

CITY OF ALAMEDA ORDINANCE NO. ____

New Series

AN URGENCY UNCODIFIED ORDINANCE AMENDING UNCODIFIED ORDINANCE NO. 3275 TO PROVIDE THAT ANY AGREEMENT BETWEEN A LANDLORD AND A TENANT CONCERNING PAYMENT OF "DEFERRED RENT" MUST LIMIT A LANDLORD'S REMEDY FOR A TENANT'S BREACH OF SUCH AGREEMENT TO MONEY DAMAGES AND, AS TO THE TENANT'S FAILURE TO PAY THE DEFERRED RENT IN THE AGREEMENT, EXPRESSLY WAIVE A LANDLORD'S RIGHT TO FILE AN UNLAWFUL DETAINER ACTION TO RECOVER POSSESSION OF A TENANT'S RENTAL UNIT OR FOR ANY UNPAID RENT THAT WAS THE SUBJECT OF THE AGREEMENT

WHEREAS, Section 3-12 of the City Charter authorizes the City Council, with a 4/5 vote, to adopt, as an urgency measure, an ordinance for the immediate preservation of the public health or safety without following the procedures otherwise required prior to adoption of an ordinance; and

WHEREAS, Government Code Section 36937 allows 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 thereof; and

WHEREAS, conditions of extreme peril to the health, safety and welfare of persons have arisen in the world, the nation, the State, the County of Alameda and the City of Alameda due to the COVID-19 pandemic; and

WHEREAS, in response to this pandemic, and in order to protect public health and safety, the Governor of the State of California declared a State of Emergency; and

WHEREAS, in response to this pandemic, and in order to protect public health and safety, the City Council of the City of Alameda on March 17, 2020, declared a local emergency; and

WHEREAS, on April 7, 2020, on June 16, 2020, and on September 1, 2020, the City Council extended the local emergency until the State's declaration of emergency is rescinded, or sooner should it be appropriate to lift the declaration of local emergency; and

WHEREAS, due to the COVID-19 pandemic in the City of Alameda, the City Council determined that the public health, safety and welfare were not adequately protected from the possibility of evictions for the failure of a residential or commercial tenant to pay rent, or for evictions following a foreclosure of a mortgage, and it was in the interest of the City, all residential and commercial tenants, all residential and commercial mortgagors, and of the community as a whole, that the City adopt ordinances to protect residential and commercial tenants, and residential and

commercial mortgagors, who face eviction due to a substantial loss of income or other adverse economic circumstances, arising out of the COVID-19 pandemic; and

WHEREAS, the Council's most recently adopted comprehensive Ordinance to protect residential and commercial tenants, and residential and commercial mortgagors, who face eviction due to substantial loss of income, or other adverse economic circumstances, arising out of the COVID-19 pandemic, was Ordinance No. 3275, adopted on April 21, 2020; and

WHEREAS, Ordinance No. 3275 provides in part that tenants have under certain circumstances a substantive defense for not paying rent between March 1, 2020 and 30 days after the City Council rescinds the declaration of local emergency, and that the substantive defense for any unpaid "deferred rent" that accrues between March 1, 2020 and 30 days after the Council rescinds the declaration of local emergency would be available for 210 days; and

WHEREAS, at the time Ordinance No. 3275 was adopted, it was uncertain how long the State or local emergency would be in effect and therefore providing tenants with a seven-month time frame following the rescission of the declaration of local emergency for the substantive defense to be available to tenants (in essence providing six months in which to pay deferred rent) was a reasonable period of time; and

WHEREAS, because the State and local emergency was (and is) continuing, on September 1, 2020, the City Council adopted an ordinance amending Ordinance No. 3275 to extend to 395 days the length of the substantive defense available to tenants (in essence providing twelve months from 30 days after the City Council rescinds the local emergency) that a tenant has to repay deferred rent; and

WHEREAS, notwithstanding these extended time periods, repaying deferred rent may pose a financial hardship on some tenants and landlords and tenants may choose to enter into agreements concerning the payment of deferred rent, for example, a landlord may accept partial payment of rent as satisfying a tenant's obligation to pay the full amount of the rent, or a landlord and a tenant may agree that a tenant may pay deferred rent over a longer period of time than as provided in the Ordinance; and

WHEREAS, notwithstanding such agreements, tenants have expressed concerns that if they should default in their obligations under such agreements, they could be subject to an unlawful detainer action under State law; and

WHEREAS, tenants therefore need protection that if they do enter into these types of agreements that the landlords' remedy will be limited to money damages under the agreement and landlords would be precluded from thereafter filing unlawful detainer actions to recover the unpaid rent and regain possession of the tenant's rental unit; and

WHEREAS, the State and local emergency continues, now into its sixth month, and there is no clear indication that either will be rescinded soon; and

WHEREAS, the Council finds the conditions that were expressed in its findings in Ordinance Nos. 3275 and Ordinance No. ___ (adopted on September 1, 2020) continue to exist and incorporate them herein by reference; and

WHEREAS, in light of the numerous serious concerns set forth herein, including but not limited to the current and immediate threat to the health, safety, and welfare of the City's residential and commercial tenants, and the adverse impacts that would result from evictions due to a residential or a commercial tenant's loss of substantial income or other adverse financial circumstances arising out of the COVID-19 pandemic, the City Council determines it is in the interest of preserving the public health, safety and general welfare to adopt this ordinance; and

WHEREAS, the City Council finds and determines that if this Ordinance were not adopted as an urgency ordinance, to take effect immediately upon its adoption, tenants could enter into agreements with their landlords that would subject them to an unlawful detainer action under State law should tenants default in their obligations under such agreements; and

WHEREAS, for reasons set forth above, this ordinance is declared by the City Council to be necessary for preserving the public welfare, health, or safety and to avoid a current and direct threat to the health, safety, or welfare of the community, and the recitals above taken together constitute the City Council's statements of the reasons constituting such necessity; and

WHEREAS, adoption of this ordinance is exempt from review under the California Environmental Quality Act: Section 15378 (not a project); and Section 15061(b)(3) (no significant environmental impact); and

WHEREAS, by the staff reports, testimony, and documentary evidence presented at the March 17, 2020, April 7, 2020, April 21, 2020, June 16, 2020, July 21, 2020 and September 1, 2020 City Council meetings, the City Council has been provided with additional information upon which the findings and actions set forth in this ordinance are based.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA does ordain as follows:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby incorporates them into this ordinance.

SECTION 2. From the effective date of this ordinance, a new paragraph 8 is added to Section 2 of Ordinance No. 3275 to read as follows:

8. If a landlord and a tenant enter into an agreement by which the tenant agrees to pay the landlord all or some of the rent that the tenant has not paid between March 1, 2020 and 30 days after the City's rescission of the declaration of the local emergency due to a Substantial Loss of Income relating to or resulting from the COVID-19 pandemic, the agreement must provide that the landlord's sole remedy

for the tenant's breach of the agreement is money damages, to be collected as any other consumer debt, and that the landlord expressly waives the landlord's right to file an unlawful detainer action against the tenant for the tenant's breach of the Agreement or for any unpaid rent that is the subject of the agreement. Any agreement entered into after the effective date of this Ordinance that does not have these provisions is contrary to public policy and is deemed null and void.

SECTION 3: This ordinance is enacted pursuant to the City of Alameda's general police powers, Section 3-12 of the Charter of the City of Alameda, Article XI of the California Constitution, and Government Code Section 36937.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

SECTION 5. All agreements described in this Ordinance after adoption of this Ordinance shall be subject to this Ordinance. As an urgency ordinance, this Ordinance becomes effective immediately upon its adoption at a first reading by a four-fifths vote of the City Council.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

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I certify that the foregoing Ordinance was duly and regularly adopted and passed by the City Council of the City of Alameda in a regular meeting thereof held on the 1st day of September 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 2nd day of September 2020.

Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

Yibin Shen, City Attorney
City of Alameda