ORIGINAL

ORDINANCE NO. 20-3

AN URGENCY ORDINANCE IMPOSING MORATORIA ON CERTAIN EVICTIONS FOR FAILURE TO PAY RENT, EVICTIONS FOR FAILURE TO PAY UTILITIES, UTILITY SHUT OFFS FOR FAILURE TO PAY RENT, UTILITY SHUT OFFS FOR FAILURE TO PAY UTILITIES, LATE FEES OR PENALTIES FOR FAILURE TO PAY RENT, LATE FEES OR PENALTIES FOR FAILURE TO PAY UTILITIES, RENT INCREASES, AND UTILITY CHARGE INCREASES, FOR CERTAIN RESIDENTIAL AND COMMERCIAL TENANTS IN THE CITY OF CONCORD EXPERIENCING A DOCUMENTED SUBSTANTIAL DECREASE IN HOUSEHOLD OR BUSINESS INCOME CAUSED BY THE COVID-19 PANDEMIC, OR BY ANY LOCAL, STATE, OR FEDERAL GOVERNMENT RESPONSE TO COVID-19, AND RECOMMENDING THAT FINANCIAL INSTITUTIONS AND UTILITIES FREEZE FORECLOSURE OR UTILITY SHUT-OFFS

RECITALS

THE CITY COUNCIL OF THE CITY OF CONCORD DOES ORDAIN AS FOLLOWS:

WHEREAS, the United States of America has confirmed cases of individuals who have a severe acute respiratory illness caused by a virus first detected in Wuhan, Hubei Province, China, otherwise commonly referred to as the "COVID-19" virus. The COVID-19 virus was first reported in China on December 31, 2019. As of March 23, 2020, the World Health Organization (WHO) has reported 332,935 confirmed cases of COVID-19, with 14,510 deaths worldwide. There are 31,573 confirmed cases in the United States and 201 deaths, with 61 cases reported in Contra Costa County and one death. The number of confirmed cases has continued to escalate dramatically over a short period of time; and

WHEREAS, WHO officials now report that sustained human-to-human transmission of the virus is occurring. Transmission from asymptomatic individuals has been documented. Suspected community transmission of the virus is occurring in the United States. Although the majority of individuals infected with COVID-19 recover from the disease without special treatment, there is significant potential for serious infection and death. The public has no known natural immunity to the virus and there is currently no vaccine to offer protection to the public; and

WHEREAS, on January 30, 2020, WHO declared the COVID-19 outbreak a public health emergency of international concern, and on January 31, 2020, the U.S. Department of Health and Human Services declared a Public Health Emergency for the United States of America; and

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WHEREAS, the United States Centers for Disease Control and Prevention (CDC) has determined that the COVID-19 virus presents a serious public health threat, requiring coordination among state and local health departments to ensure readiness for potential health threats associated with the virus; and

WHEREAS, on March 4, 2020, the Governor of California proclaimed a state of emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS, on March 7, 2020, the California Department of Public Health issued its "Mass Gatherings Guidance on Novel Coronavirus or COVID-19," followed by a March 12, 2020, recommendation that certain gatherings in California be postponed or canceled for the remainder of March; and

WHEREAS, on March 10, 2020, due to the introduction of COVID-19, the Contra Costa County Board of Supervisors proclaimed the existence of a local emergency throughout Contra Costa County (County Resolution No. 2020/92); and

WHEREAS, on March 10, 2020, the Contra Costa County Board of Supervisors requested that the Governor proclaim Contra Costa County to be in a state of emergency (County Resolution No. 2020/91); and

WHEREAS, on March 10, 2020, Contra Costa Health Services issued "Novel Coronavirus (COVID-19) Interim Guidance for Social Distancing;" and

WHEREAS, on March 12, the Governor of the State of California issued Executive Order N-25-20 which, among other things, orders that all California residents are to ". . . heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19;" and

WHEREAS, Concord Municipal Code Chapter 2.30 (Civil Emergencies) empowers the Director of Emergency Services, designated as the City Manager, to proclaim a local emergency when the City Council is not in session and requested City Council ratification thereof; and

WHEREAS, on March 13, 2020, the Director proclaimed a local emergency and requested City Council ratification thereof; and

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WHEREAS, on March 19, 2020, at a special meeting, the City Council ratified said proclamation of a local emergency; and

WHEREAS, on March 16, 2020, the Governor of the State of California issued Executive Order N-28-20, Section 1 of which waives the 30-day time limitation set forth in Penal Code Section 396(f), which provides that, upon a declaration of emergency by the President, the Governor or City, it is unlawful to evict a residential tenant and rent or offer to rent to another person at a rental price greater than what the evicted tenant could be charged under Penal Code Section 396. The Governor's waiver of the 30-day time limitation shall be in effect until May 31, 2020 unless extended; and

WHEREAS, Section 2 of Executive Order N-28-20 suspends any 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 when: (i) the basis for the eviction is nonpayment of rent, or a foreclosure, arising out of a substantial decrease in household or business income (including, but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or a substantial decrease in business income caused by a reduction in opening hours or consumer demand), or substantial out-of-pocket medical expenses; and (ii) the decrease in household or business income or the out-of-pocket medical expenses described in subparagraph (i) was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented; and

WHEREAS, Section 2 of Executive N-28-20 further provides that the statutory causes of action for judicial foreclosure, unlawful detainer, or any other statutory causes of action to evict residential or commercial tenants or occupants of residential property after foreclosure are suspended when a local government has imposed a limitation on eviction pursuant to the Executive Order, effective through May 31, 2020 unless extended; and

WHEREAS, Executive Order N-28-20 further requests that the California Public Utilities Commission monitor measures undertaken by public and private utility providers to implement customer service protections for critical utilities, including but not limited to electric, gas, water, internet, landline telephone, and cell phone service, in response to COVID-19; and

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WHEREAS, on March 16, 2020, the Contra Costa County Health Officer directed all individuals in Contra Costa County to shelter at their place of residence, except to provide or receive essential services or engage in certain essential activities and work for "Essential Businesses" and governmental services; and

WHEREAS, on March 19, 2020, the Governor for the State of California issued Executive Order N-33-20, which directed California residents to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors; and

WHEREAS, the City Council desires to maintain economic infrastructure so that "Essential Businesses" as that term is defined in the Contra Costa County Department of Health Order dated March 16, 2020, may remain open and continue operations uninterrupted in support of residents who are sheltering in place, and so that all businesses have the ability to recover from the impacts of the virus and continue to provide employment and generate tax revenue and so that economic recovery is possible after the emergency is over, all of which are in the interest of the public peace, health, safety and welfare; and

WHEREAS, during this time of shelter in place, self-isolation, and other social distancing, many individuals are experiencing substantial losses of personal or business income as a result of business closures or the loss of hours or wages or layoffs related to COVID-19, hindering their ability to pay rent and/or utility bills, and/or businesses' ability to secure or provide insurance coverage; and

WHEREAS, displacement of residents and businesses through eviction for Failure to Pay Rent or Failure to Pay Utilities destabilizes the living situation of residents, the viability of businesses, the living situation of business owners and employees, the provision of the County Order for Essential Businesses, and impacts the health of the community by removing the locations where these residents may be sheltering in place, self-isolating or practicing other social distancing measures, removing access to and provision and receipt of essential services or activities, and removing essential means of accessing and communicating essential service information and related public health and safety information; and

WHEREAS, increases in residential or commercial rents will exacerbate the potential and frequency of Failure to Pay Rent and Failure to Pay Utilities, and further threaten the public peace,

health, safety, and welfare by threatening housing security and increasing the potential of homelessness, which can exacerbate the vulnerability to COVID-19 exposure; and

WHEREAS, if a landlord were to shut off a tenant's utilities for Failure to Pay Rent or Failure to Pay Utilities, such shut off would also cause a tenant to be displaced or a business to be interrupted, and further threaten the public peace, health, safety, and welfare; and

WHEREAS, the City Council desires to create stability for the impacted residents and business to ensure that they can comply with federal, local and state directives to practice social distancing, access, provide and receive essential services from Essential Businesses, and access and communicate essential service information and related public health and safety information, which is the interest of the public peace, health, safety and welfare; and

WHEREAS, Government Code Section 36937 authorizes the adoption of an urgency ordinance for the "immediate preservation of public peace, health or safety," as long as such ordinance contains a declaration of the facts constituting the urgency and it is passed by a four-fifths (4/5) vote of the City Council; and

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

WHEREAS, by the staff report, public testimony, and documentary evidence presented at the March 19, 2020 special City Council meeting, the City Council directed preparation of an urgency ordinance restricting residential and commercial evictions and rent increases in order safeguard the public peace, health, safety, and welfare during the pandemic; and

WHEREAS, by the staff report, public testimony, and documentary evidence presented at the March 25, 2020 special City Council meeting, the City Council has been provided with information upon which the findings and actions set forth in this Ordinance is based.

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

Section 1. **Recitals**. The City Council finds and determines that the foregoing recitals to be

true and correct and hereby incorporates them into this Ordinance.

Section 2. CEQA. Adoption of this Ordinance is exempt from review under the California Environmental Quality Act ("CEQA") pursuant to the following, each a separate and independent basis: California Public Resources Code Section 21080(b)(4) and CEQA Guidelines Section 15269(c) because adoption of this Ordinance is to prevent or mitigate an emergency; CEQA Guidelines Section 15061(b)(3) because it because this Ordinance only regulates evictions and rents and it can be seen with certainty that is no potential for it to cause a significant effect on the environment; CEQA Guidelines Section 15183 because this Ordinance is consistent with the City's General Plan policies and goals and/or CEQA Guidelines Section 15378(b) because this Ordinance is not a project but an administrative action that will not result in direct or indirect physical changes to the environment.

Section 3. **Authority; Term; Extension**. This Ordinance is enacted pursuant to the City of Concord's general police powers, Section 7 of Article XI of the California Constitution, and California Government Code Sections 8634, 36934 and 36937, the Governor's Proclamation of a State Emergency dated March 4, 2020, Executive Order N-28-20, and any other rights or obligations under local, Contra Costa County, State of California, and Federal law. This Ordinance is effective immediately and shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however that this Ordinance shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order. All references to the "term" of this Ordinance shall mean the effective date hereof through May 31, 2020 and any extension.

Section 4. **Definitions**. For purposes of this Ordinance only, the definitions below apply to terms used herein.

a. "Affected Commercial Tenancy" means use or occupancy of a Commercial Unit by an Affected Commercial Tenant.

b. "Affected Commercial Tenant" shall mean a Commercial Tenant, who has a valid City of Concord business license and who has experienced a "Substantial decrease in household or business income," as defined herein, and who has satisfied the "Notice and Documentation to Landlord" obligations set forth in Section 5.a, below.

c. Affected Residential Tenancy" means use or occupancy of a Residential Unit by an Affected Residential Tenant.

d. "Affected Residential Tenant" shall mean a Residential Tenant who has experienced a "Substantial decrease in household or business income," as defined herein, and who has satisfied the "Notice and Documentation to Landlord" obligations set forth in Section 5.a, below.

e. "China" means the People's Republic of China.

f. "City Council" means the City of Concord City Council.

g. "Commercial Tenant" means any business entitled by written or oral agreement, or by sufferance, to use or to occupy a Commercial Unit.

h. "Commercial Tenancy" means use or occupancy of a Commercial Unit by a Commercial Tenant.

i. "Commercial Unit" means a structure or part of a structure that is used as a place of business, and which the Commercial Tenant pays Rent for the use and occupancy for periods in excess of 29 days.

j. "County Order" means the Contra Costa County Department of Health Order dated March 16, 2020.

k. "COVID-19," "pandemic," and/or the "virus" means the novel (new) corona virus.

l. "Director" means the City of Concord City Manager in her capacity as Director of Emergency Services.

m. "Essential Businesses" means (1) healthcare operations and essential infrastructure therein; (2) grocery stores, certified farmers' markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, poultry, and any other household consumer products (such as cleaning and personal care products), including businesses that ship or deliver groceries, food, goods or services to residences; (3) food cultivation, including farming, livestock, and fishing; (4) businesses that provide food, shelter, and social services and other necessities of life for economically disadvantaged or otherwise needy individuals; (5) newspaper and other media; (6) gas stations, auto-supply and repair facilities; (7) banks and related financial

institutions; (8) hardware stores; (9) plumbers, electricians, exterminators and other necessary service providers to maintain safety, sanitation and essential operation of residences, essential activities and businesses; (10) laundromats, dry cleaners, and laundry service providers; (11) restaurants and other facilities that prepare food for take-out only; (12) businesses that supply products for people to work from home or support other essential businesses; (13) airlines, taxis or private transportation necessary for essential activities; (14) home-based care for seniors, adults of children; (15) professional services, such as legal or accounting, when necessary to comply with legally mandated activities; and (16) childcare facilities for employees exempted to work in the County Order.

n. "Failure to Pay Rent" as used herein and pursuant to the Governor's Executive Order N-28-20 means : (i) nonpayment of rent arising out of a substantial decrease in household or business income (including, but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or a substantial decrease in business income caused by a reduction in opening hours or consumer demand), or substantial out-of-pocket medical expenses; and (ii)the decrease in household or business income or the out-of-pocket medical expenses described in subparagraph (i) was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented.

o. "Failure to Pay Utilities" means failure to pay Utilities for the same reasons as set forth for "Failure to Pay Rent."

p. "Governor" means the Governor of the State of California.

q. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of either a Residential Unit or a Commercial Unit, and the agent, representative, or successor of the foregoing.

r. "Late Fees and Penalties" means late fees, charges, penalties, or interest on for failure to pay monies when due.

s. "Ordinance" means this urgency ordinance.

t. "Rent increase" or "increase rent" means any upward adjustment of the rent amount.

u. "Rent" means the rental amount to be paid by the Tenant to the Landlord in the month immediately preceding the effective date of the Rent increase.

v. "Rental Unit" means a Residential Unit and a Commercial Unit.

w. "Residential Tenant" means a Tenant, residential tenant, subtenant, lessee, sublessee, occupant, or any other person entitled by written or oral agreement, or by sufferance, to use or to occupy a Residential Unit, including each dependent of any Residential Tenant whose primary residence is the Residential Unit.

x. "Residential Tenancy" means use or occupancy of a Residential Unit by a Residential Tenant.

y. "Residential Unit" means a structure or part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which household pays rent for the use and occupancy for periods in excess of seven days whether or not the residential use is a conforming use permitted under the Concord Municipal Code. "Residential Unit" includes a "mobile home space" as that term is defined in Concord Municipal Code Section 15.105.160.

z. "Substantial decrease in household or business income" means (1) a reduction of 20% or more of a Residential Tenant's monthly gross pay caused by layoffs or a reduction in the number of compensable hours of work caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented, when that monthly gross pay is compared to the Residential Tenant's average gross monthly pay during calendar year 2019; or (2) a reduction of 20% or more of a Commercial Tenant's gross business receipts caused by a reduction in opening hours or consumer demand caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented, when that monthly gross business receipts is compared to the Commercial Tenant's average gross business receipts during calendar year 2019; or (3) substantial out-of-pocket medical expenses caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented; or (4) extraordinary childcare needs or expenses arising from school or childcare closures caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented.

aa. "Tenant" means any person having the legal responsibility for the payment of rent for a Residential Unit or Commercial Unit in the City of Concord. The term "Tenant"

shall include the agent or representative of the tenant; provided, that such agent or representative shall have full authority to answer for the tenant and enter into agreements on the tenant's behalf. The term "Tenant" includes a Residential Tenant and Commercial Tenant.

bb. "Unit" means a Commercial Unit and a Residential Unit.

cc. "Utilities" means critical utilities, including but not limited to electric, gas, water, internet, landline telephone, and cell phone service pursuant to Executive Order N-28-20.

dd. "WHO" means the World Health Organization.

SECTION 5. Notice to Landlord; Documentation; Repayment.

a. Notice to Landlord. Any Tenant who has experienced a "Substantial decrease in household or business income" must so notify their Landlord in writing (including via email) at least seven (7) days before Rent or Utilities are due. Within three (3) days after Rent or Utilities are due, such Tenant must provide Landlord with written documentation or other objectively verifiable means of such "Substantial decrease in household or business income".

b. Documentation.

i. Documentation of a Residential Tenant's "Substantial decrease in household or business income" pursuant to clause (1) of said definition s may be documented by employer letter of work layoff or termination, letter of approval for State unemployment, pay stubs showing reduced hours or other documents that support a decrease in gross monthly pay during calendar year 2019 together with a written description supported by documentary evidence of how such decrease was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

ii. Documentation of a Commercial Tenant's "Substantial decrease in household or business income" pursuant to clause (2) of said definition may be documented by financial statements or other revenue tracking that compare the monthly gross business receipts to the average gross business receipts during calendar year 2019 together with a written description supported by documentary evidence of how such decrease was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

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iii. Documentation of a "Substantial decrease in household or business income" pursuant to clause (3) of said definition with respect to substantial out-of-pocket medical expenses may be documented by receipts for medical care or by insurance company notifications of that verify increased out-of-pocket medical expenses over calendar year 2019 together with a written description supported by documentary evidence of how such increase was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

iv. Documentation of a "Substantial decrease in household or business income" pursuant to clause (4) of said definition with respect to extraordinary childcare needs or expenses arising from school or childcare closures may be documented by providing a copy of the notification of school closure or by receipts that verify such increased needs or expenses over calendar year 2019 together with a written description supported by documentary evidence of how such increases were caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

c. Repayment. Affected Residential Tenants and Affected Commercial Tenants shall receive a ninety (90) day grace period per month of arrears after expiration or other termination of the term of this Ordinance during which to repay any monies due to a Landlord for a Failure to Pay Rent or a Failure to Pay Utilities. For example, if an Affected Residential Tenant is two months in arrears for Rent and/or Utility Charges, that counts as two months total and the Affected Residential Tenant would then have 180 days to repay the arrears amounts (2 months x 90 days =180 days).

Section 6. **Eviction Moratoria**. All moratoria are subject to Section 10, Exceptions and Exemptions, below.

d. Moratorium on Evictions for Failure to Pay Rent; Affected Residential Tenants. During the term of this Ordinance, a Landlord shall not terminate an Affected Residential Tenancy or evict any Affected Residential Tenant for Failure to Pay Rent.

e. Moratorium on Evictions for Failure to Pay Utilities; Affected Residential Tenants. During the term of this Ordinance, a Landlord shall not terminate any Affected Residential Tenancy or evict any Affected Residential Tenant for Failure to Pay Utilities.

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f. Moratorium on Evictions for Failure to Pay Rent; Affected Commercial Tenants. During the term of this Ordinance, a Landlord shall not terminate any Affected Commercial Tenancy or evict any Affected Commercial Tenant for Failure to Pay Rent.

g. Moratorium on Evictions for Failure to Pay Utilities; Affected Commercial Tenants. During the term of this Ordinance, a Landlord shall not terminate any Affected Commercial Tenancy or evict any Affected Commercial Tenant for Failure to Pay Utilities.

Section 7. **Utility Shutoff Moratoria**. All moratoria are subject to Section 10, Exceptions and Exemptions, below.

a. Moratorium on Utility Shut Offs for Failure to Pay Rent; Affected Residential Tenants. During the term of this Ordinance, a Landlord shall not shut off Utilities to any Affected Residential Tenant for Failure to Pay Rent.

b. Moratorium on Utility Shut Offs for Failure to Pay Utilities; Affected Residential Tenants. During the term of this Ordinance, a Landlord shall not shut off Utilities to any Affected Residential Tenant for Failure to Pay Utilities.

c. Moratorium on Utility Shut Offs for Failure to Pay Rent; Affected Commercial Tenants. During the term of this Ordinance, a Landlord shall not shut off Utilities to any Affected Commercial Tenant for Failure to Pay Rent.

d. Moratorium on Utility Shut Offs for Failure to Pay Utilities; Affected Commercial Tenants. During the term of this Ordinance, a Landlord shall not shut off Utilities to any Affected Commercial Tenant for Failure to Pay Utilities.

Section 8. **Late Fees and Penalties Moratoria**. All moratoria are subject to Section 10, Exceptions and Exemptions, below.

(a) Moratorium on Late Fees or Penalties for Failure to Pay Rent; Affected Residential Tenants. During the term of this Ordinance, a Landlord shall not charge or assess Late Fees or Penalties against any Affected Residential Tenant for Failure to Pay Rent.

(b) Moratorium on Late Fees or Penalties for Failure to Pay Utilities; Affected Residential Tenants. During the term of this Ordinance, a Landlord shall not charge or assess Late Fees or Penalties against any Affected Residential Tenant for Failure to Pay Utilities.

(c) Moratorium on Late Fees or Penalties for Failure to Pay Rent; Affected Commercial Tenants. During the term of this Ordinance, a Landlord shall not charge or assess Late Fees or Penalties against any Affected Commercial Tenant for Failure to Pay Rent.

(d) Moratorium on Late Fees or Penalties for Failure to Pay Utilities; Affected Commercial Tenants. During the term of this Ordinance, a Landlord shall not charge or assess Late Fees or Penalties against any Affected Commercial Tenant for Failure to Pay Utilities.

Section 9. **Rent Increase Moratoria**. All moratoria are subject to Section 10, Exceptions and Exemptions, below.

a. Moratorium on Rent Increases; Affected Residential Tenants. During the term of this Ordinance, a Landlord shall not increase Rent for Affected Residential Tenants.

b. Moratorium on Utility Charge Increases; Affected Residential Tenants. During the term of this Ordinance, a Landlord shall not increase Utility charges for Affected Residential Tenants.

c. Moratorium on Rent Increases; Affected Commercial Tenants. During the term of this Ordinance, a Landlord shall not increase rents for Affected Commercial Tenants.

d. Moratorium on Utility Charge Increases; Affected Commercial Tenants. During the term of this Ordinance, a Landlord shall not increase Utility charges for Affected Commercial Tenants.

Section 10. **Exceptions and Exemptions**. Notwithstanding anything in this Ordinance to the contrary, the following exceptions and exemptions apply to all moratoria.

a. Initial Rent. This Ordinance does not regulate initial Rent at which any Residential Unit or Commercial Unit is offered at the outset of any new tenancy.

b. Residential Unit Exception to Moratorium on Late Fees and Penalties, Moratorium on Rent Increases and the Moratorium on Utility Charge Increase. Residential Units are exempt from the Moratorium on Late Fees and Penalties, the Moratorium on Rent Increases. and the Moratorium on Utility Charge Increases, if exempt under State law, including under California Civil Code Section 1946.2(e) which provides as follows:

"This section shall not apply to the following types of residential real properties or residential circumstances:

(1) Transient and tourist hotel occupancy as defined in subdivision (b) of Section 1940.

(2) Housing accommodations in a nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or an adult residential facility, as defined in Chapter 6 of Division 6 of Title 22 of the Manual of Policies and Procedures published by the State Department of Social Services.

(3) Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school.

(4) Housing accommodations in which the tenant shares bathroom or kitchen facilities with the owner who maintains their principal residence at the residential real property.

(5) Single-family owner-occupied residences, including a residence in which the owner-occupant rents or leases no more than two units or bedrooms, including, but not limited to, an accessory dwelling unit or a junior accessory dwelling unit.

(6) A duplex in which the owner occupied one of the units as the owner's principal place of residence at the beginning of the tenancy, so long as the owner continues in occupancy.

(7) Housing that has been issued a certificate of occupancy within the previous 15 years.

(8) Residential real property that is alienable separate from the title to any other dwelling unit, provided that both of the following apply:

(A) The owner is not any of the following:

(i) A real estate investment trust, as defined in Section 856 of the Internal Revenue Code.

(ii) A corporation.

(iii) A limited liability company in which at least one member is a corporation."

c. Lawful Evictions. Pursuant to Executive Order N-28-20 and California Penal Code Section 396(m), this Ordinance does not prohibit a Landlord from evicting a Tenant for any lawful reason, including pursuant to Section 1161 of the Code of Civil Procedure.

d. Landlord's Right to Recover Rent. Pursuant to Executive Order N-28-20, nothing in this Ordinance shall relieve a tenant of the obligation to pay rent, nor restrict a landlord's ability to recover rent due.

e. Landlord's Right to Recover Utility Payments. Nothing in this Ordinance shall relieve a Tenant of the obligation to pay Utilities, nor restrict a Landlord's ability to recover Utility payments due.

Section 12. **Enforcement**. In any action by a Landlord to recover possession of a Residential Unit or Commercial Unit, the Tenant may be raised as an affirmative defense any violation or noncompliance within the provisions of this Ordinance and Executive Order N-28-20.

Section 13. **Recommendation to Financial Institutions and Utilities to Freeze Foreclosure or Utility Shut-Offs**. Pursuant to Executive Order N-28-20, the City Council hereby urges financial banks and institutions and public utilities that operate and/or are located within City limits to freeze any foreclosures or utility shut-offs during this term of this Ordinance on Concord residents and businesses who have experienced a "Substantial decrease in household or business income" as defined herein.

Section 14. **Remedies**. In the event of a violation of this Ordinance, an Affected Residential Tenant or Affected Commercial Tenant may institute a civil proceeding for injunctive relief, money damages, and whatever other relief the court deems appropriate. The remedy available under this Section shall be in addition to any other existing remedies which may be available to the Affected Residential Tenant or Affected Commercial Tenant under local, state or federal law. In addition, this Ordinance grants a defense to eviction to any unlawful detainer actions in violation of this Ordinance.

Section 15. **Severability**. 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.

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Section 16. **Codification**. This Ordinance is effective immediately pursuant to Government Code Section 36937(b) and shall NOT be codified.

AYES: Councilmembers - D. Aliano, E. Birsan, L. Hoffmeister, C. Obringer, T. McGallian

NOES: Councilmembers - None

ABSTAIN: Councilmembers - None

ABSENT: Councilmembers - None

I HEREBY CERTIFY that the foregoing is a true and correct copy of an Ordinance duly and regularly introduced, passed, and adopted by the City Council of the City of Concord, California.

By: _____
Joelle Fockler, MMC
City Clerk