

ORDINANCE NO. ____ (N.S.)

AN ORDINANCE ADDING TITLE 3, DIVISION 1, CHAPTER 5 OF THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES, RELATING TO PREDATORY PRACTICES AFTER THE DECLARATION OF AN EMERGENCY

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

Section 1. Findings.

- (a) The Board of Supervisors finds and determines that the County is committed to protecting the life, health, and safety of all people in the County. In emergencies and major natural or manmade disasters including, but not limited to, earthquakes, floods, fires, storms, droughts, plant or animal infestation or diseases, pandemic or epidemic disease outbreaks, or civil disturbances, there may be a temporary spike in demand for food, repair or reconstruction services, emergency or medical supplies, hotels, motels, housing, or gasoline. Under such circumstances, there is a heightened risk to consumers that prices for goods and services that are vital and necessary for their health, safety, and welfare may be significantly increased. Therefore, the County of San Diego has an interest in ensuring that County residents are protected against overpricing of vital and necessary goods and services during a state of emergency as proclaimed by the President of the United States, the Governor of California, or locally by the Board of Supervisors during a local emergency as declared pursuant to law.
- (b) 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, when threatened by the damage caused by an emergency, by keeping the residents of the County of San Diego housed.
- (c) 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. Title 3, Division 1 of the San Diego County Code of Regulatory Ordinances is hereby amended to add Chapter 5 as follows:

CHAPTER 5: PREDATORY PRACTICES AFTER THE DECLARATION OF AN EMERGENCY

SEC 31.501 DEFINITIONS

Unless otherwise provided below, the definitions provided by California Penal Code section 396 shall apply:

- (a) "State of emergency" means a natural or manmade disaster or emergency for which a state of emergency has been proclaimed by the President of the United States or the Governor of California.

- (b) "Care Facility" means a facility that provides long-term residential care to individuals requiring assistance with personal care or medical needs.
- (c) "Economic Loss" means reduced income, increased expenses, or other personal economic consequences directly or indirectly caused by the emergency, 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.
- (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 emergency (including but not limited to acts or omissions regarding leaving a Residential Unit for emergency 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) "Local emergency" means a natural or manmade disaster or emergency for which a local emergency has been proclaimed pursuant to California Government Code section 8630.
- (g) "Medical Supplies" are any items used in the diagnosis, cure, mitigation, treatment, or prevention of disease or other medical condition, including, but not limited to, prescription and non-prescription drugs and medical devices, bandages, gauzes, isopropyl alcohol, and personal protective equipment, including, but not limited to, masks, gowns, face shields, and gloves.
- (h) "Vital and necessary" means required to sustain the health, safety, and welfare of a person or animal.
- (i) "Mobilehome" means the definition set forth in California Civil Code section 798.3, including subsequent amendments.
- (j) "Mobilehome Space" means the site within a Mobilehome Park intended, designed, or used for the location or accommodation of a Mobilehome and any accessory structures or attached appurtenances whether or not the Mobilehome space is permitted pursuant to State or local law.
- (k) "Person" means any individual, online retailer, vendor or any form of business organization or association, or any other legal entity.
- (l) "Rental Price" means the following:
 - (1) For housing rented within one year prior to the time of the proclamation or declaration of emergency, the actual rental price paid by the tenant.
 - (2) For housing not rented at the time of the declaration or proclamation, but rented, or offered for rent, within one year prior to the proclamation or declaration of emergency, the most recent rental price offered before the proclamation or declaration of emergency.
 - (3) For housing rented at the time of the proclamation or declaration of emergency but which becomes vacant while the proclamation or declaration of emergency remains in effect and which is subject to any County rent control ordinance, rule, regulation, or initiative measure, the actual rental price paid by the

- previous tenant or 160 percent of the fair market rent established by the United States Department of Housing and Urban Development, whichever is greater.
- (m) "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 an Emergency Affected Area.
 - (n) "Sell" or "Resell" means to engage in a sales transaction located within the unincorporated area of the County of San Diego, or to engage in a sales transaction with any resident of the unincorporated area of the County of San Diego whereby the sale of goods or services occurs through the internet, mail order, telephone, or any other means and whereby delivery of such goods or services occurs within the unincorporated area of the County of San Diego.
 - (o) "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 an Emergency Affected Area.
 - (p) "Unconscionably excessive price" means a price that is more than 50 percent above either the person's total cost paid for the good or the person's total cost of producing and selling the good.
 - (q) "Vital and necessary" means required to sustain the health, safety, and welfare of a person or animal.

SEC 31.502 PREDATORY PRACTICES AFTER THE PROCLAMATION OF AN EMERGENCY

(a) Upon the proclamation of a state of emergency by the President of the United States, Governor of California or locally by the Board of Supervisors or authorized County official pursuant to California Government Code section 8630, the following shall be unlawful:

- (1) Goods and Services Previously Offered for Sale. For a period of 30 days following that proclamation or declaration, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell any vital and necessary consumer food items or goods, including but not limited to, water, milk, eggs, flour, salt, dried and canned goods, sanitary products, medical supplies, batteries, propane, gasoline or other motor fuels, baby food, diapers, and baby supplies, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, restaurant food delivery services, and storage services, or gasoline or other motor fuels for a price of more than 10 percent above the price charged by that person for those goods or services during the 30-day period immediately preceding to the proclamation or declaration of emergency, subject to the conditions set forth in subsection (C) of this Section.
- (2) Goods and Services Not Previously Offered for Sale. If a good or service has not been sold by a person during the 30-day period immediately preceding the day

that proclamation or declaration is made, it is unlawful for that person to sell or offer to sell that good or service for an unconscionably excessive price.

- (3) Hoarding. In addition to the prohibitions set forth above, for a period of 30 days following that proclamation or declaration, it is unlawful for a person to purchase and accumulate vital and necessary consumer food items or goods, including but not limited to water, milk, eggs, flour, salt, dried and canned goods, sanitary products, medical supplies, batteries, propane, gasoline or other motor fuel, baby food, diapers, and baby supplies, in excess of what would be ordinarily and customarily needed for business, personal or home consumption, for the purpose of reselling or offering to resell such vital and necessary consumer food items or goods.
- (4) Construction Goods and Services. For a period of 180 days following that proclamation or declaration, it is unlawful for a contractor to sell or offer to sell any vital and necessary repair or reconstruction services or any services used in emergency cleanup for a price of more than 10 percent above the price charged by that person for those services immediately prior to the proclamation or declaration of emergency, subject to the conditions set forth in subsection (C) of this Section.
- (5) Hotels and Motels. For a period of 30 days following that proclamation or declaration, it is unlawful for an owner or operator of a hotel or motel to increase the hotel's or motel's regular rates, as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent, subject to the conditions set forth in subsection (C) of this Section.
- (6) Short Term or Vacation Rentals. For a period of 30 days following that proclamation or declaration, it is unlawful for a booking service or homeowner to advertise, accept, process payments for, or increase the daily rental rate as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent, subject to the conditions set forth in subsection (C) of this section. It is unlawful for booking services and homeowners to cancel reservations in order to advertise the same property for an increased rate higher than 10 percent than the originally advertised rate.
- (7) Home and Apartment Rentals. For a period of 30 days following that proclamation or declaration, it is unlawful for any person to increase the rental price as advertised, offered, or charged for housing, to an existing or prospective tenant, by more than 10 percent. However, a greater rental price increase is not unlawful if that person can prove that the increase is directly attributable to additional costs for repairs or additions beyond normal maintenance that were amortized over the rental term that caused the rent to be increased greater than 10 percent or that an increase was contractually agreed to by the tenant prior to the proclamation or declaration. For rental housing that was not rented or advertised for rent within one year prior to a declaration of emergency, the price cannot

exceed 160 percent of the fair market rent value of the rental housing as established by the U.S. Department of Housing and Urban Development.

- (8) Care Facilities. For a period of 30 days following that proclamation or declaration it is unlawful for care facilities to increase the cost of care as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent subject to the conditions set forth in subsection (C) of this Section.
- (9) Mobilehomes. For mobilehomes and mobilehome spaces rented to existing tenants at the time of the proclamation or declaration of emergency it is unlawful for any person to charge a rent in excess of the amount of rent last charged for a space in the same mobilehome park.

(b) A business offering an item for sale at a reduced price immediately prior to the proclamation or declaration of the emergency may use the price at which it usually sells the item to calculate the price..

(c) For the pricing of goods and services, construction goods and services, hotel and motel rates, short term and vacation rentals and care facilities, described in subsections (A)(1)-(A)(2), and (A)(3)(A)(4)-(A)(6) and (A)(8) of this Section, a greater price increase is not unlawful if the person, contractor, business, owner, operator or other entity selling the goods or services can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor, goods or materials used to provide the services, provided that in those situations where the increase in price is attributable to the additional costs imposed by the seller's or contractor's supplier or additional costs of providing the goods or services during the state of emergency, the price represents no more than 10 percent above the total of the cost to the seller or contractor plus the markup customarily applied by the seller or contractor for that good or service in the usual course of business immediately prior to the onset of the state of emergency. In addition, a greater price increase is not unlawful if an owner or operator of a hotel or motel, short term or vacation rental, or care facility can prove that the increase in price is due to seasonal adjustments in rates that are regularly scheduled, or to previously contracted rates, or if the increase in costs is attributable to the declared emergency.

(d) The provisions of this Section may be extended pursuant to California Penal Code section 396 (e) for additional 30-day periods by resolution of the Board of Supervisors, or the California Legislature if deemed necessary to protect the lives, property, or welfare of the citizens.

SEC 31.503 PROHIBITION OF RESIDENTIAL EVICTIONS WITHOUT JUST CAUSE EVICTION

Upon the proclamation of a local state of emergency by the Board of Supervisors or other authorized official for San Diego County that includes a reference to this section 31.504, evictions without just cause are prohibited until the seventh day after the date of the proclamation unless the County of San Diego issues an urgency ordinance addressing evictions on an earlier date. The following provisions apply:

- (a) Upon the proclamation of a local state of emergency by the Board of Supervisors

or other authorized official for San Diego County that includes a reference to this section 31.503, evictions without just cause are prohibited until the seventh day after the date of the proclamation unless the County of San Diego issues an urgency ordinance addressing evictions on an earlier date.

- (b) For purposes of this section, “just cause” requires a showing that there is an imminent health or safety threat, as defined in Section 31.501 above.
- (c) 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 the proclamation, except that no eviction order against a residential tenant may be executed or enforced while Section 31,503 is in effect pursuant to a proclamation of a state of emergency by the Board or other authorized official for San Diego County, unless there is an imminent health or safety threat as defined in Section 31.503 above.
- (d) 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 emergency;
 - (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 emergency 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 emergency;
 - (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 emergency. Any such notice of termination of tenancy served or expiring while section 31.503 is in effect shall be deemed invalid and insufficient to support an action in unlawful detainer;
 - (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 emergency that the Tenant is required to move out of their unit by law.

- (e) 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.
- (f) 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 emergency.
- (g) 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.
- (h) 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 seven day term of this ordinance as stated in section (a) above, 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.
- (i) 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.
- (j) 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 relocation is needed to fix damage caused by the emergency.
- (k) Nothing in this section may impose liability on any law enforcement personnel or their employer serving process or enforcing judgments.
- (l) 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.

SEC 31.504 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 3. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against the same in a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY
CLAUDIA G. SILVA
BY: Monica Hall, Senior Deputy County Counsel