CITY OF ALAMEDA ORDINANCE NO. 3273
New Series

AN URGENCY UNCODIFIED ORDINANCE IMPOSING WITHIN THE CITY OF ALAMEDA A TEMPORARY MORATORIUM ON (A) RESIDENTIAL AND COMMERCIAL EVICTIONS DUE TO THE COVID-19 PANDEMIC AND (B) LANDLORDS' SHUTTING OF UTILITIES IN RESIDENTIAL AND COMMERCIAL RENTAL UNITS EXCEPT FOR EMERGENCY SITUATIONS, AND REPEALING ORDINANCE NO. 3268.

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 following:

A novel coronavirus (named COVID-19 by the World Health Organization) was first detected in December 2019. The Center for Disease Control and Prevention (CDC) has stated that COVID-19 is a serious public health threat, based on current information. Cases of COVID-19 have been diagnosed throughout the world, the United States, the State of California, the County of Alameda and the City of Alameda.

The exact modes of transmission of COVID-19, the factors facilitating human to human transmission, the extent of asymptomatic viral shedding, the groups most at risk of serious illness, the attack rate, and the case fatality rate all remain active areas of investigation. The CDC believes, at this time, the symptoms appear two to fourteen days after exposure. Currently, there are no vaccine or specific anti-viral treatment for COVID-19.

Actions are being taken to protect public health and limit the spread of COVID-19 but the whether those actions will be successful is unknown at this time.

Due to the COVID-19 pandemic, the President of the United States has declared a national emergency, the Governor of the State of California has declared a State of Emergency for the State and issued numerous Executive Orders to protect the public, County Health Officers throughout the State, including the County of Alameda, have also issued orders and directives in an effort to protect the public, and, on March 17, 2020, in response the COVID-19 pandemic, the City Council of the City of Alameda declared a local emergency as set forth in Ordinance No. 3267; and

WHEREAS, as a result of these various declarations, orders and directives, and the threat to public health and safety due to the contagious nature of COVID-19, residents Statewide have been ordered to shelter in place, public and private gatherings of persons have been prohibited, schools, kindergartens, day care centers have been closed, non-essential service businesses have been shuttered, and essential service businesses may have their hours or means of operation curtailed, all of which have had significant financial impacts to residents and businesses in the community; and

WHEREAS, many employers have laid off or will need to lay off employees, working Alameda residents with children may be compelled not to work in order to provide care for their children, and many Alameda residents who are working and become ill due to COVID-19, or who must self-quarantine due to COVID-19 because they have been exposed to COVID-19, do not have paid sick leave; and

WHEREAS, most commercial tenants have been ordered to shutter their businesses and even commercial tenants of businesses providing "essential services" may suffer economic losses, thereby depriving all commercial tenants of an income stream to pay rent and utilities; and

WHEREAS, those residents financially impacted due to the COVID-19 pandemic may not be able to pay rent or their mortgage, or be faced with the Hobson's Choice of paying rent/mortgage and not having sufficient funds for food, medical care or other necessities for themselves and their families; and

WHEREAS, residents unable to pay rent or the mortgage under these circumstances would be faced with the prospect of being evicted from their homes; and

WHEREAS, commercial tenants financially impacted due to the COVID-19 pandemic may not be able to pay their rent and also face the possibility of eviction; and

WHEREAS, the Governor of the State of California has issued Executive Order N-28-20 that, in part, suspends any provision of state law that would preempt or otherwise restrict a local government's exercise of its police powers to impose substantive limitations on residential or commercial evictions when the basis for the eviction is non-payment of rent or foreclosure arising out of a substantial decrease in household or business income arising out or caused by the COVID-19 pandemic; and

WHEREAS, that Order also requests financial institutions holding home and commercial mortgages, to implement an immediate moratorium and related evictions when a foreclosure or a foreclosure-related eviction arises out of a substantial decrease in household or business income, or substantial out of pocket medical expenses, arising out of or caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19; and

WHEREAS, the U.S. Department of Housing and Urban Development, in consultation with the Trump Administration and the Coronavirus Task Force, has authorized the Federal Housing Administration to implement an immediate foreclosure and eviction moratorium for single family homeowners with FHA-insured mortgages, thereby

halting all new foreclosure actions and suspending all current foreclosure actions for these properties; and

WHEREAS, due to the COVID-19 pandemic in the City of Alameda, the public health, safety and welfare are 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 is 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 an ordinance 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, if a landlord were to shut off a residential or commercial tenant's utility for reasons unrelated to an emergency, such shut off would also cause a residential tenant to be displaced from the tenant's rental unit at a time when residents are being required to remain in their residences and finding alternative housing would expose tenants unnecessarily to COVID-19 and, in the case of a commercial tenant, would cause the commercial tenant to shutter the business that would negatively impact the tenant and the tenant's employees; 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 mortgagors, 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, or from a residential or commercial tenant's being displaced or forced to shut down a business due to utilities being shut off for non-emergency purposes, the City Council determines it is in the interest of immediately preserving the public health, safety and general welfare to adopt this urgency ordinance; and

WHEREAS, the City Council finds and determines that, if a temporary moratorium on evictions from residential rental 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 tenants would have no affirmative defense in response to a landlord's taking action to evict tenants who were unable to pay rent due to a substantial loss of income or other adverse financial circumstances arising out of the COVID-19 pandemic or who were being evicted following a foreclosure of a mortgage; and

WHEREAS, the City Council finds and determines that, if a temporary moratorium on commercial evictions due to 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 commercial tenant would have no affirmative defense in response to a landlord's taking action to evict commercial tenants who were unable to pay rent due to a substantial loss of income

or other adverse financial circumstances arising out of the COVID-19 pandemic, or who were being evicted following a foreclosure of a mortgage, and promoting stability amongst commercial tenancies is critical to protecting public health; and

WHEREAS, the City Council finds and determines that, if a temporary moratorium on landlords' shutting off a residential or commercial tenant's utilities for non-emergency purposes is not imposed now, the public health, safety and welfare will be immediately threatened because residential tenants will be forced to leave their rental units to find alternative housing, thereby causing them and their households to be unnecessarily exposed to COVID-19 and, in the case of commercial tenants, such tenants would be forced to shutter their business causing significant financial harm to the tenants and their employees; 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, immediate 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 urgency; 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, and April 7, 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 urgency ordinance the following is adopted:

SUBSTANTIVE EVICTION DEFENSE TO UNLAWFUL DETAINERS INSTITUTED FOR NON-PAYMENT OF RENT, OR FOLLOWING A FORECLOSURE OF A MORTGAGE, RESULTING FROM THE COVID 19 PANDEMIC AND PROHIBITING LANDLORDS FROM SHUTTING OFF A RESIDENTIAL OR COMMERCIAL TENANT'S UTILITIES EXCEPT FOR EMERGENCY SITUATIONS.

1. For purposes of this Ordinance, the following terms shall have the following meanings:

   A. Substantial Loss of Income for a residential tenant shall a mean (1) a

reduction of 20% or more of a tenant's monthly gross income, when that monthly gross income is compared to the tenant's average gross monthly income during calendar year 2019; (2) extraordinary out-of-pocket medical expenses; or (3) extraordinary child care needs arising from school or childcare closures, relating to or resulting from the COVID-19 pandemic, including but not limited to, the need to remain off work due to COVID-19 symptoms of the tenant or a member of the tenant's household or due to the need of the tenant to self-quarantine because of the exposure to COVID-19 and the lack of paid sick leave, a reduction in the number of hours for which the tenant is paid, job loss due closure of the enterprise, business, restaurant, office, store etc. that employed the tenant, or the need to be off work to care for children whose School is closed.

B. Substantial Loss of Income for a commercial tenant shall a mean (1) a reduction of 20% or more of a commercial tenant's monthly gross income, when that monthly gross income is compared to the tenant's average gross monthly income during calendar year 2019; or (2) extraordinary business expenses necessarily incurred, including but not limited to, the need to pay employees to remain off work due to COVID-19 impacts on the employees or a member of the employees' household or reductions in business operations in compliance with governmental order to close, provide social distancing or shelter in place.

C. School shall mean any public, private, or parochial institution that provides educational instruction and/or after school programs for students in any or all of the grades from kindergarten through twelfth grade, any State licensed child care center, and/or any State licensed family day care center.

2. It shall be a defense in any eviction action instituted under State law against any residential or commercial tenant if:

A. The eviction action is instituted (1) for non-payment of rent or, as to a Section 8 Program tenant, for non-payment of the tenant's share of the contract rent, or (2) following a non-judicial or judicial foreclosure of a mortgage, for the time period between on March 1, 2020 and 30 days after the conclusion of the COVID-19 pandemic as evidenced by the City rescinding its declaration of local emergency;

B. The tenant demonstrates by substantial evidence that (1) the tenant, the tenant's household or the tenant's business has suffered a Substantial Loss of Income, (2) the tenant is or was ill with COVID-19 or caring for a household or family member who is or was ill with COVID-19 or (3) in the case of a commercial tenant, a substantial number of its workforce is or was ill with COVID-19 or is or was caring for a household or family member who is or was ill from COVID-19 and

C. The notice to quit or pay rent or, as to a foreclosure notice to quit, was

served on or after March 1, 2020.

3. Notwithstanding the time period in subsection A of this Section 2, the substantive defense set forth in subsection A of this Section 2 shall be available to residential and commercial tenants, and to residential and commercial mortgagors, between March 1, 2020 and 210 days after the conclusion of the COVID-19 pandemic as evidenced by the City rescinding its declaration of local emergency, as further explained by implementing regulations. This substantive defense shall not be available for the non-payment of rent or to an eviction proceeding following a foreclosure that occurred before March 1, 2020 nor the non-payment of rent or an eviction proceeding following a foreclosure that accrues 30 days after the City rescinds its declaration of local emergency.

4. Nothing in this Ordinance shall relieve any tenant of liability for unpaid rent, whether such rent accrued before March 1, 2020, during the City's declaration of a local emergency as set forth in Ordinance No. 3267 or following the City's rescission of the declaration of the local emergency. A landlord shall not, however, charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance as further explained by implementing regulations.

5. Any tenant unable to pay rent shall take all reasonable steps to timely inform the landlord of such and, to the extent feasible, make reasonable reduced rent payments commensurate with the tenant's reduced income and financial ability to do so.

6. No landlord shall shut off any tenant's utilities for reasons unrelated to an emergency during the period where City of Alameda has declared a local emergency relating to the COVID-19 pandemic.

SECTION 3: Waiver.

1. A landlord may request that the requirements of this Ordinance be waived or modified by the City Manager or designee, based on a showing that applying the requirements would constitute an unconstitutional taking of property or otherwise have an unconstitutional or unlawful application to the landlord's property.

2. The landlord shall bear the burden of presenting evidence to support the request for a waiver or modification of the requirements of this Ordinance and shall set forth in detail the factual and legal basis for the claim, including all supporting documentation.

SECTION 4: Remedies and Penalties for Violations

In the event of a violation of this Ordinance:

1. An aggrieved tenant may institute a civil proceeding for injunctive and/or declaratory relief, money damages of not less than three times actual damages (including damages for mental or emotional distress as specified below) and what

other relief that a Court deems appropriate. If there is an award of damages based on mental or emotional distress, the award shall be trebled if the trier of fact finds the landlord acted in knowing violation of, in reckless disregard of, this Ordinance.

2. The City may issue an administrative citation, the fine for which shall be $250 for the first offense, $500 for the second offense within a one year period, and $1000 for a third offense within one year.

3. A person shall be guilty of an infraction punishable by a fine not to exceed $250 or a misdemeanor punishable by a fine not to exceed $1000 per violation, or by imprisonment in the County jail for a period not exceeding six months, or by both a fine and imprisonment.

4. Any aggrieved person, including the City and the People of the State of California may enforce, and seek to enjoin, a violation of this Ordinance by means of a civil action. The burden of proof in such cases shall be the preponderance of evidence. As part of any civil action brought by the City or the People of the State of California to enforce this Ordinance a court shall assess against any person who commits, continues to commit, allows or maintains any violation of this Ordinance a civil penalty in an amount up to the greater of $2500 per violation per day or $10,000 per violation, 50% payable to the City and 50% to the person or persons whose rights were violated. In addition, any violator shall be liable for an additional civil penalty of up to $5000 for each offense committed against a person who is a Senior Adult, has a Disability, or is in a household with one or more minor children.

SECTION 5: The Community Development Director may adopt administrative regulations to effectuate and implement this Ordinance.

SECTION 6: The City Council requests financial institutions, including banks, credit unions, government sponsored enterprises and institutional investors, holding home or commercial mortgages that are not single family home Federal Housing Administration insured mortgages to implement an immediate moratorium on foreclosures when the foreclosure arises out of a Substantial Loss of Income as defined in this Ordinance.

SECTION 7: 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 8. 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 9. All evictions based on a Substantial Loss of Income on or after the date of final passage and adoption of this Ordinance shall be subject to this Ordinance. As an emergency ordinance, this Ordinance becomes effective immediately upon its

adoption at a first reading by a four-fifths vote of the City Council.

SECTION 10. Ordinance No. 3268 is hereby repealed.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

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I certify that the foregoing Ordinance was passed and adopted by the City Council of the City of Alameda at a regular meeting thereof held on this 7th day of April 2020 by the following vote:

AYES:	Councilmembers Daysog, Knox White, Oddie, Vella and Mayor Ezzy Ashcraft – 5.
NOES:	None.
ABSENT:	None.
ABSTENTIONS:	None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 8th day of April 2020.

Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

Yibin Shen, City Attorney

City of Alameda