

ORDINANCE NO. _____

**AN EMERGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF SUNNYVALE TO TEMPORARILY
SUSPEND EVICTIONS FOR NONPAYMENT OF RENT FOR
RESIDENTIAL TENANTS IMPACTED BY THE COVID-19
EMERGENCY EFFECTIVE FROM JULY 1, 2021
THROUGH SEPTEMBER 30, 2021**

WHEREAS, the Sunnyvale City Council hereby makes the following findings and declarations with respect to the COVID-19 emergency:

1. Section 701 of the Sunnyvale City Charter authorizes the City Council, with at least five affirmative votes, to introduce and adopt at the same meeting an emergency ordinance the Council declares necessary for preserving the public peace, health or safety.
2. Government Code Sections 36394 and 36937 allow a city, including a charter city, to adopt an urgency ordinance to take effect immediately upon its adoption for the preservation of the public peace, health, or safety upon a finding of facts constituting the urgency.
3. International, national, state, and local health and governmental authorities are continuing to respond to an outbreak of respiratory disease caused by the novel coronavirus named COVID-19 and the attendant social and economic effects that continue to linger even as significant progress has been made against slowing the spread of COVID-19 itself.
4. On March 4, 2020, the Governor of the State of California proclaimed a “state of emergency” to make additional resources available, formalize emergency actions already under way across multiple State agencies and departments, and help the State prepare for the broader spread of COVID-19. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic. On March 12, 2020, the City Manager acting as the Director of Emergency Services proclaimed the existence of a local emergency within the City related to the COVID-19 outbreak, which the City Council unanimously ratified and confirmed on March 17, 2020. On March 13, 2020, the President of the United States of America declared a national emergency and announced that the Federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19.
5. On March 16, 2020, the Health Officer of the County of Santa Clara issued an order directing all individuals living in the County to shelter in their place of residence, except for certain essential services; directing all businesses and governmental agencies to cease nonessential operations at physical locations in the County; and prohibiting all nonessential gatherings and travel. That order was subsequently revised and extended multiple times throughout 2020, including but not limited to April 29 and May 18, 2020.
6. On March 19, 2020, the Governor of the State of California issued Executive Order N-33-

20 ordering all Californians to stay home for an undetermined period. Over the following 14 months, the County Health Officer and State of California issued numerous orders designed to limit the spread of COVID-19 through regulation of the operations of businesses and industries, and activities and conduct required for individuals.

7. On March 27, 2020, Governor Newsom issued Executive Order N-37-20 banning the enforcement of eviction orders for renters affected by COVID-19 through May 31, 2020. On April 6, 2020, the California Judicial Council promulgated emergency rules in response to the 2020 COVID-19 pandemic that temporarily suspended entry of default and trials in eviction proceedings in the Superior Courts.
8. On March 31, 2020, the City Council adopted an emergency ordinance (Ordinance No. 3157-20) that temporarily suspended residential evictions for nonpayment of rent by tenants impacted by COVID-19, finding that such action was appropriate during the emergency situation because of the important interests of protecting the public health and preventing transmission of COVID-19, avoiding unnecessary housing displacement, protecting the City's affordable housing stock, and preventing housed individuals from falling into homelessness.
9. On May 29 and June 30, 2020, Governor Newsom issued Executive Orders N-66-20 and N-71-20, which extended suspension of any provision of State law that would preempt or otherwise restrict a local government's exercise of police powers to impose substantive limits on residential or commercial evictions under certain conditions.
10. On August 31, 2020, the State Legislature adopted Assembly Bill 3088 ("AB 3088"), a Statewide Eviction Moratorium which preempted any local ordinances regulating residential evictions in response to the COVID-19 pandemic that went into effect from August 19, 2020 through January 31, 2021. AB 3088 included the COVID-19 Tenant Relief Act of 2020 (Code of Civil Procedure, Part 3, Title 3, Chapter 5, Sections 1179.01 to 1179.07, referred to in this Ordinance as the "Statewide Eviction Moratorium"), which provides critical protections from eviction for tenants to help prevent mass evictions in the midst of the COVID-19 pandemic. Because of the breadth of Assembly Bill 3088's protections, it preempted many of the residential tenant protections within the City's eviction moratorium related to non-payment of rent.
11. On September 4, 2020, the United States Centers for Disease Control announced an order ("CDC Order") temporarily halting evictions nationwide for certain residential tenants, which will sunset on June 30, 2021.
12. Many of the state's protections against eviction were initially scheduled to expire on January 31, 2021. On January 29, 2021, Senate Bill 91 ("SB 91") extended many of the protections of AB 3088 until June 30, 2021, established a state emergency rental assistance program, and prohibited new local eviction moratoria related to the COVID-19 pandemic from taking effect until July 1, 2021. Under this legislation, residential tenants facing hardship related to COVID-19 cannot be evicted if they pay at least 25% of rent due between September 1, 2020 through June 30, 2021 by June 30, 2021. Actions to collect the

back rent owed by these tenants must be brought in small claims court and may not commence before August 1, 2021. Tenants who did not make the minimum payments required under the statute are not protected from eviction, and are not protected from an eviction proceeding based on the ongoing obligation to pay rent as of July 1, 2021.

13. On June 11, 2021, Governor Newsom issued Executive Order N-07-21 discontinuing the Statewide Stay at Home Order and Blueprint for a Safer Economy on June 15, 2021; however, the California state of emergency and the City's local emergency declarations related to COVID-19 remain in effect. The Governor has announced that the State will continue to closely monitor cases and spread of COVID-19 at least through September 30, 2021 and that the "state of emergency" will remain in place to allow ongoing aid programs and recovery efforts to continue without interruption.
14. Although California "reopened" on June 15, 2021, certain measures intended to limit the spread of COVID-19, particularly among unvaccinated individuals, remain in effect. Although the stay-home/shelter orders and other orders regulating operations, capacity, and similar measures have been lifted with the reopening, many residents continue to suffer economic hardship that began while those orders were in effect.
15. As a result of the public health emergency and the precautions recommended by health authorities, many tenants in Sunnyvale experienced sudden income loss, layoffs, and business closure, thereby placing increased demands on already strained regional and local health and safety resources.
16. Although resources have been identified to help repay landlords for rent lost during the pandemic and to provide tenants with financial assistance to continue making rent payments, many of these resources have been slow or not yet able to distribute funds.¹ Delays in the distribution of financial assistance may contribute to increased eviction risk for those households that are still waiting for their claims to be processed.
17. The City Council finds and determines that, if a temporary suspension on evictions from residential units due to a resident's loss of substantial income arising out of the consequences of the COVID-19 pandemic were not imposed now, the public health, safety, and welfare will be immediately threatened because, upon the expiration of the Statewide Eviction Moratorium on July 1, 2021, landlords can initiate action to evict tenants who were unable to pay rent due to a substantial loss of income.
18. For the reasons set forth above, the City Council declares this Emergency Ordinance necessary for preserving the public welfare, health, or safety and to avoid a current, immediate, and direct threat to the health, safety, or welfare of the community. These findings and declarations constitute the City Council's statements of the reasons constituting such necessity and urgency.

¹ See, e.g., California Eviction Moratorium still in Limbo Ahead of June 30 Expiration, Lauren Hepler & Alexei Koseff, San Francisco Chronicle, June 23, 2021, <https://www.sfchronicle.com/local/article/California-eviction-moratorium-still-in-limbo-16269705.php>

19. The pandemic appears to be coming under control, but it is not yet over, and the threat of mass evictions starting July 1, 2021 is a looming crisis for tenants who could be directly affected as well as for the City of Sunnyvale as a whole. The City has a shortage of affordable rental housing, a significant percentage of the City's households are renters, and many potentially impacted renters are both at risk of permanent displacement, should they be forced to leave their current homes, and also essential workers who will be needed immediately if the pandemic takes a turn for the worse. Moreover, the same communities that faced the highest exposure to COVID-19, such as essential workers working for low wages, now face an epidemic of evictions, which are deeply tied to higher suicide rates, heart disease, and hypertension.² Eviction protections can help prevent the direct and indirect public health effects associated with COVID-19 and housing insecurity.
20. SB 91 also established a state Emergency Rental Assistance (ERAP) program in which landlords may be reimbursed for up to 80% of each eligible household's unpaid rent due between April 1, 2020 and March 31, 2021, conditioned on the landlord's agreement to waive the remaining 20% of unpaid rent for that specific time period. Eligible tenants whose landlords choose not to participate in the program may receive up to 25% of unpaid rent due between April 1, 2020, and March 31, 2021. However, implementation of the ERAP program and distribution of rental assistance payments has been slow and many tenants remain at risk of eviction. In the event the Legislature does not take action to extend the protections provided by AB 3088 and SB 91, a significant number of residential tenants within the County will face eviction resulting in negative economic impacts and substantial hardships to the tenants starting July 1. Further, federal protections afforded by the CDC Order will expire on June 30, 2021. Therefore, both federal and state eviction protections for residential tenants will expire on June 30, 2021. State and Federal relief programs have been delayed and only began processing applications in May 2021, and these funding delays have in turn impacted the City's efforts to administer relief to landlords and tenants.³ A short-term extension of eviction protections is necessary to help tenants during this transitional phase. Extending the moratorium will give renters time to access rent relief programs and will allow nurses and public health practitioners to focus attention on healing individuals and communities.
21. This Emergency Ordinance intends to prevent mass evictions that would threaten the public health by increasing housing instability, contributing to overcrowding, and increasing homelessness while landlords and tenants await relief funds and adjust to a COVID-19

² Extend the Eviction Moratorium to Ward off Another Public Health Crisis, CalMatters, June 9, 2021, <https://calmatters.org/commentary/my-turn/2021/06/extend-the-eviction-moratorium-to-ward-off-another-public-health-crisis-2/>

³ Cash to Help California Renters Goes Unspent with Eviction Protections Expiring Soon, Los Angeles Times, May 20, 2021, <https://www.latimes.com/california/story/2021-05-20/california-renters-unspent-financial-assistance-eviction-protections-expiring>;

Thousands of Renters and Landlords Await State Aid as Eviction Moratorium Set to Expire, KQED, Erin Baldasarri, June 10, 2021, <https://www.kqed.org/news/11877600/thousands-of-renters-and-landlords-await-state-aid-as-eviction-moratorium-set-to-expire>

recovery landscape. To comply with the preemption provisions of SB 91 and provide tenant protections as soon as the Statewide Eviction Moratorium's protections are due to expire, the City's residential tenant eviction moratorium will take effect no earlier than July 1, 2021. Nothing in this Emergency Ordinance shall affect or impair the application of any other City law or the Statewide Eviction Moratorium with respect to rent payments that came due before July 1, 2021.

22. Nothing in this Ordinance will waive a tenant's obligations to pay back rent owed once this Ordinance is no longer effective.

23. This Ordinance is temporary and not a general ordinance in force required to be codified pursuant to Section 704 of the City Charter; and

WHEREAS, to address the potential impacts discussed in the foregoing recitals and findings, the City of Sunnyvale desires to adopt an uncoded ordinance to temporarily suspend residential evictions for nonpayment of rent by tenants financially impacted by COVID-19.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. INCORPORATION OF FINDINGS AND RECITALS. The City Council hereby finds, determines, and declares that (1) all the foregoing recitals and findings and the staff report presented with this Ordinance are true and correct and incorporates and adopts them as findings of the City Council as if fully set forth herein, and (2) this Emergency Ordinance adopted pursuant to Sunnyvale City Charter Section 701 is necessary for all the reasons stated such recitals and findings.

SECTION 2. URGENT NEED. Based on the foregoing recitals and findings, all of which are deemed true and correct, the City Council hereby finds this Ordinance is urgently needed to temporarily suspend residential evictions for nonpayment of rent stemming from the COVID-19 emergency, for the immediate preservation of the public peace, health, and safety. This Emergency Ordinance shall take effect immediately upon adoption in accordance with the provisions set forth in Sunnyvale City Charter Section 701.

SECTION 3. EMERGENCY ORDINANCE ENACTING TEMPORARY MORATORIUM ON EVICTIONS FOR NONPAYMENT OF RENT BY RESIDENTIAL TENANTS IMPACTED BY THE COVID-19 PANDEMIC. A moratorium on eviction for non-payment of rent by residential tenants impacted by the COVID-19 pandemic is adopted as follows:

1. **Policy and Purpose.** The purpose of this emergency ordinance is to prevent, at the beginning of the COVID-19 recovery period, possible mass evictions of residential tenants in Sunnyvale who have been directly impacted by the COVID-19 pandemic, by temporarily suspending residential evictions for nonpayment of rent for tenants who have certified to their landlords that they have suffered financial hardship related to COVID-19. Such evictions are likely to threaten the public health by increasing housing instability, contributing to overcrowding, and increasing homelessness. They are also likely avoidable

in many cases because COVID-19 relief funds for tenants and landlords are available, but to date application and payment processing has been slow to roll out and thus ill-aligned with the June 30, 2021 expiration of the Statewide Eviction Moratorium (Cal. Senate Bill 91 (2020)), which has since its adoption provided Sunnyvale tenants suffering COVID-19-related financial hardship protection from eviction.

2. **Definitions.** For purposes of this Ordinance, the following definitions shall apply:

- (a) Landlord means any natural person, partnership, or corporate or fictitious entity acting as a lessor or sublessor, whether as a principal or through an agent, who receives or is entitled to receive rent in exchange for the use or occupancy of any residential real property for rent, and includes a predecessor in interest;
- (b) Rent means the financial obligation or monetary payment a tenant owes a Landlord for the occupancy or use of residential real property whether by written or oral agreement;
- (c) Residential Real Property means any dwelling unit that is intended or used for human habitation, including mobile homes and mobile home lots;
- (d) Tenant means the lawful occupant of residential real property whether by lease or sublease.

3. **Limitation on Residential Evictions Stemming from COVID-19 Related Financial Distress.** A Landlord of any Residential Real Property within the City of Sunnyvale may not commence evictions on any Tenant or otherwise seek to recover possession of a residential unit for the Tenant's nonpayment of rent if the rent payment originally became due on or after July 1, 2021, provided that the Tenant, subject to limitations defined in Section 5, has delivered to the Landlord a signed declaration under penalty of perjury of COVID-19-related financial distress, as defined by California Code of Civil Procedure Section 1179.02(d), and has paid twenty-five percent (25%) of each outstanding rental payment that has come due from July 1, 2021 onward. Nothing in this Ordinance prohibits evictions for reasons other than those specified in this section.

4. **Landlord Notice Requirements.** In no event may a Landlord pursue an unlawful detainer action for nonpayment of rent for the Tenant's nonpayment of rent if the rent payment originally became due on or after July 1, 2021, unless notice demanding payment is provided that includes the following:

- a. The time period in which the Tenant may pay the amount due or deliver possession of the property shall be no shorter than fifteen (15) days, excluding Saturdays, Sundays, and other judicial holidays.
- b. The notice shall set forth the amount of rent demanded and the date each amount became due.
- c. The notice shall advise the Tenant that the Tenant cannot be evicted for failure to comply with the notice if the Tenant delivers a declaration of COVID-19-related financial distress that complies with Section 3 of this Ordinance.

5. **High-Income Tenant Requirements.** A “high-income Tenant” shall have the meaning defined in Code of Civil Procedure Section 1179.02.05. If a Landlord has evidence that a Tenant is a high-income Tenant, before providing notice required in Section 4 of this ordinance the Landlord may require, together with a declaration of COVID-19-related financial distress, documentation supporting the claim that the Tenant has suffered COVID-19-related financial distress. Any form of objectively verifiable documentation that demonstrates the COVID-19-related financial distress the Tenant has experienced is sufficient to satisfy the requirements of this subdivision, including those methods defined in Code of Civil Procedure Section 1179.02.05. A high-income Tenant that does not provide documentation of COVID-19-related financial distress shall be ineligible for the protection from eviction provided by this Ordinance.
6. **Repayment of Rent.** The balance of any unpaid rent originally due on or after July 1, 2021 shall be due from a Tenant to the Landlord on October 1, 2021; provided, however, that nonpayment of this balance shall not provide the basis for eviction of a residential tenant if the tenant has complied with Section 3 of this Ordinance. Nothing in this Ordinance shall relieve the Tenant of the obligation to pay rent due on or after October 1, 2021, nor restrict a Landlord’s ability to recover rent due and balances owed as permitted under applicable law. Nothing in this Ordinance prevents Landlords and Tenants from negotiating a longer repayment period for past due rent. Landlords and Tenants are strongly encouraged to mutually agree to a repayment plan for past due rent, and if necessary, to contact the City regarding mediation services that may be available to help facilitate such discussions.
7. **Late Fees and Penalties.** A Landlord may not charge or collect late fees, penalties, interest, liquidated damages, or similar charges for nonpayment of rent that originally became due on or after July 1, 2021 through September 30, 2021, if the Tenant has complied with Section 3 of this Ordinance.
8. **Application and Construction.** This Ordinance applies to nonpayment eviction notices and unlawful detainer actions based on such notices served or filed on or after July 1, 2021. This Ordinance shall be liberally construed to provide the broadest possible protection.
9. **Affirmative Defense.** This Ordinance may be asserted as an affirmative defense in any unlawful detainer action.
10. **Civil Remedies.**
 - a. Any Landlord that fails to comply with this Ordinance may be subject to civil proceedings for displacement of Tenants initiated by such Tenant for actual and exemplary damages.
 - b. 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.
 - c. Treble damages shall be awarded for a Landlord's willful failure to comply with the obligations established under this Ordinance.
 - d. Nothing in this Ordinance 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 that

Landlord's property.

- e. Nothing in this Ordinance is intended to limit the damages recoverable by any party through a private action.

11. No Relief from Rent. Nothing in this Ordinance shall relieve a Tenant of the obligation to pay Rent, nor restrict a Landlord's ability to recover Rent due. Tenants and Landlords are encouraged to participate in all available Rent relief programs for which they may be eligible.

SECTION 4. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 5. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 6. EFFECTIVE DATE. Pursuant to Sunnyvale City Charter Section 701 and Government Code Sections 36934 and 36973, the provisions of this Emergency Ordinance shall be effective immediately. This Emergency Ordinance shall remain in effect until the earlier of: (a) September 30, 2021; or (b) the effective date of State action that extends the expiration of the Statewide Eviction Moratorium, including any amendments to such moratorium, so long as the legislation extends the end date of the Statewide Eviction Moratorium, and even if such date is earlier than September 30, 2021. Upon such date, this Emergency Ordinance shall be automatically repealed and will have no further force or effect.

SECTION 7. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on June 29, 2021 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

City Clerk

Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM:

City Attorney