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ORDINANCE NO. 1637

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIALTO  
TEMPORARILY PROHIBITING EVICTIONS OF COMMERCIAL TENANTS ARISING  
FROM INCOME LOSS OR SUBSTANTIAL MEDICAL EXPENSES RELATED TO THE  
CORONAVIRUS PANDEMIC**

**WHEREAS**, the City of Rialto (“City”) is authorized by Article XI, Section 7 of the California Constitution to make and enforce all regulations and ordinances using its police powers;

**WHEREAS**, Government Code sections 36934 and 36937 authorize ordinances to take effect immediately if they are for the immediate preservation of the public peace, health or safety, contain a declaration of the facts constituting the urgency, and are passed by a four-fifths vote of the City Council;

**WHEREAS**, the California Emergency Services Act (California Government Code section 8550, et. seq.) defines a local emergency as the existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a city, caused by conditions such as an epidemic, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of a city, and require the combined forces of other political subdivisions to combat;

**WHEREAS**, Chapter 2.28, section 2.28.020 of the City of Rialto Municipal Code defines an emergency as the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within this city caused by such conditions as, but not limited to, air pollution, fire, flood, storm, epidemic, riot, or earthquake, or other conditions, including conditions resulting from war or imminent threat of war, but other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of this city, requiring the combined forces of other political subdivisions to combat;

**WHEREAS**, the State of California, including the City of Rialto, is experiencing an unprecedented and critical emergency related to the novel coronavirus (“COVID-19”) pandemic;

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1           **WHEREAS**, states of emergency have recently been proclaimed at the local, state, and  
2 federal government levels related to the COVID-19 pandemic;

3           **WHEREAS**, on March 12, 2020 the City Council declared that the existence and  
4 anticipated spread of COVID-19 is a local emergency, as defined by the California Emergency  
5 Services Act (California Government Code section 8550, et. seq.);

6           **WHEREAS**, on March 17, 2020, the San Bernardino County Public Health Officer issued  
7 an order requiring County residents to shelter in place through April 6, 2020 in order to stop  
8 community spread of COVID-19, subject to exceptions for the provision and receipt of essential  
9 services, and this order may be continued as necessary to address the pandemic;

10           **WHEREAS**, on March 17, 2020, the Governor issued Executive Order N-28-20, which  
11 suspended any provisions of state law that would preempt or otherwise restrict a local  
12 government’s exercise of its police power to impose substantive limitations on residential or  
13 commercial evictions, including but not limited to Civil Code Sections 1940 et seq. or 1954.25 et  
14 seq., until May 31, 2020, unless extended; and

15           **WHEREAS**, on March 19, 2020 the Governor issued Executive Order N-33-20  
16 mandating that all Californians stay home or at their place of residence except in order to  
17 maintain critical infrastructure sectors;

18           **WHEREAS**, many businesses and commercial establishments do not constitute critical  
19 infrastructure sectors and therefore these businesses may be subject to closure and may cease  
20 operations, or even where deemed critical infrastructure may suffer a reduction in productivity or  
21 reduction in sales;

22           **WHEREAS**, with the closure, or reduction of productivity and sales, of so many  
23 businesses and commercial establishments, such businesses will be unable to conduct business  
24 which may render them unable to pay rent;

25           **WHEREAS**, commercial evictions due to a tenant’s inability to pay rent have the  
26 likelihood of resulting in business owners and individuals engaging in activities (e.g. moving,  
27 board-ups, eviction process etc.,) which do not constitute critical infrastructure sectors thereby  
28 increasing the likelihood of the spread of COVID-19, leading to further health and safety risks to

1 the community;

2 **WHEREAS**, without local protection, eviction notices for failure to pay rent are likely to  
3 surge as businesses are unable to earn income due to the pandemic;

4 **WHEREAS**, the City Council is concerned that, during the COVID-19 pandemic,  
5 eviction notices and threats of eviction will surge; and

6 **WHEREAS**, the City of Rialto has determined that it is appropriate to temporarily  
7 prohibit commercial evictions until the authorization to suspend evictions under Executive Order  
8 N-28-20, as may be modified or superseded, terminates or the City Council declares an end to the  
9 local emergency, whichever occurs first, for any commercial tenant who can demonstrate that  
10 they are being evicted for the failure to pay rent and that such failure is a direct impact of the  
11 COVID-19 pandemic, as provided in Governor Newsom’s Executive Order N-28-20. A copy of  
12 the Executive Order is attached to this Ordinance.

13 **NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE**  
14 **CITY OF RIALTO AS FOLLOWS:**

15 **SECTION 1. DECLARATION OF URGENCY; ORDINANCE ADOPTED.**

16 The City Council of the City of Rialto hereby incorporates the recitals of facts above by  
17 reference and finds and declares that they constitute an urgent situation requiring the City Council  
18 to act for the immediate protection of the public peace, health and safety. Without it, City of  
19 Rialto tenants would suffer potentially irreversible displacement resulting from evictions arising  
20 from the COVID-19 pandemic. The Council, therefore, adopts this Urgency Ordinance attached  
21 hereto as Attachment “A” to become effective immediately, pursuant to California Government  
22 Code Section 36937.

23 **SECTION 2. EFFECTIVE DATE; VOTE REQUIREMENTS.**

24 This Ordinance shall take effect and be in force immediately upon an affirmative vote of  
25 four-fifths of the City Council and remain in effect until the authorization to suspend evictions  
26 under State Executive Order N-28-20, as may be modified or superseded, terminates or the City  
27 Council declares an end to the local emergency.

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1                   **SECTION 3. SEVERABILITY.**

2                   If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason  
3 held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such  
4 decision will not affect the validity of the remaining portions of this ordinance. The City Council  
5 hereby declares that it would have passed this ordinance and each and every section, subsection,  
6 sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any  
7 portion of the ordinance would be subsequently declared invalid or unconstitutional.

8                   **SECTION 4. CODIFICATION.**

9                   This urgency ordinance shall not be codified in the City of Rialto Municipal Code.

10                   **SECTION 5. CEQA.**

11                   The City Council hereby finds that the action to adopt this Ordinance will not result in any  
12 change in the environment and thus is not a project subject to the requirements of CEQA. Further,  
13 even if the action to adopt this Ordinance was deemed to be a project subject to CEQA, the City  
14 Council finds the proposed Ordinance is exempt from CEQA under the common sense exemption  
15 set forth in Section 15061(b)(3), which provides that CEQA only applies to projects which have  
16 the potential for causing a significant effect on the environment, and thus where it can be seen  
17 with certainty that there is no possibility that the activity in question may have a significant effect  
18 on the environment, the activity is not subject to CEQA.

19                   **SECTION 6. AUTHORITY PURSUANT TO THE CALIFORNIA EMERGENCY**  
20 **SERVICES ACT AND RIALTO MUNICIPAL CODE.**

21                   Pursuant to Cal. Gov. Code Section 8610, the City, while in a state of emergency  
22 proclaimed by the Director of Emergency Services and ratified by the City Council, may establish  
23 rules and regulations for dealing with the local emergency. Pursuant to Rialto Municipal Code  
24 Section 2.28.060(A)(6)(a), the Director of Emergency Services has the authority to make and  
25 issue rules and regulations on matters reasonably related to the protection of life and property as  
26 affected by such emergency; provided, however, such rules and regulations must be confirmed at  
27 the earliest practicable time by the city council. The City Council also thus finds and determines  
28 that it has the authority to enact this ordinance pursuant to the California Emergency Services

1 Act, the Rialto Municipal Code and the declaration of local emergency issued by the Rialto City  
2 Council on March 12, 2020.

3 **SECTION 7. DECLARATION OF URGENCY.**


4 The City Council finds and declares that this ordinance is required for the immediate  
5 protection of the public peace, health and safety. Without it, City of Rialto tenants would suffer  
6 potentially irreversible displacement of tenants resulting from evictions arising from the COVID-  
7 19 pandemic. The Council, therefore, adopts this ordinance to become effective immediately,  
8 pursuant to California Government Code Section 36937.

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10 **PASSED, APPROVED AND ADOPTED** this 24th day of March, 2020.

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13 \_\_\_\_\_  
14 Deborah Robertson, Mayor

15 **ATTEST:**

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18 Barbara McGee, City Clerk

19 **APPROVED AS TO FORM:**

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22 Eric Vail, Interim City Attorney  
23 Burke, Williams & Sorensen, LLP  
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**EXHIBIT "A"**

**SECTION 1: PURPOSE.**

This Ordinance temporarily prohibits evictions of commercial tenants who can demonstrate that they have received a notice of eviction for failure to pay rent, and that such failure is related to a substantial loss of income or substantial out-of-pocket medical expenses resulting from the 2020 novel coronavirus (COVID-19) pandemic or any local, state, or federal government response to the pandemic.

**SECTION 2: DEFINITIONS.**

The following words and phrases, whenever used in this section, shall be construed as follows:

1. "Commercial Unit" means a structure or the part of a structure in which at least 50 percent of its floor space is used for commercial activities, such as retail, the providing of services, or food service.
2. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Commercial Unit or portion thereof.
3. "Owner" means any person, acting as principal or through an agent, offering a Commercial Unit for rent, and includes a predecessor in interest to the owner.
4. "Pandemic" means the 2020 novel coronavirus (COVID-19) pandemic.
5. "Tenant" means any person entitled by written or oral agreement, or by sufferance, to the use or occupancy of a Commercial Unit.

**SECTION 3: PROHIBITION ON EVICTIONS.**

- A. A Landlord of any Commercial Unit or Commercial Units shall not terminate or attempt to terminate a lawful tenancy for failure to pay rent if the Tenant demonstrates that the failure to pay rent is directly related to a substantial loss of income associated with the coronavirus pandemic or any local, state, or federal government response to the pandemic.
- B. This section shall also apply to a Landlord's action that constitutes constructive eviction under California law. Terminations that are required to comply with an order issued by a

1 government agency or court requiring that the real property be vacated are excepted from  
2 this prohibition.

3 C. To take advantage of the protections afforded under this section, a Tenant must do all of  
4 the following:

5 1. Notify the landlord in writing before the day rent is due that the Tenant has a  
6 covered reason for delayed payment. For purposes of this Section, "writing" shall  
7 include emails, text messages, or other forms of electronic communication with  
8 Landlord or Landlord's representative.

9 2. Pay the portion of rent that the tenant is able to pay.

10 3. Demonstrate through documentation or other objectively verifiable means that the  
11 Tenant has experienced:

12 a. Substantial loss of income from a substantial decrease in business  
13 income caused by a reduction in opening hours or consumer  
14 demand.

15 D. Tenants who were afforded eviction protection under this section shall have up to sixty  
16 (60) days after the termination of this ordinance to pay their landlord all unpaid rent.

17 E. Nothing in this section waives a tenant's obligations to pay back rent owed once this  
18 ordinance is no longer effective; provided, however, that a Landlord may not file an  
19 unlawful detainer action based on the failure to pay rent while this ordinance is in effect  
20 unless the Tenant fails to pay rent when due under Section D of this ordinance.

21 F. Nothing in this section shall relieve a Tenant of the obligation to pay rent, nor restrict a  
22 Landlord's ability to recover rent due once this ordinance is no longer effective.

23 **SECTION 4: ENFORCEMENT.**

24 A. In the event of a violation of this Ordinance, a Tenant who has been improperly served  
25 with notice of an eviction or an unlawful detainer action may institute a civil proceeding  
26 for an injunction, and the prevailing party shall be entitled to an award of reasonable  
27 attorneys' fees and costs if so ordered by the court.

28 B. This Ordinance may be asserted as an affirmative defense in an unlawful detainer action.



1 C. A Landlord’s failure to comply with this Ordinance does not constitute a criminal offense  
2 but may subject an owner to civil fines and penalties as set forth in the Rialto Municipal  
3 Code.

4 D. The remedies provided in this Section are in addition to any other existing remedies that  
5 may be available to a Tenant under local, state, or federal law or equity and in no way  
6 limit such existing remedies, if any.

7 **SECTION 5: WAIVER.**

8 A Landlord may request that this Ordinance’s requirements be waived or modified based on a  
9 showing that applying the requirements would have an unconstitutional application to the  
10 Landlord’s property. A Landlord shall bear the burden of presenting evidence to support any  
11 such request for waiver or modification and shall set forth in detail the factual and legal basis for  
12 the claim, including all supporting documentation, for consideration by the City Council.

13 **SECTION 6: EFFECTIVE DATES.**

14 This Ordinance applies to eviction notices and unlawful detainer actions based on notices served  
15 or filed on or after the effective date of this Ordinance. The prohibitions on evictions shall  
16 continue to apply until the authorization to suspend evictions under State Executive Order N-28-  
17 20, as may be modified or superseded, is terminated or the City Council declares an end to the  
18 local emergency, whichever occurs first.

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