

ORDINANCE NO. 5128

AN URGENCY ORDINANCE OF THE COUNTY OF SANTA BARBARA AMENDING CHAPTER 44, ARTICLE III, OF THE SANTA BARBARA COUNTY CODE PURSUANT TO GOVERNMENT CODE SECTIONS 25123 AND 25131 AND CALIFORNIA GOVERNOR NEWSOM'S EXECUTIVE ORDERS N-28-20 AND N-80-20, TO TEMPORARILY PROHIBIT AND SUSPEND COMMERCIAL EVICTIONS ARISING FROM LOSS OF INCOME OR SUBSTANTIAL MEDICAL EXPENSES RELATED TO COVID-19, CORONAVIRUS PANDEMIC, UNTIL MARCH 31, 2021. THIS URGENCY ORDINANCE DOES NOT RELIEVE A TENANT'S OBLIGATIONS TO PAY RENTAL PAYMENTS OR RESTRICT A LANDLORD'S ABILITY TO RECOVER ANY RENTAL PAYMENTS THAT ARE DUE.

The Board of Supervisors of the County of Santa Barbara hereby ordains as follows:

SECTION 1. Emergency Findings. This urgency ordinance is adopted pursuant to California Government Code Sections 25123(d) and 25131 and shall take effect immediately upon its approval by at least a four-fifths vote of the Board of Supervisors. The Board of Supervisors finds that this ordinance is necessary for the immediate preservation of the public peace, health and safety, based upon the following declaration of facts constituting the urgency:

1. Chapter 12, Sec. 12-5(a) of the Santa Barbara County Code, empowers the County of Santa Barbara, Director of Emergency Services, to proclaim a local emergency if the Board of Supervisors is not in session; and
2. Section 8558(c) of the Government Code defines a "Local Emergency" as: "the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat"; and
3. A novel coronavirus, COVID-19, causes infectious disease and was first detected in Wuhan City, Hubei Province, China in December 2019. Symptoms of COVID-19 include fever, cough, and shortness of breath; outcomes have ranged from mild to severe illness, and in some cases death. The Centers for Disease Control and Prevention considers the virus to be a very serious public health threat; and
4. On March 4, 2020, Governor Newsom declared a state of emergency for conditions caused by COVID-19; and on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and
5. On March 11, 2020, Governor Newsom and California Public Health state officials recommended that non-essential gatherings should be postponed or cancelled across the state at least until the end of March, in order to implement social distancing guidelines intended to protect all

individuals, particularly those who are at higher risk for severe illness for COVID-19; and

6. On March 12, 2020, the Health Officer of the County of Santa Barbara determined that there is an imminent and proximate threat to public health from the introduction of COVID-19 in the County of Santa Barbara, and has proclaimed a Local Health Emergency as a result. The Board of Supervisors ratified this proclamation on March 17, 2020; and
7. On March 12, 2020, the Director of Emergency Services proclaimed a local emergency related to COVID-19 pursuant to Government Code section 8550 et. seq. and Chapter 12, Section 12-5(a) of the Santa Barbara County Code. The Board of Supervisors ratified this proclamation on March 17, 2020; and
8. On March 19, 2020, Governor Newsom issued Executive Order N-33-20 directing all California residents to “stay at home” except for essential workers and except for certain essential activities, as specified; and
9. On May 4, 2020, Governor Newsom announced the State would begin moving into “Stage 2” of his reopening plan and many retail locations were authorized to reopen for “curbside pickup” only on May 8, 2020; and
10. On May 21, 2020, Santa Barbara County’s Attestation and Reopening Plan was approved by the state allowing Santa Barbara County to move further into “Phase 2” of reopening, allowing for destination retail and dine-in restaurants, with hair salons and barbershops reopening on May 26, 2020; and
11. Santa Barbara County moved into “Phase 3” of reopening on June 10, 2020 with the reopening of family entertainment centers, hotels for tourism, childcare programs, zoos and museums, campgrounds, card rooms, gyms and fitness centers, and restaurants, bars and wineries; and
12. Santa Barbara County began to have trouble meeting the state’s reopening metrics and was placed on the state’s County Monitoring List on June 16, 2020; and
13. Santa Barbara County’s Public Health Officer issued a Health Order allowing personal services to reopen on June 26, 2020; and
14. The State of California ordered the re-closure of bars for counties that have been on the state’s County Monitoring List for 14 days or more, resulting in a Health Order closing Santa Barbara County’s bars on July 1, 2020; and
15. Governor Newsom ordered the closure of additional sectors for counties on the state’s County Monitoring List including indoor operations of restaurants, wineries, tasting rooms, card rooms, family entertainment centers, movie theaters, zoos, and museums; and
16. The COVID-19 pandemic and associated public health orders has resulted in the closure of many local businesses for months at a time and on an unpredictable schedule and tens of thousands of County residents losing their jobs, and will result in extreme restrictions on other local businesses and loss of income for an unknown period of time; and
17. The COVID-19 pandemic and associated public health orders are expected to result in a severe loss of income to a widespread portion of the local population that depend on wages or business

- income to pay rent and result in substantial medical expenses for certain County residents; and
18. On March 16, 2020, Governor Newsom issued Executive Order N-28-20 stating that local jurisdictions may “determine that additional measures to promote housing security and stability are necessary to protect public health or to mitigate the economic impacts of COVID-19”; and
 19. Executive Order N-28-20 suspended “[a]ny provision of state law that would preempt or otherwise restrict a local government’s exercise of its police power to impose substantive limitations on residential or commercial evictions” subject to certain limitations; and Executive Order N-28-20 authorizes local jurisdictions to suspend the evictions of tenants for the non-payment of rent if the non-payment is a result of the COVID-19 pandemic; and
 20. Executive Order N-28-20 requested that all public housing authorities “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”; and
 21. Executive Order N-28-20 requested that “[f]inancial institutions holding home or commercial mortgages, including banks, credit unions, government-sponsored enterprises, and institutional investors implement an immediate moratorium on foreclosures and related evictions when the foreclosure or foreclosure-related eviction arises out of a substantial decrease in household or business income, or substantial out-of-pocket medical expenses, which were caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19”; and,
 22. Governor Newsom issued Executive Order N-71-20 on June 30, 2020 extending the provisions of Executive Order N-28-20 through September 30, 2020; and,
 23. On September 23, 2020, Governor Newsom issued Executive Order N-80-20 extending Executive Order N-28-20 “with respect to commercial evictions only”; and,
 24. On August 28, 2020, the State Public Health Officer ordered an update to the framework for reopening, which is known as California’s Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe. Governor Newsom introduced this framework as the Blueprint for a Safer Economy, with a four-tiered color-coded county classification system: (1) purple represents the highest widespread risk level; (2) red represents substantial risk; (3) orange represents moderate risk; and, (4) yellow the lowest level, represents minimal risk. Counties are prohibited from moving through the tiers more than one tier at a time and must stay at the same tier for at least three weeks; and
 25. As of January 2021, the County remains classified as a Tier One county, in the “purple,” highest risk tier and is under the State’s Regional Stay At Home Order and Limited Stay At Home Order. In December 2020, the State Public Health Officer ordered additional closures and retail restrictions in regions that have an intensive care unit (ICU) capacity of less than 15 percent. ~~In addition,~~ Santa Barbara County is part of the Southern California region which is experiencing a recent surge in cases and hospitalizations. Additional restrictions under the State’s Regional Stay At Home Order and Limited Stay At Home Order will remain in place until the State’s four-week projections of the Region’s total available adult ICU bed capacity is greater than or equal to 15 percent. Due to the extreme uncertainty and inconsistency of employment brought on by the COVID-19 pandemic, it

is reasonable to expect Santa Barbara County businesses may have difficulty making rent or buying back owed rent.

26. The Board has determined that it is appropriate to temporarily prohibit and suspend commercial evictions through March 31, 2021, for any commercial tenant who can demonstrate that they are being evicted for the failure to pay rental payments, and that such failure is a direct impact of the COVID-19 pandemic and as long as the tenant meets the requirements of this Ordinance. This urgency ordinance does not relieve a tenant's obligation to pay rental payments or restrict a landlord's ability to recover rental payments due, and respects the discretion of public housing authorities and financial institutions to act in the public's best interest; and
27. For the immediate preservation of the public peace, health or safety, these conditions warrant and necessitate that the County adopt this urgency ordinance to protect the health, safety, and welfare of tenants in the unincorporated area of Santa Barbara County through March 31, 2021.

SECTION 2. Chapter 44 of the Santa Barbara County Code is hereby amended to read as follows:

**TEMPORARY PROHIBITION ON COMMERCIAL EVICTIONS ARISING FROM
SUBSTANTIAL INCOME LOSS OR MEDICAL EXPENSES RELATED TO THE
CORONAVIRUS PANDEMIC**

Sections:

44-12 Purpose.

44-13 Definitions.

44-14 Temporary prohibition on commercial real property evictions stemming from coronavirus pandemic losses.

44-15 Severability.

44-16 Publication.

44-17 Effective date.

44-18 California Environmental Quality Act.

Section 44-12 Purpose.

This chapter prohibits commercial real property evictions through March 31, 2021, for any commercial real property tenant who can demonstrate with a Declaration of COVID-19-related financial distress: that they have received a notice of eviction for failure to pay rental payments; that such failure is related to a substantial loss of income or substantial out-of-pocket medical expenses resulting from the 2020 novel coronavirus pandemic or any local, state, or federal government response to the pandemic; and that for unpaid rent for September 1, 2020 to March 31, 2021, the tenant has paid 25% of rental payments due for that time period consistent with existing lease obligations (Example: 25% each month in an underlying lease that requires payment each month). This urgency ordinance does not relieve a tenant's obligation to pay rental payments or restrict a landlord's ability to recover rental payments due.

Section 44-13 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section.

- (A) "Commercial real property" means any real property that is used for business or income producing purposes.
- (B) "Declaration of COVID-19-related financial distress" means the declaration as defined in Cal. Code Civil Procedure section 1179.02(d) (AB 3088).
- (C) "Owner" means any person, acting as principal or through an agent, providing commercial real property for rent, and includes a predecessor in interest to the owner.
- (D) "Rental payment" means rent or any other financial obligation of a tenant under the tenancy.
- (E) "Tenancy" means the lawful occupation of commercial real property and includes a lease or sublease.
- (F) "Tenant" means a person or entity lawfully occupying commercial real property and includes a lease or sublease.

Section 44-14 Temporary prohibition on commercial real property evictions stemming from coronavirus pandemic losses.

(A) Through March 31, 2021, the owner of commercial real property shall not terminate a commercial tenancy for failure to pay rental payments if: the tenant demonstrates that the failure to pay rental payments is directly related to a substantial loss of income or substantial out-of-pocket medical expenses associated with the coronavirus pandemic or any local, state, or federal government response to the pandemic; and the tenant meets the other requirements of this urgency ordinance.

(B) In order for this section to apply, a tenant must provide written notice to the owner and demonstrate by providing a "Declaration of COVID-19-related financial distress" under Cal. Code Civil Procedure section 1179.02(d) (AB 3088):

(1) Substantial loss of income from (a) job loss; (b) layoffs; (c) a reduction in the number of compensable hours of work; (d) a store, restaurant, office, or business closure; (e) a substantial decrease in business income caused by a reduction in opening hours or consumer demand; (f) the need to miss work to care for a home-bound school-age child or a family member infected with coronavirus; or (g) other similarly-caused loss of income that resulted from the pandemic and that for unpaid rental payments for September 1, 2020 to March 31, 2021, the tenant has paid 25% of rental payments due for that time period consistent with existing lease obligations (Example: 25% each month in an underlying lease that requires payment each month); or

(2) substantial out-of-pocket medical expenses related to the pandemic and that for unpaid rental payments for September 1, 2020 to March 31, 2021, the tenant has paid 25% of rental payments due for that time period consistent with existing lease obligations (Example: 25% each month in an underlying lease that requires payment each month).

(C) This prohibition shall also apply to an owner's action that constitutes constructive eviction under California law. An owner's failure to comply with this ordinance shall render any notice of termination of tenancy void. This section may be asserted as an affirmative defense in an unlawful detainer action. Terminations that are required to comply with an order issued by a government agency or court requiring that the real property be vacated are excepted from this prohibition. An owner's failure to comply with this ordinance does not constitute a criminal offense but will subject an owner to civil fines and penalties as set forth in this Code.

(D) Nothing in this ordinance shall relieve a tenant of the obligation to pay rental payments, nor restrict a landlord's ability to recover rental payments due.

(E) This ordinance shall be liberally construed to provide the broadest possible protection for commercial tenants in the unincorporated area of the County.

Section 44-15 Severability. If any provision of this urgency ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions of this urgency ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this urgency ordinance are severable. The Board of Supervisors hereby declares that it would have adopted this urgency ordinance irrespective of the invalidity of any particular portion thereof.

Section 44-16 Publication. Before the expiration of 15 days after passage of this urgency ordinance, a summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara in compliance with Government Code Section 25124.

Section 44-17 Effective Date. This urgency ordinance, section 44-12 through 44-18, shall take effect and be in full force immediately upon adoption by at least a four-fifths vote of the Board of Supervisors pursuant to Government Code Section 25123 and shall remain in effect and operative through March 31, 2021. County Code section 44-4 shall not apply to section 44-12 through 44-18.

Section 44-18 California Environmental Quality Act. This ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15269(c) (specific action to mitigate an emergency), Section 15061(b)(3) (no possibility the activity may have a significant effect on the environment), and Section 15378(b)(5) (the administrative activity is not a project because it will not result in any direct or indirect physical changes in the environment.)


PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this the 26th day of January 2021, by the following vote:

AYES: Supervisors Williams, Hart, Hartmann and Lavagnino

NOES: Supervisor Nelson

ABSTAIN: NONE

ABSENT: NONE



BOB NELSON, CHAIR
BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA

ATTEST: MONA MIYASATO, COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By Sheila LaGuerra
Deputy Clerk

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

By Rachel SanMulle
Deputy County Counsel