

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO. 1667

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NOVATO ENACTING A TEMPORARY MORATORIUM ON RENT INCREASES FOR TENANTS RESIDING IN CERTAIN RESIDENTIAL UNITS AND IN U.S CENSUS TRACTS MOST DISPROPORTIONATELY IMPACTED BY COVID-19 AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

WHEREAS, there is a widespread, ongoing global outbreak of respiratory illness known as COVID-19 that can be spread from person-to-person, and on February 26, 2020, community transmission was confirmed by the Centers for Disease Control and Prevention (CDC) in the Bay Area; and

WHEREAS, on March 4, 2020, California Governor Newsom declared a state of emergency in the State of California on March 4, 2020; and

WHEREAS, on March 16, 2020, a Shelter in Place Order for all of Marin County was issued by the Marin County Health Officer; and

WHEREAS, these conditions are likely to be beyond the control of the services, personnel, equipment, and facilities of the City of Novato; and that the aforesaid conditions of peril to the safety of persons and property warrant and necessitate the proclamation of the existence of a local emergency; and

WHEREAS, the City Council hereby finds that the above-described conditions of extreme peril did warrant and necessitate the proclamation of the existence of a local emergency in the City of Novato which the City Manager proclaimed on March 11, 2020; and

WHEREAS, on March 16, 2020, the City Council ratified and confirmed the Proclamation of Local Emergency; and

WHEREAS, the COVID-19 pandemic has disproportionately impacted our historically marginalized and under-resourced communities of color, and whose contributions are critical to the success of our local and regional economies as they are clients to our local businesses, and are members of the essential workforce; and

WHEREAS, the disproportionate impacts of COVID-19 have only reaffirmed the racial inequalities that exist in the City of Novato and have highlighted the urgent need to pursue bold, collaborative solutions that place equity at the forefront of our actions; and

WHEREAS, this Ordinance is a temporary moratorium intended to promote stability and fairness within the residential rental market in the City during the COVID-19 pandemic, and to prevent avoidable homelessness by temporarily preventing rent increases that would increase financial instability for thousands of individuals and families struggling during this time to pay

their bills and feed their families due to being out of work, thereby serving the public peace, health, safety, and public welfare; and

WHEREAS, displacement through eviction creates undue hardship for tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing, which could lead to increases in health issues (including COVID-19 infection), exacerbation of existing health issues, and increase in risk of earlier death; and

WHEREAS, the City Council and City staff have found that certain geographic locations, specifically three census tracts (1032, 1042, 1022.03) have been disproportionately impacted by COVID-19; and

WHEREAS, such geographic locations have suffered and continue to suffer disproportionate impacts from COVID-19, which have materialized in higher risk of COVID-19 transmission and number of cases compared to the national average, and higher risk of economic and housing instability as compared to the remainder of the City; and

WHEREAS, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) signed into law on March 27, 2020, appropriated \$5 billion in additional Community Development Block Grant (CDBG) Program funding to state and local governments; and

WHEREAS, the CARES Act directs the Department of Housing and Urban Development (“HUD”) to administer these funds pursuant to Section 106 of the Housing and Community Development Act of 1974 (42 U.S.C. 5306). This provision calls for HUD to allocate the supplemental funds to CDBG grantees—including eligible local governments, states, and insular areas—proportional to their conventional Fiscal Year 2020 CDBG allocation, as published by HUD in April 2020; and

WHEREAS, CARES Act funding is intended to prevent, prepare for, and respond to COVID-19 based on public health needs, risk of transmission, number of cases compared to the national average, and economic and housing market disruptions; and

WHEREAS, HUD has provided clear direction that the CARES Act funding be allocated based on public health need, risk of transmission of coronavirus, number of coronavirus cases compared to the national average, and economic and housing market disruptions, and other factors, as determined by the Secretary; and

WHEREAS, in reliance on this HUD directive, the County of Marin developed an adjusted allocation methodology for CARES Act funding disbursements based on U.S. Census Tract data in which COVID-19 cases are proven most prevalent; and

WHEREAS, data on COVID-19 cases, supplied by the County of Marin Health and Human Services (HHS), and data on overcrowding, gathered from the U.S. Census American Community Survey, were utilized to determine the communities with the greatest risk for coronavirus transmission; additionally, data from HUD’s CHAS/Consolidated Plan tool were utilized to determine the percentage of low-income households in each community, in line with the use of HUD dollars to be used for low-income individuals and households, who make below 80% of the area median income; and

WHEREAS, the above described data resulted in a CARES Act allocation within the County of Marin as follows:

- Novato: 27.1%, \$485,359.37
- San Rafael: 52.7%, \$943,853.84
- County Other: 20.2%, \$361,780.79; and

WHEREAS, in allocating CARES Act funding, the County of Marin relied upon data from the Marin County Health and Human Services regarding COVID-19 positivity rates, and relied upon U.S. Census American Community Survey 2018 5-year estimates regarding rates of overcrowding; and

WHEREAS, overcrowded households are also more likely to include individuals with lower wage occupations which cannot be performed remotely, increasing the likelihood of COVID-19 exposure; and

WHEREAS, to limit the exponential spread of COVID-19, County Public Health Guidelines require any individual testing positive or coming into contact with someone who has tested positive to quarantine for at least ten (10) days, and due to these Public Health requirements individuals and entire households may be required to quarantine, thereby losing income; and

WHEREAS, the California Fair Housing Task Force (the “Task Force”), established by the State of California Department of Housing and Community Development was established to provide research, evidence-based policy recommendations, and other strategic recommendations to HCD and other related state agencies/departments to further the fair housing goals (as defined by HCD); and

WHEREAS, Census Tracts 1032, 1042, and 1022.03 are also amongst those identified for CARES Act allocations; and

WHEREAS, this combination of overcrowded housing, occupations that can only be performed in person, and increase risk of displacement creates a vicious cycle where overcrowded households are at increased risk for COVID-19 exposure, are financially unable to respond to the quarantine requirements if exposed, and are more likely to be displaced to a situation at even greater risk of COVID-19 exposure; and

WHEREAS, the City has found and declares that while there are other Census Tracts in the City experiencing overcrowding and high rates of COVID-19, no other Census Tracts in the City are experiencing overcrowding, COVID-19 infection rates, financial instability, and risk of displacement at the same rates and levels as Census Tracts 1032, 1042, and 1022.03; and

WHEREAS Census Tracts 1032, 1042, and 1022.03 have the highest rates of COVID-19 infections in all of Novato and have higher rates of COVID-19 infections than 90% of all Census Tracts in the County of Marin, placing these three Census Tracts in the top 10% of the entire County of Marin in terms of COVID-19 case rates and overcrowding; and

WHEREAS, in reliance on this data and so as to strike a balance between the economic stability of property owners and landlords within the City and the grave risks that residents of

Census Tracts 1032, 1022.03, and 1042 face, the City finds that the rent freeze should apply only to Census Tracts 1032, 1042, and 1022.03 which are at the absolute highest risk of displacement, financial instability, and COVID-19 infection rates within the City; and

WHEREAS, the facts, research, and conclusions utilized by the Federal and State governments and the County of Marin as described more fully above and in the staff report accompanying this Ordinance, establish that poverty, overcrowding, and high COVID-19 infection rates in U.S. Census Tracts 1032, 1042, and 1022.03 have led and will continue to lead to disproportionate risks of displacement, COVID-19 infection rates, and financial and economic instability; and

WHEREAS, in reliance on this data and the facts establishing that residents of Census Tracts 1032, 1042, and 1022.03 are disproportionately at risk of displacement, debt, and contraction of the COVID-19 virus, the City finds and declares that there is an urgent need to take measures to protect residents of these Census Tracts against further risk of displacement, debt, disease; and

WHEREAS, implementation of a complete rent freeze in these three vulnerable Census Tracts will reduce the likelihood of displacement, debt, and continued increases in COVID-19 positivity rates by limiting the accumulation of debt due to rent increases, thereby supporting the long-term recovery of these residents; and

WHEREAS, the City has previously adopted and implemented rent control upon mobilehomes located within the City pursuant to Chapter XX (Mobilehome Rent Stabilization) of the Novato Municipal Code; and

WHEREAS, Chapter XX protects homeowners and residents of mobilehomes from arbitrary, capricious and unreasonable rent increases while ensuring owners of mobilehome park properties receive a fair and reasonable return; and

WHEREAS, because Chapter XX already provides those protections to homeowners and residents and mobilehomes that this Ordinance seeks to provide, the City Council finds and declares that this Ordinance need and shall not apply to mobilehomes already protected from unreasonable rent increases pursuant to Chapter XX; and

WHEREAS, for the reasons set forth herein, there is currently an urgent and imminent threat necessitating the immediate need to freeze rents in certain geographic locations but because the COVID-19 Tenant Relief Act of 2020 (enacted on August 31, 2020 as AB 3088), prohibits cities from enacting any ordinance in response to the COVID-19 pandemic to protect tenants from eviction which would become effective prior to February 1, 2021, the City finds and declares that this Ordinance should become effective immediately on the earliest date allowed by the State, namely February 1, 2021; and

WHEREAS, this Ordinance will lower the risk of displacement of vulnerable populations, which is essential for public health, will keep tenants from falling even further behind during the state of emergency and will help tenants experiencing poverty and high segregation in good standing after the Ordinance expires; and

WHEREAS, so too will this Ordinance help ameliorate the broader public health, safety, and welfare effects of the emergency; failure to suspend rent increases in geographic locations disproportionately impacted by COVID-19 will worsen the already severe impacts of COVID-19 in these areas; and

WHEREAS, this Ordinance is temporary and not a general ordinance in force required to be codified; and

WHEREAS, this Ordinance is expressly authorized by State law because the Ordinance is more protective than the provisions of section 1946.2 of the California Civil Code, which was adopted pursuant to the Tenant Protection Act of 2019, because this ordinance provides tenant protections that are neither prohibited by nor established by other provisions of applicable law.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NOVATO:

SECTION 1. Declaration of Threat to Public Health, Safety, and Welfare Necessitating Urgency Ordinance

The City Council of the City of Novato hereby finds and declares that there is a current and immediate threat to the public health, safety and welfare and a need for the immediate preservation of the public health and safety that warrants the adoption of this urgency ordinance, which finding and declaration are based upon the facts, findings, and declarations stated in the recitals of this Ordinance (which said recitals are incorporated by this reference), and all oral and written testimony presented at the January 26, 2021 Novato City Council meeting.

SECTION 2. Title

This Ordinance shall be known as the “COVID-19 Temporary Rent Freeze Ordinance.”

SECTION 3. Term

This Ordinance shall become effective on February 1, 2021 upon its adoption by a 4/5 vote of the City Council of the City of Novato pursuant to section 36937(b) of the California Government Code and shall remain in effect until December 31, 2021 unless repealed or extended by the City Council.

SECTION 4. Definitions

“Condominium” means an estate in real property described in Section 783 of the Civil Code.

“Dwelling Unit” means one (1) or more rooms occupied as living quarters, with a kitchen, sleeping facilities, and sanitary facilities for the exclusive use of one (1) household.

“Housing Services” means all services provided by a Landlord related to use or occupancy of a Rental Unit, including without limitation insurance, repairs, replacement, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, refuse removal, parking, storage, furnishings, and security services.

“Landlord” means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Rental Unit or portion thereof.

“Rent” means the consideration, including any funds, labor, bonus, benefit, or gratuity, demanded or received by a landlord for or in connection with the use and occupancy of a Rental Unit and the housing services provided therewith, or for the assignment of a rental agreement for a Rental Unit. A decrease in Housing Services is considered an increase in Rent, except where such decrease is due to State or local orders mandating discontinuation of certain Housing Services.

“Rental Unit” means any Dwelling Unit in any real property, including a building, structure, or part thereof, and the land appurtenant thereto, rented or available for residential occupancy, and located in the City. The following shall not be considered Rental Units:

1. Units in hotels, motels, inns, tourist homes, and rooming and boarding houses which are rented primarily to transient guests for a period of fewer than thirty days;
2. Units in any hospital, convent, monastery, extended care facility, emergency residential shelter, residential care facility, residential service facility, nonprofit home for Senior Citizens (as defined in the Unruh Act, as may be amended), or in dormitories owned and operated by an institution of higher education, a high school or elementary school;
3. Units which a government entity owns, operates, or manages, or in which governmentally-subsidized Tenants reside, if applicable federal or state law or administrative regulation specifically exempt such units from municipal rent control.
4. Single family homes;
5. Units in a building, structure, on a single property, or part thereof, containing only one (1) or two (2) Dwelling Units;
6. Condominiums and townhomes;
7. Accessory Dwelling Units as that term is defined in Government Code section 65852.2;
8. Mobilehomes subject to Chapter XX (Mobilehome Rent Stabilization) of the Novato Municipal Code and mobilehomes exempt from rent control pursuant to any applicable federal or state law;
9. Units for which an initial certificate of occupancy was dated on or after February 1, 1995.

“Single-Family Home” means a detached building containing a single residential dwelling unit separately alienable from any other dwelling unit.

"Tenant" means a person entitled by written or oral agreement, or by sufferance, to the use or occupancy of a Rental Unit.

"Tenant household" means all tenant(s) who occupy any individual Rental Unit, and each minor child, dependent, spouse or registered domestic partner of any tenant whose primary residence is the Rental Unit.

“Townhome” means a building containing a single residential dwelling unit attached to other single residential dwelling units which share common boundary walls. The owner of a townhome owns the building containing the single residential dwelling unit, the airspace within the building

and the land on which the building is situated, all of which is separately alienable from any other dwelling unit.

SECTION 5. Geographic Scope

This Ordinance applies to all Rental Units located within the following U.S. Census Tracts, which are depicted in **Figure A** of this Ordinance (U.S. Census Tracts Subject to Scope of Ordinance) and have been identified based on the declared threat to public health, safety and welfare within these U.S. Census Tracts:

U.S. Census Tract Number
1032
1042
1022.03

SECTION 6. Moratorium on Rent Increases

- A. During the Term of this Ordinance, a Landlord may not increase the Rent for any Rental Unit except pursuant to the provisions and procedures set forth in Section 7 of this Ordinance (Right to Petition for Fair Return).
- B. Any pending increase in Rent and/or increase in Rent which becomes effective during the Term of this Ordinance, whether such increases are authorized pursuant to a lawfully served notice or an existing written or oral rental agreement, shall not be collected and shall not become effective during the Term of this Ordinance.
- C. No requests, notices or demands for increases in Rent which would become effective after the Term of this Ordinance, shall be served, given or provided to any Tenant or Tenant Household during the Term of this Ordinance.
- D. Upon repeal or expiration of this Ordinance a Landlord’s right to impose rent increases on Tenants and Tenant Households of Residential Units shall immediately resume, subject to any other applicable federal, state, or local limitations that may be in place.
- E. Notwithstanding the limitations in subsections A through E of this Section, a landlord may establish any new, base Rent for tenancies which commence after the effective date of this Ordinance.

SECTION 7. Right to Petition for Fair Return

- A. Fair Return Petition. To effectuate the purposes of this Ordinance and the requirements of law, a Landlord may file a petition (“Petition”) for an upward adjustment of the Rent for any given Rental Unit to ensure a fair and reasonable rate of return. There is a rebuttable presumption that maintenance of net operating income on the date of adoption of this Ordinance, as adjusted by inflation over time, provides a Landlord with

a just and reasonable rate of return on a Rental Unit. It is the intent of this Section that individual upward adjustments in Rent be granted only when the Landlord demonstrates that such adjustments are necessary to provide the Landlord with a fair and reasonable rate of return.

- B. Procedures for Petition. A Landlord may file a Petition for a fair return hearing pursuant to this Section on a form provided by the City. The City Council hereby delegates authority to and directs the City Manager to adopt policies and procedures to implement the fair hearing Petition process that are consistent with this Section.
- C. Hearing Officer Appointed. A Hearing Officer, appointed by the City Manager, shall conduct a hearing to act upon a Petition for an upward adjustment of the Rent for any given Rental Unit. The Hearing Officer shall have the power to administer oaths and affirmations, and to render a final decision on the merits of the Petition, subject to the provisions of this Section and the Petition procedures established by administrative rules and regulations.
- D. Failure to Comply with Ordinance. No upward adjustment of Rent shall be authorized by a Hearing Officer under this Section if the Landlord has failed to comply with any provision of this Ordinance or implementing policies and procedures adopted by the City Manager or has failed to maintain the Rental Unit in compliance with any applicable Federal, State, or local law or administrative regulation.
- E. Upward Adjustment of Rent. In making an upward adjustment of Rent based on a Landlord's Petition to ensure a fair rate of return, the Hearing Officer shall approve an adjustment in accordance with the following criteria:
 - 1. Right to Fair Return. No provision of this Ordinance shall be applied so as to prohibit the Hearing Officer from granting a fair return adjustment of Rent that is demonstrated by the Landlord to be necessary to provide the Landlord with a fair rate of return.
 - 2. Maintenance of Net Operating Income. The Petition shall establish and the Hearing Officer shall consider a Landlord's ability or inability to maintain a fair rate of return on any given Rental Unit. There is a rebuttable presumption that maintenance of net operating income on the date of adoption of this Ordinance, as adjusted by inflation over time, provides a Landlord with a just and reasonable rate of return on a Rental Unit. The Hearing Officer shall consider a Landlord's ability to maintain net operating income for any given Rental Unit. Net operating income equals gross income minus operating expenses.
 - 3. Gross income equals the following:
 - a) Gross rents; plus
 - b) Interest from security or other deposits, except to the extent that said interest is payable to the Tenant; plus
 - c) Income from services or parking; plus

- d) All other income or consideration received or receivable in connection with the use or occupancy of Rental Units.

For purposes of calculating gross income, the Hearing Officer may take into account other factors necessary to assure that the Landlord receives a fair and reasonable return on his/her/its investment.

- 4. Operating expenses include the following expenses:
 - a) Real property taxes;
 - b) Unsecured property taxes;
 - c) Utility costs that are not reimbursed by tenants;
 - d) Management expenses, including but are not limited to, necessary and reasonable advertising, accounting, insurance, and allowable necessary and routine legal expenses;
 - e) Repair and maintenance expenses;
 - f) Owner performed labor, which shall be counted at reasonable rates;
 - g) License and registration fees required by law that are not reimbursed by the Tenant; and
 - h) Capital improvements, provided they are not compensated by insurance proceeds, subject to the following conditions: 1) that said expenses be amortized over a period of time established by recognized authority in doing so such as the IRS, and 2) capital improvements constructed in the interior areas of the Rental Unit can be included only to the extent required by state or local laws.

- 5. The following are excluded from operating expenses:
 - a) Avoidable and unnecessary increases in expenses;
 - b) Penalties, fees, or interest assessed or awarded for violation of this or any other law with respect to the Rental Unit;
 - c) Depreciation of the property;
 - d) Any expense for which the Landlord has been reimbursed by any security deposit, insurance settlement, judgment for damages, settlement, or any other method;
 - e) Mortgage interest or principal, or similar financial instruments used to purchase or finance rental property, unless incurred for purposes of financing capital improvements; and
 - f) Income taxes.

SECTION 8. Affirmative Defense to Eviction; Civil Remedies

A Landlord's failure to comply with any provision of this Ordinance shall constitute an affirmative defense in any unlawful detainer action based upon nonpayment of rent. A Landlord that fails to comply with this Ordinance may further be subject to civil proceedings in law or equity initiated by Tenants and/or Tenant Households for (i) the eviction or other forms of displacement of Tenants or Tenant Households, and/or (ii) actual and exemplary damages suffered by Tenants and/or Tenant Households as a result of a Landlord's failure to comply with this Ordinance.

SECTION 9. Figure A – U.S. Census Tracts Subject to Scope of Ordinance

Those properties to which this Ordinance applies are those located in U.S. Census Tracts 1032, 1042, and 1022.03 which are depicted on **Figure A** attached hereto and incorporated by this reference.

SECTION 10. Severability

If any provision or clause of this ordinance or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by a final judgment of any court or competent jurisdiction, such invalidity shall not affect other provisions or clauses or application, and to this end, the provisions and clauses of this ordinance are declared to be severable.

SECTION 11. California Environmental Quality Act

The City Council finds that the adoption and implementation of this Ordinance are exempt from the provisions of the California Environmental Quality Act under section 15061(b)(3) in that the City Council finds there is no possibility that the implementation of this Article may have significant effects on the environment.

SECTION 12. Publication

This Ordinance shall be published and/or posted in accordance with State law.

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THE FOREGOING ORDINANCE was passed by the City Council of the City of Novato, California, by a vote of at least four-fifths (4/5) of the City Council, at a regular meeting held on the 26th day of January 2021 by the following vote, to wit:

AYES:	Councilmembers	Athas, Peele, Wernick, Lucan, Eklund
NOES:	Councilmembers	None
ABSTAIN:	Councilmembers	None
ABSENT:	Councilmembers	None

/Pat Eklund/
Mayor of the City of Novato

Attest:

/Laura McDowall/
City Clerk of the City of Novato

Approved as to form:

/Jeffrey Walter/
City Attorney of the City of Novato