

ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF
SAN DIEGO EXERCISING THE COUNTY'S POLICE POWER TO PROHIBIT
RESIDENTIAL EVICTIONS WITHOUT JUST CAUSE AND TO ENACT
A DELAY ON CERTAIN RESIDENTIAL RENT INCREASES

The County of San Diego Board of Supervisors ordains as follows:

Section 1. Findings.

- (a) On Monday, January 22, 2024, the County of San Diego endured the fourth wettest day since 1850, with nearly three inches of rain deluging the County in a single day.
- (b) This atmospheric river or rainstorm (hereafter "the Flood") was serious enough that disaster preparedness experts refer to it as a "thousand-year storm."
- (c) The Flood left devastation in its wake. As a result of the flooding, the residents of San Diego County have had their lives upended as well as suffered property damage and economic hardship. Homes were damaged, businesses were unable to operate, and a large but presently unquantifiable number of people were displaced or stuck in uninhabitable dwellings. The full extent of the Flood effects are yet to be known.
- (d) As of the morning of January 27, 2024, at least three deaths were confirmed to have been caused by the Flood. As of that same date, there were over 2,500 damage reports totaling more than \$125,000,000 in damage to homes and personal property. In addition, the county-wide damage estimate for public infrastructure exceeded \$60,000,000. Because of the Flood's lasting effects, there is good reason to believe these figures are under-estimates of the real cost to San Diego County.
- (e) Numerous residents affected by the Flood have reported that landlords have failed to make necessary repairs to make their housing meet basic requirements of habitability, have demanded full rent despite uninhabitable conditions, and have evicted or threatened to evict tenants who have clearly suffered economic hardship because of the Flood.
- (f) In one example reported by local media, tenants at an apartment complex were given 10-days notice to relocate, and informed that relocation expenses would only be paid through the end of January, after which point their leases would be cancelled.
- (g) Economic hardship caused by the Flood may result from property damage, the need to take time off from work to address property damage and engage in property cleanup, the inability to get through flooded streets to get to work, and a variety of other negative effects from flooding.

- (h) On Tuesday, January 23, 2024, the County’s Interim Chief Administrative Officer declared a state of emergency which was ratified by the San Diego County Board of Supervisors on Wednesday January 24, 2024.
- (i) California Governor Gavin Newsom proclaimed a state of emergency in San Diego County because of the privations caused by the Flood on Tuesday January 23, 2024.
- (j) Tenants faced with the economic hardships resulting from the Flood are less able to pay rent than normal, exposing them to risk of eviction as a consequence of the Flood and its devastating effect on the local economy.
- (k) For this reason, it is necessary for a brief and limited period of time to provide protection to those tenants in areas devastated by the Flood from having an eviction exacerbate their economic hardship.
- (l) Further, as observed in the recent COVID pandemic, when landlords are prohibited from evicting tenants for nonpayment of rent, they have with some frequency resorted to alleged lease violations or other conduct-based allegations as a pretext to evict tenants whose economic situation would not let them pay rent as demanded by the landlord.
- (m) Without sufficient eviction protections, many tenants “self-evict” and move out even without adequate replacement housing, rather than face future legal eviction that could impact their ability to find new housing.
- (n) The County of San Diego is experiencing a severe housing affordability crisis and approximately forty-six percent of San Diego County housing units are occupied by renters, who would not be able to locate affordable housing within the County if they lose their housing.
- (o) In response to the housing affordability crisis, in 2019 Governor Newsom signed into law Assembly Bill 1482, a statewide response to the problem of rent gouging that further burdens tenants, some of whom cannot afford exorbitant rent increases and who might be at risk of self-evicting if faced with rent amounts that they can no longer pay.
- (p) On January 12, 2021, the San Diego County Board of Supervisors adopted a Resolution Declaring Racism as a Public Health Crisis.
- (q) The Flood offered new evidence to support this finding because many of the communities most devastated by the Flood were areas where lower income and Black, Indigenous, and persons of color (BIPOC) tenants reside.
- (r) This ordinance requires just cause for termination of a residential tenancy and provides additional tenant protections that are not prohibited by any other provision of law. The ordinance also serves justice and promotes racial equity for renters in the County of San

Diego, and preserves the public health and safety, which is threatened by the damage caused by the Flood, by keeping the residents of the County of San Diego housed.

- (s) This ordinance is necessary for the immediate preservation of the public peace, health, and safety as described in subdivision (d) of Government Code section 25123.
- (t) This Ordinance offers more protection to tenants than Civil Code section 1946.2, and this Ordinance is binding as required by Civil Code section 1946.2(g)(1)(B)(iii).

Section 2. Definitions.

- (a) "Change in CPI" means the percentage change from April 1 of the prior year to April 1 of the current year in the regional Consumer Price Index for the San Diego area, as published by the United States Bureau of Labor Statistics.
- (b) "Economic Loss" means reduced income, increased expenses, or other personal economic consequences directly or indirectly caused by the Flood, including, but not limited to, lost work hours, damage to a Tenant's property or to a Tenant's Residential Unit, or a need to relocate because of damage to a Tenant's Residential Unit or building. Economic Loss includes any loss caused by a Landlord in the course of improperly evicting or requiring the relocation of a Tenant.
- (c) "Flood Affected Area" refers only to areas that have been particularly devastated by the Flood. Specifically, the Flood Affected Area is limited to the following areas: All Residential Units located in the geographic boundaries of the following United States Postal (ZIP) Codes: 92113 (San Diego), 91977 (Spring Valley), 91950 (National City), 92114 (San Diego), 92102 (San Diego), 92115 (San Diego), 91945 (Lemon Grove), 92118 (Coronado), and 92104 (San Diego).
- (d) "Imminent health or safety threat" exists when an act or omission by a Tenant creates an immediate and serious threat to a person's health or safety, taking into account (1) any public health or safety risk caused by the eviction, and (2) all other remedies available to the landlord and other occupants of the property, against the nature and degree of health and safety risk posed by the tenant's activity. Acts or omissions of a Tenant responsive to the Flood (including but not limited to acts or omissions regarding leaving a Residential Unit for flood repairs) shall not constitute an imminent health or safety threat.
- (e) "Landlord" includes owners, lessors, or sublessors (of any level) of either residential rental property, and the agent, representative, or successor of any of the foregoing.
- (f) "Residential Unit" is a unit that is occupied by a tenant as their place of residence, including but not limited to apartments, houses, rooms, and residential hotels. A unit is considered a residential unit if it is used for residential occupation regardless of its permitting status. A Residential Unit must be in a Flood Affected Area.

- (g) "Tenant" includes a tenant, subtenant, lessee, sublessee (of any level), or any other person entitled to use or occupy residential property, including occupants who are holding over after the expiration of the term of a written or oral lease and current occupants who occupied the property with the current or prior consent of the property's landlord or a prior owner. This shall also include a prior homeowner residing in a residential unit post-foreclosure. However, the term "Tenant" only applies to a resident of a Flood Affected Area.

Section 3. Prohibition of Residential Evictions Without Just Cause.

- (a) For purposes of this section, "just cause" requires a showing that there is an imminent health or safety threat, as defined in Section 2 above.
- (b) This section does not apply to any eviction where a fully legally compliant notice of eviction has been served or an unlawful detainer action has been filed prior to January 22, 2024.
- (c) In the absence of just cause, no Landlord may lawfully terminate a residential tenancy and are therefore prohibited from engaging in any of the following behaviors with respect to a Tenant of a residential unit:
 - (1) Serve a notice of termination of tenancy on a Tenant who the Landlord (or any person or combination of persons within the definition of Landlord) knows or reasonably should have known has suffered Economic Loss of any sort caused by the Flood;
 - (2) File or serve an unlawful detainer lawsuit, ejectment action, or other action on a Tenant who the Landlord (or any person or combination of persons within the definition of Landlord) knows, or reasonably should know, has suffered Economic Loss of any sort caused by the Flood to recover possession of a Residential Unit;
 - (3) Evict a Tenant or require a Tenant to vacate a residential unit, including by seeking the entry of an eviction judgment or by causing or permitting a writ of possession to be executed, where the Landlord (or any person or combination of persons within the definition of Landlord) knows, or reasonably should know, has suffered Economic Loss of any sort caused by the Flood;
 - (4) Take any other action in reliance on a notice of termination of tenancy that expired or attempt to induce a tenant to vacate based on such a notice where the Landlord (or any person or combination of persons within the definition of Landlord) knows, or reasonably should know, has suffered Economic Loss of any sort caused by the Flood. Any such notice of termination of tenancy served or expiring from January 24, 2024 through the end of this ordinance's term shall be deemed invalid and insufficient to support an action in unlawful detainer; or

- (5) Represent to a Tenant who the Landlord (or any person or combination of persons within the definition of Landlord) knows, or reasonably should know, has suffered Economic Loss of any sort caused by the Flood that the Tenant is required to move out of their unit by law.
- (d) To the extent state law is more protective of a residential tenancy than this ordinance, those state law provisions shall apply to the residential tenancy as well. Nothing in this section shall be construed to supersede any applicable requirements in Civil Code section 1946.2 pertaining to relocation assistance or rent waiver.
- (e) No Landlord shall be permitted to recover possession of a rental unit or prevail in an unlawful detainer action unless the Landlord shows that (1) the Landlord provided notice of termination of tenancy and fully complied with all of the terms of this Section 3; (2) the lawsuit was served and filed complying with all terms of this section; and (3) unless justified by just cause, the Tenant has not suffered Economic Loss as a result of the Flood.
- (f) Nothing in this section shall be construed to reduce or eliminate a Landlord's duty to make a reasonable accommodation for disability in rules, policies, practices, or services that may be necessary to afford a person equal opportunity to use and enjoy a dwelling, including remedies such as the reinstatement of a terminated tenancy.
- (g) In addition to complying with any other applicable notice requirements under local, state, or federal law, any notice of termination of tenancy served on a Tenant with respect to a residential unit during the term of this ordinance shall include the reason for termination amounting to just cause or a different basis for eviction authorized under this ordinance and must set forth specific facts to permit a determination of the date, place, witnesses, and circumstances concerning the reason for eviction.
- (h) In order to prevail in an action to recover possession of a Residential Unit, a Landlord must prove strict compliance with all applicable notice requirements or any applicable portion of this ordinance.
- (i) Nothing in this ordinance prohibits or exempts a Landlord from any obligations to provide a Tenant a Residential Unit that complies with all statutory and common-law requirements for habitability. If a Tenant must be relocated from a unit to accomplish any necessary repairs, a Landlord must comply with all state law requirements regarding relocation assistance. Nothing in this ordinance prohibits a Landlord from relocating a Tenant temporarily, in compliance with all state and local laws including those requiring relocation assistance, if needed to fix damage caused by the Flood.
- (j) Nothing in this section may impose liability on any law enforcement personnel or their employer serving process or enforcing judgments.
- (k) Nothing in this ordinance shall relieve a Tenant of the obligation to pay rent, nor restrict a Landlord's ability to recover rent due, in accordance with state law.

Section 4. Delay of Residential Rent Increases.

- (a) During the term of this ordinance, no Landlord may increase a Tenant's rent by any amount greater than the CPI for the previous year.
- (b) Just cause, as defined in Section 3 of this ordinance, does not include a Tenant's failure to pay any increase in rent made during the term of this ordinance.
- (c) A residential real property that is exempt from the rent limits imposed by Civil Code section 1947.12 is exempt from this section.
- (d) This section does not apply when a unit lawfully becomes vacant and the Landlord sets the initial rent for a new tenancy for a new Tenant.
- (e) This section does not apply to any rent increase from taking effect for which notice was lawfully provided to a Tenant prior to January 22, 2024.

Section 5. No Waiver of Rights.

Any agreement to waive any rights under this ordinance, including a stipulation, settlement agreement, or lease agreement, shall be void as contrary to public policy.

Section 6. Remedies.

- (a) No Landlord shall be permitted to recover possession of a rental unit or prevail in an unlawful detainer action, ejectment action, or other action to recover possession of a residential unit unless the Landlord is able to prove strict compliance with any applicable provision of this ordinance, including all notice requirements. A Landlord's lack of strict compliance with the terms of subsection 3(g), and all other noncompliance constituting a fatal defect to the Landlord's case shall entitle a Tenant to judgment.
- (a) The provisions of this ordinance may be asserted as an affirmative defense in an unlawful detainer action, ejectment action, or any other action to recover possession of a residential unit.
- (b) If a Landlord attempts to recover possession or recovers possession of a residential real property in violation of this ordinance, retaliates against a Tenant for the exercise of any rights under this ordinance, or attempts to prevent a Tenant from acquiring any rights under this ordinance, the aggrieved Tenant may institute a civil proceeding for injunctive relief, money damages (including damages for mental or emotional distress as specified below), and all other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the Landlord acted in knowing violation of or in reckless disregard of this ordinance. The remedy available under this section shall be in addition to any other existing remedies which may be available to the Tenant under local, state or federal law.
- (c) The remedies provided by this ordinance are cumulative and in addition to any other

remedies available at law or in equity, including sanctions for violating an order issued pursuant to the Emergency Services Act (Government Code section 8550 et seq.) and all remedies provided for in Government Code section 25132 or for authorized for violations of the San Diego County Code of Regulatory Ordinances.

Section 7. Applicability.

- (a) Government Code section 8634 authorizes the Board of Supervisors to promulgate countywide orders and regulations necessary to provide for the protection of life and property during a local emergency. Pursuant to Government Code section 8634, the regulations in this ordinance shall apply to cities within the County of San Diego and unincorporated area of the county, subject to subsections (b) through (d) below.
- (b) If the governing body of a city has enacted an ordinance that has stronger protections for Tenants related to the Flood, the Tenant may apply the city ordinance in lieu of the county ordinance, to the extent the city's ordinance is stronger.
- (c) To the extent the city ordinance is not stronger, the county ordinance protecting Tenants shall apply despite contrary provisions or silence on the subject in the city ordinance.
- (d) This ordinance only applies to Tenants and Residential Units in Flood Affected Areas.

Section 8. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The Board of Supervisors 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 9. Effective Date.

Pursuant to Government Code Section 25123, subdivision (d), this measure is declared to be an urgency ordinance, to take effect and be in force immediately upon its passage by 4 or more votes.

Section 10. Term of Ordinance

This ordinance shall remain effective for 60 days after its effective date. However, any action by a Landlord during the term of this ordinance in violation of this ordinance's provisions shall continue to be unlawful and subject to this ordinance's provisions after the ordinance's expiration.

APPROVED AS TO FORM AND LEGALITY
CLAUDIA G. SILVA, COUNTY COUNSEL
By: Caitlin Rae, Assistant County Counsel