in writing within seven (7) days after the date that rent is due that the tenant is unable to pay rent due to financial impacts related to COVID-19.
- b. For purposes of this Ordinance, “financial impacts related to COVID-19” is defined as follows:
 1. A substantial decrease in household income (including but not limited to, a substantial decrease in household income caused by business closure, 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 income or the out-of-pocket medical expenses described in subsection (b)(1) was caused by the COVID-19 pandemic or by any local, county, state, or federal government response to COVID-19.
- c. 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.
- d. Within seven (7) days of providing notice under subsection (a), the tenant shall provide the landlord documentation to support the claim that the tenant is unable to pay rent due to financial impacts related to COVID-19. Documentation may include, but is not limited to, paystubs, letters from employers, financial or bank statements, business records, physician’s letters, and/or monthly bills or evidence of financial responsibilities. Any medical or financial information provided to the landlord shall be held in confidence and only used for evaluating the residential tenant’s claim.

- e. If the tenant does not provide evidence of financial impacts related to COVID-19 within the timeframe described in subsection (d), the landlord may pursue any enforcement action in accordance with state and local laws.
- f. If a tenant complies with the requirements of this Ordinance, a landlord shall not serve a notice pursuant to Code of Civil Procedures section 1161(2), file or prosecute an unlawful detainer action based on a 3 day pay or quit notice, or otherwise seek to evict the tenant for nonpayment of rent.

Section 4. This Ordinance applies to nonpayment eviction notices and unlawful detainer actions for residential tenants based on such notices, served or filed on or after July 1, 2020, following the expiration of Ordinance No. 2020-1486, which extended the City's initial temporary moratorium on evictions due to nonpayment of rent for residential and commercial tenants impacted by the novel coronavirus (COVID-19) until June 30, 2020, through September 30, 2020. This Ordinance is intended to be retroactive in effect, to provide continuous protections to residential tenants from March 24, 2020, the date of the City Council's adoption of Ordinance No. 2020-1485, the initial eviction moratorium, through September 30, 2020, subject to Section 7, below.

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.

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 either: (i) the close of business on September 30, 2020; or (ii) the date, if any, that renter assistance legislation intended to assist those affected by the COVID-19 pandemic, currently anticipated to be in the form of AB 1436 and/or AB 828, is passed by the California Legislature and signed by the Governor, whichever occurs first.

Section 8. Subject to the provisions of this Section 8, upon the expiration or earlier termination of this Ordinance as provided in Section 7, above, a tenant who satisfied the notice and documentation requirements set forth herein shall have up to six (6) months to pay the landlord all unpaid rent. If a tenant opts to move while this Ordinance is effective, all owed rent is due upon move out. At the end of this six (6) month period, a landlord may evict a tenant who has not paid all outstanding rent and resort to all remedies available to the landlord under the lease and the law. However, in the event renter assistance legislation intended to assist those affected by the COVID-19 pandemic is passed by the California Legislature and signed by the Governor, the terms and provisions

of such approved legislation will supersede this Section 8 and will be controlling with respect to the repayment period.

Section 9. This Ordinance is to be construed in a manner which affords the greatest possible protection to residential tenants.

Section 10. 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 11. 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 12. 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.

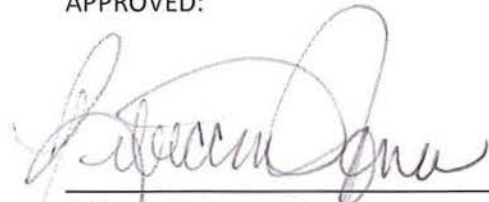
PASSED, APPROVED, and ADOPTED by the City Council of the City of San Marcos, California, this 31st day of August, 2020, by the following roll call vote:

AYES: COUNCILMEMBERS: JENKINS, NUÑEZ, PETREK, WALTON, JONES

NOES: COUNCILMEMBERS: NONE

ABSENT: COUNCILMEMBERS: NONE

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