**ORDINANCE NO. 2020-\_\_\_**

AN ORDINANCE OF THE [CITY/COUNTY] [CITY COUNCIL /COUNTY BOARD] ADOPTING AN URGENCY ORDINANCE TO PROTECT RESIDENTIAL TENANTS DURING THE COVID-19 PANDEMIC AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

THE [CITY/COUNTY] [CITY COUNCIL/COUNTY BOARD] HEREBY ORDAINS AS FOLLOWS:

**SECTION 1.  Findings.**

A.        The findings set forth in Ordinance No. [REFERENCE PRIOR ORDINANCE(S), IF APPLICABLE] remain applicable and are incorporated herein by reference.

B.         [See [Model Local Resolution](https://www.supportdemocracy.org/the-latest/model-local-resolution-calling-for-local-authority-to-adopt-housing-protections-during-the-covid-19-pandemic) for additional Whereas Clauses]

C.         In light of the on-going COVID-19 pandemic, on [INSERT DATE], [INSERT NAME/ENTITY] declared a local emergency for [CITY/COUNTY], ratified by the [CITY COUNCIL/COUNTY BOARD] on [INSERT DATE] (hereinafter, the “Local Emergency”).

D.        Evictions resulting from the conditions associated with the Local Emergency present an immediate threat to the public peace, health, and safety in that they will potentially cause the irregular and increased displacement of residents, contribute to an increase in the homeless population in [CITY/COUNTY], and make it more difficult for the [CITY/COUNTY] to enforce [INSERT RELEVANT EMERGENCY ORDERS] designed to promote public health and combat the negative effects of the COVID-19 pandemic.

E.         [Insert up-to-date data on rent and evictions – [Eviction Lab can be a helpful resource](https://evictionlab.org/map/#/2016?geography=states&type=er)]

F.         The Centers for Disease Control and Prevention (“CDC”) imposed a moratorium on certain evictions, effective from September 4, 2020 through December 31, 2020, to prevent the further spread of COVID-19 (“CDC Order”).

G.        The CDC Order explicitly does not preclude states and localities from imposing additional requirements that provide greater protections and are more restrictive than the CDC Order.

H.        This ordinance is adopted pursuant to the [CITY/COUNTY]’s police powers and powers afforded to the [CITY/COUNTY] in the time of a national, state, county, and local emergency during an unprecedented health pandemic, such powers being afforded by [INSERT SECTION] of the State Constitution, [INSERT SECTION(S) OF STATE LAW] and [INSERT SECTION] of the [MUNICIPAL/COUNTY CODE] to protect the peace, health, and safety of the public. The [CITY COUNCIL/COUNTY BOARD] finds that this ordinance is necessary for the preservation of the public peace, health, and safety and for the protection of tenants within the [CITY/COUNTY], and finds urgency to approve this ordinance immediately based on the facts described herein and detailed in the staff report.

**SECTION 2. Adoption of findings.**

The [CITY COUNCIL/COUNTY BOARD] declares the foregoing findings to be true and correct and hereby incorporates such findings into this ordinance.

**SECTION 3.** **Purpose and Intent.**

The purpose and intent of this ordinance is to prevent residential displacement, reduce transmission of COVID-19, and promote the stability, health, and safety of the residents of [CITY/COUNTY] during the Local Emergency.

**SECTION 4. Definitions.**

(a)   “COVID-19 Rent Arrearage” means any amount lawfully owed by a residential tenant to a landlord in connection with a residency tenancy that comes due or had come due during the Local Emergency Period, as defined herein, and has not been paid.

(b)  “Evict or eviction” means, for the purposes of this ordinance only, to terminate a residential tenancy or attempt to do so, including by declining to renew an expiring lease, issuing a notice to vacate premises (including a notice in the alternative to pay or vacate), filing or causing to be filed any lawsuit seeking possession of the premises, or making any statement or take any act to deter, exclude, or otherwise prevent a tenant from remaining in occupancy of leased premises.

(c)   “Local Emergency Period” means the time period beginning on the declaration of the Local Emergency by the [CITY COUNCIL/COUNTY BOARD] and ending 30 days after the [CITY COUNCIL/COUNTY BOARD] declares such emergency to be over or the emergency declaration ends by its own terms.

(d)  “Rental application fee” means any fee or charge imposed on a person as a condition of applying to or being considered for admission as a tenant of residential rental property, including any fee such person must pay to a third-party, such as a tenant-screening agency or other credit reporting agency or background check provider.

(e)   “Residential tenancy” is a tenancy of residential premises intended or used solely for residential purposes.

(f)   [INSERT OTHER DEFINITIONS AS NEEDED]

**SECTION 5. Residential eviction moratorium; changes in household membership.**

(a)        During the Local Emergency Period, no landlord shall evict a residential tenant, except when the tenant poses an imminent and severe threat to the health or safety of other occupants of the property, and such threat is stated in any notice as the grounds for such eviction. In any action to evict the tenant, the landlord shall bear the burden of proving that the stated grounds for termination or non-renewal are true and amount to an imminent and severe threat to the health or safety of other occupants of the property.

(b)       Notwithstanding subsection (a) in this Section 5 or anything in this [CHAPTER] to the contrary, no landlord shall evict any residential tenant wholly or in part because of a COVID-19 Rent Arrearage during the Local Emergency Period or for a period of twelve (12) months following the expiration of the Local Emergency Period.

(c)        Any notice served pursuant to subsection (a) shall include the following statement in bold underlined 12-point font: “**Except to protect against an imminent and severe threat to the health and safety of other occupants of the property, you may not be evicted during the Local Emergency Period, as defined in Ordinance No. [INSERT ORDINANCE NO.]. This does not relieve you of the obligation to pay back rent in the future.**”

(d)       A landlord shall permit any other persons occupying residential premises to remain in possession of the premises upon the same terms as in the rental agreement with a residential tenant who dies or becomes incapacitated during the Local Emergency, until the later of (i) the expiration of the rental agreement, or (ii) the end of the Local Emergency Period.

(e)        No landlord shall deny permission for a person to join the household of an existing tenant during the Local Emergency unless the denial is required by law.

**SECTION 6. Treatment of rent arrearages accumulated during COVID-19 emergency.**

(a) No landlord shall charge, claim, or collect any fee, liquidated damage, interest, or other non-rent charge based on the tenant’s failure to pay rent in a timely manner during the Local Emergency Period or based on any COVID-19 Rent Arrearage existing thereafter.

(b) Notwithstanding any other law, a landlord shall not apply any funds received from a tenant toward the satisfaction of a COVID-19 Rent Arrearage unless (i) the tenant is current in all obligations arising after the Local Emergency Period, and (ii) the tenant has specifically authorized the landlord, in writing, to apply the funds toward the COVID-19 Rent Arrearage.

(c) Nothing in this ordinance shall relieve a tenant from liability for any COVID-19 Rent Arrearage, which the landlord may seek after expiration of the Local Emergency Period.  A tenant must pay any such arrearage within twelve (12) months of the expiration of the Local Emergency Period.

**SECTION 7. Rent increase moratorium.**

(a)   For all residential tenancies, any rent increase in excess of [INSERT APPROPRIATE ESCALATOR SUCH AS CPI] shall be void and unenforceable during the Local Emergency Period.

(b)  Any notice of rent increase served during the Local Emergency Period shall include the following statement in bold underlined 12-point font: “**During the Local Emergency Period, as defined in Ordinance No. [INSERT ORDINANCE NO.], your rent may not be increased in excess of [INSERT APPROPRIATE ESCALATOR SUCH AS CPI].**”

(c)   This moratorium on rent increases shall not apply if the unit or property is exempt from rent control pursuant to local or state law.

[*Comment: In some states, legislation affecting rent increases for residential tenancies (e.g. “rent control”) may render this provision invalid. A local jurisdiction should check with its counsel to determine whether it is legal to include a rent increase moratorium in its ordinance.]*

**SECTION 8. Utility shutoff moratorium.**

(a)   During the Local Emergency Period, no landlord shall shut off, discontinue, or interrupt any tenant’s utilities except for emergency repairs and then, only for the duration of such repairs.

(b)  Any notice of utility shutoff served by the landlord during the Local Emergency Period shall include the following statement in bold underlined 12-point font: “**During the Local Emergency Period, as defined in Ordinance No. [INSERT ORDINANCE NO.], your utilities may not be shutoff, discontinued, or interrupted except for emergency repairs and then, only for the duration of such repairs**.”

**SECTION 9. Termination of rental agreement by tenant affected by COVID-19.**

(a) Within one year after the end of the Local Emergency Period, a tenant who vacates and surrenders possession of residential rental premises for a reason related to COVID-19, including any diminished income or other economic impacts of the pandemic or frustration of an intended purpose for which the premises were rented, shall not be liable for any future rental payments remaining under the lease.

(b) Any early termination fee, liquidated damage, or other charge associated with the termination of a residential rental agreement in effect during the Local Emergency Period shall not be enforceable.

(c) For purposes of this section, a tenant shall be conclusively presumed to have surrendered possession of residential premises for reasons related to COVID-19 where (i) the tenant notifies the landlord before or within seven (7) days after vacating that the tenant had vacated for a reason related to COVID-19; (ii) the tenant vacated involuntarily or at the request of the landlord; or (iii) the landlord had actual knowledge, or was in possession of other information from which a reasonable person would believe, that the tenant vacated for a reason related to COVID-19.

(d) Nothing in this section shall affect a tenant’s liability for rent pertaining to use or

occupancy of premises prior to the tenant’s surrender of possession.

**SECTION 10. Rental admission screening.**

(a)        No landlord shall charge or collect any rental application fee during the Local Emergency Period.

(b)   A landlord may collect a refundable deposit to hold a vacant unit for an applicant whose application is being considered. Such deposit shall not exceed 50% of the monthly rent for the premises and shall be refunded within three (3) business days if the applicant is denied admission. If the application is accepted, the deposit shall be credited toward the tenant’s rent, security deposit, or other charges authorized by the lease.

(c)    During the Local Emergency Period, a landlord shall not obtain any consumer report or conduct any other investigation into the background or qualifications of a rental applicant without first (i) establishing a written rental admissions policy that is available to the public, and (ii) providing the applicant either (A) a copy of the landlord’s written admission policy, or (B) an electronic communication stating where the landlord’s written admission policies may be accessed and providing a hyperlink or other electronic access.

(d)   A landlord who denies an application to lease residential rental property during the Local Emergency Period, or who takes other adverse action in connection with an application (such as approving the application contingent upon payment of an increased security deposit) shall, within one (1) business day, provide the tenant with a written or electronic document setting forth a plain statement of the reason(s) for the denial or other adverse action.

(e)    No landlord shall deny admission to rental housing, or take other adverse action against a rental applicant, because of (i) a COVID-19 Rent Arrearage; (ii) the applicant’s early termination of a rental agreement within one year after the Local Emergency Period; or (iii) an eviction proceeding brought against the applicant during the Local Emergency Period, other than an eviction based on an imminent and severe threat to the health or safety of other occupants of the property that resulted in a judgment against the tenant.

**SECTION 11. Reprisals and Retaliation Prohibited.**

(a)        No landlord shall take or threaten to take any reprisals or retaliatory action against a tenant because of any good-faith assertion or enforcement by the tenant of any right provided under this [CHAPTER].

(b)       For purposes of this section, “reprisal or retaliatory action” shall include any termination or nonrenewal of the rental agreement, increase in rent, charges, or other obligations imposed on the tenant, reduction in services provided to the tenant, or other adverse, hostile, or unwanted conduct motivated wholly or in part by the tenant’s enforcement of a right under this [CHAPTER].

**SECTION 12. Notice requirements.**

All notice statements required by this ordinance shall be written in the language that the landlord and/or the landlord’s agents normally use for verbal communications with the tenant.

**SECTION 13. Housing Authorities.**

All public housing authorities operating within the jurisdiction of [CITY/COUNTY] are requested to extend deadlines for housing assistance recipients or applicants to deliver records or documents related to their eligibility for programs, to the extent that those deadlines are within the discretion of the housing authority.

**SECTION 14. Enforcement.**

(a)    Any person acting for the interests of itself or its members (hereinafter “the Private Enforcer”) may bring a civil action to enforce this [CHAPTER]. Upon proof of a violation, a court shall award to the Private Enforcer the following:

(1) Damages in the amount of either: (i) upon proof, actual damages; or (ii) with insufficient or no proof of damages, $[INSERT AMOUNT] for each violation of this [CHAPTER] (hereinafter “Statutory Damages”). Unless otherwise specified in this [CHAPTER], each day of a continuing violation shall constitute a separate violation.

(2) Punitive damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, or a conscious disregard for the public health.

(b)   The Private Enforcer may also bring a civil action to enforce this [CHAPTER] by way of an injunction.

(c)    Nothing in this [CHAPTER] shall prohibit the Private Enforcer from bringing a civil action in small claims court to enforce this [CHAPTER], so long as the amount in demand and the type of relief sought are within the jurisdictional requirements of small claims court as set forth in [INSERT RELEVANT STATE CODE].

**SECTION 15. Regulations and additional action.**

The [CITY MANAGER/COUNTY EXECUTIVE] may issue regulations, guidance, and forms as needed to implement this ordinance. The [CITY MANAGER/COUNTY EXECUTIVE] and all other [CITY/COUNTY] officers and department heads are authorized and directed to take such actions as may be necessary or appropriate to implement the intent and purpose of this ordinance.

**SECTION 16. Severability.**

If any section, subsection, sentence, clause, phrase, or word of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the remaining provisions of this ordinance. The [CITY COUNCIL/COUNTY BOARD] hereby declares that it would have passed this ordinance and each section, subsection, clause, or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses, or phrases may be declared invalid or unconstitutional.

**SECTION 17. Urgency declaration; effective date.**

The [CITY COUNCIL/COUNTY BOARD] finds and declares that the adoption and implementation of this ordinance is necessary for the immediate preservation and protection of the public peace, health and safety as detailed above.  The [CITY/COUNTY] and public would suffer potentially irreversible displacement of residential tenants and loss of employment resulting from evictions for failure to pay rent during the COVID-19 crisis. The length of the period of federal, state and Local Emergency is unknown at this time and it is prudent to revisit these emergency response measures as the unprecedented situation and legal landscape evolve. The [CITY COUNCIL/COUNTY BOARD] desires to provide stability for residential tenants while orders of the [COUNTY HEALTH OFFICER] continue to mandate significant limitations on movement and employment and to provide certainty to landlords on the processes in place to repay deferred rent after the initial period of moratorium. The [CITY COUNCIL/COUNTY BOARD] therefore finds and determines that the immediate preservation of the public peace, health and safety require that this ordinance be enacted as an urgency ordinance pursuant to [INSERT STATE LAW] and take effect immediately upon adoption.

**SECTION 18. Termination Date of Ordinance.**

This ordinance shall remain in effect until [INSERT DATE], unless otherwise extended.

**SECTION 19. Certification.**

The [CITY/COUNTY] Clerk shall certify to the passage and adoption of this ordinance and shall cause the same, or the summary thereof, to be published or posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ [INSERT DAY] of \_\_\_\_ [INSERT MONTH], [INSERT YEAR].