

ORDINANCE NO. __

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO
ENACTING A TEMPORARY MORATORIUM ON RENT INCREASES FOR
QUALIFIED TENANTS RESIDING IN CERTAIN RESIDENTIAL UNITS DUE TO THE
FINANCIAL IMPACTS OF THE COVID-19 PANDEMIC**

WHEREAS, Pursuant to the California Constitution and State Government Code, the Town may make and enforce all regulations and ordinances using its police powers to regulate municipal affairs and may enact ordinances for the preservation of the public peace, health, or safety; and

WHEREAS, in late December 2019, several cases of unusual pneumonia began to emerge in the Hubei province of China and on January 7, 2020, a novel coronavirus now known as COVID- 19 was identified as the likely source of the illness; and

WHEREAS, on January 30, 2020, the World Health Organization declared COVID-19 a Public Health Emergency of International Concern. On January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency; and

WHEREAS, the widespread, ongoing global outbreak of respiratory illness 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, the Governor of California declared a State of Emergency due to the COVID-19 pandemic; and

WHEREAS, on March 11, 2020, the San Anselmo Town Manager, in his capacity as Director of Emergency Services, declared a Local Emergency in the Town of San Anselmo due to the COVID-19 pandemic, which was affirmed by resolution of the San Anselmo Town Council on March 17, 2020; and

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency due to the COVID-19 pandemic; and

WHEREAS, on March 16, 2020, the health officers of seven jurisdictions in the San Francisco Bay Area, including the County of Marin, issued an Order to all residents of the respective jurisdictions to shelter in their homes in an effort to slow the progression of the COVID- 19 pandemic; and

WHEREAS, on March 16, 2020, the Governor issued Executive Order N-28-20, authorizing local jurisdictions to prohibit commercial and residential evictions due to non-payment of rent or mortgage payments, where failure to pay is related to the COVID-19 pandemic; and

WHEREAS, on August 31, 2020, the State enacted legislation the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020, Assembly Bill (“AB”) 3088 that put into place a statewide moratorium on residential evictions until January 31, 2021, and precluded local governments from extending any existing moratoria on residential evictions beyond their already enacted expiration dates; and

WHEREAS, on September 1, 2020, Governor Newsom signed AB 3088 into law to provide immediate protections and financial relief to residential tenants, homeowners, and small Property Owners impacted by COVID-19; and

WHEREAS, on January 29, 2021, Governor Newsom signed Senate Bill ("SB") 91 into law, which extends through June 30, 2021, eviction protections under AB 3088, as well as the temporary preemption of a local jurisdiction's ability to enact new or amend existing eviction protections for nonpayment of rent due to financial distress related to COVID-19; and

WHEREAS, at its June 22, 2021, meeting the Town Council will consider an urgency ordinance enacting an eviction moratorium within the Town to take effect upon the expiration of SB 91 and to remain in force until December 31, 2021; and

WHEREAS, state law currently limits annual rent increases to 5% plus the cost of living, up to 10%, though some properties are exempt from those provisions which means that currently in Marin, rent cannot be increased by more than 6.1% within a 12-month period on residential units subject to the Tenant Protection Act of 2019 (TPA); and

WHEREAS, the TPA does not preempt local rent control rules if they are consistent with the Costa-Hawkins Rental Housing Act (Cal. Civ. Code § 1954.50 et seq.) and have more restrictive annual increases than the TPA. (Cal. Civ. Code § 1947.12(d)(3)).

WHEREAS, Marin County, San Rafael and Novato adopted rent freeze protections through December 31, 2021, for certain residential units in census tracts disproportionately impacted by, or at risk of, COVID-19;

WHEREAS, the Town of San Anselmo is in one of the least affordable housing markets in California and the United States and federal government data collected prior to the pandemic indicates renters occupy about 24 percent of the Town's housing stock and 41 percent of renters spend more than 30 percent of their income on housing; and

WHEREAS, while Marin County has experienced a reduction in COVID-19 cases since January 2021, many residential tenants continue to experience serious financial impacts including the substantial loss of income due to illness, business closures, loss of employment, or reduced hours due to the COVID-19 pandemic, leaving them vulnerable to the additional financial burden of a rent increase that could lead to eviction for nonpayment of rent; and

WHEREAS, displacement through eviction destabilizes the living situation of tenants and impacts the health of San Anselmo's residents by uprooting children from schools, disrupting the social ties and networks that are integral to the community's welfare, creating undue hardship through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing and homeless shelters in San Anselmo, and can lead to increases in health issues, exacerbation of existing health issues, and increase in risk of earlier death; and

WHEREAS, in-person school instruction can lower rates of anxiety and depression, result in higher rates of immunizations, and have other positive results on health and wellbeing and evictions can interrupt this critical in-person instruction for some San Anselmo tenants; and

WHEREAS, the Town Council finds and determines that establishing a temporary prohibition on residential rent increases for tenants providing their landlords with Declaration of COVID-19-Related Financial Distress and who occupy properties that are not exempt from rent restrictions under the Costa-Hawkins Rental Housing Act, is necessary to protect public health and safety; and

WHEREAS, this Ordinance is intended to prevent avoidable homelessness by temporarily prohibiting rent increases that would cause financial instability for individuals and families struggling during this time to pay their bills and feed their families due to COVID-19 financial hardship, thereby serving the public peace, health, safety, and public welfare; and

WHEREAS, implementation of a temporary rent freeze will reduce the likelihood of displacement by limiting the accumulation of debt due to rent increases, thereby supporting the long-term recovery of these residents, lowering the risk of displacement of San Anselmo renters and thereby protecting public health; and

WHEREAS, this Ordinance is temporary and not a general ordinance in force and is not 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; and

WHEREAS, based upon the above-described facts and circumstances, and for these same reasons, the Town Council finds that this ordinance is necessary for preserving the public peace, health and safety; and

WHEREAS, the Town Council desires to establish a temporary rent freeze, where not preempted, through December 31, 2021, and provide aggrieved tenants a private right of action for violations of the regulations;

NOW THEREFORE, THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO hereby ordains as follows:

SECTION 1. Environmental Review.

The Town Council hereby finds that adoption of a temporary rent freeze ordinance is not a “project” under the California Environmental Quality Act, because it does not involve an activity which has the potential to cause a direct or reasonably foreseeable indirect physical change in the environment. (Cal. Pub. Res. Code § 21065).

SECTION 2. Establishing a Temporary Rent Freeze for Qualified Tenants.

A temporary residential rent freeze for tenants who provide landlords with a Declaration of COVID-19-Related Financial Distress and who occupy Residential Rental Units as defined, is necessary to ensure protection of vulnerable San Anselmo tenants from rent increases.

SECTION 3. Definitions.

“Declaration of COVID-19-Related Financial Distress” means the following written statement, as provided by Code of Civil Procedure Section 1179.02(d):

I am currently unable to pay my rent or other financial obligations under the lease in full because of one or more of the following:

1. Loss of income caused by the COVID-19 pandemic.
2. Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic.
3. Increased expenses directly related to health impacts of the COVID-19 pandemic.
4. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit my ability to earn income.
5. Increased costs for childcare or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic.
6. Other circumstances related to the COVID-19 pandemic that have reduced my income or increased my expenses.

Any public assistance, including unemployment insurance, pandemic unemployment assistance, state disability insurance (SDI), or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of income and/or increased expenses.

Signed under penalty of perjury:

Dated:

This Declaration may be delivered in person, electronically, by mail, or through any method permitted by Code of Civil Procedure Section 1179.03(f).

“Property Owner” means any owner, lessor, or sublessor of real property who receives or is entitled to receive Rent for the use or occupancy of any Residential Unit or portion thereof in the Town of San Anselmo, and the designated representative, agent, or successor of such owner, lessor, or sublessor.

“Rent” means all periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed, or services rendered to or for the benefit of the Property Owner for use or occupancy of a Residential Rental Unit under a rental housing agreement.

“Residential Rental Unit” means any building, structure, or part thereof, or appurtenant thereto, or any other rental property rented or offered for Rent for living or dwelling purposes, including houses, apartments, rooming or boarding house units, and other real properties used for living or dwelling purposes and located in the corporate limits of the Town of San Anselmo. The following shall not be considered Residential Rental Units for the purposes of this Ordinance:

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, Cal. Civ. Code § 51, 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 Residential Tenants reside, if applicable federal or state law or administrative regulation specifically exempt such units from municipal rent control;

4. Units which are exempt from rent control regulations under the Costa-Hawkins Rental Housing Act (Cal. Civ. Code § 1954.50 et seq.), including single-family homes, condominiums and residential units for which an initial Certificate of Occupancy was issued on or after February 1, 1995.

"Tenant" means a person entitled by written or oral agreement, or by sufferance, to the use or occupancy of a Residential Rental Unit and includes a tenant, subtenant, lessee, sublessee, or a person entitled under the terms of a rental housing agreement to the use or occupancy of a Residential Rental Unit.

SECTION 4. Residential Rental Unit Rent Freeze.

- A. Through December 31, 2021, a Property Owner who receives a Declaration of COVID-19-Related Financial Distress from a Tenant shall not increase Rent on a Residential Rental Unit with the following exceptions.
1. A Residential Rental Unit that is exempt from the rent limits imposed by the Costa Hawkins Rental Housing Act (Civil Code section 1954.50 *et seq.*) is exempt from this Ordinance.
 2. Where a Property Owner is granted a fair return adjustment pursuant to the provisions and procedures set forth in Section 5 of this Ordinance (Right to Petition for Fair Return).
 3. Upon repeal or expiration of this Ordinance a Property Owner's right to impose rent increases on Tenants of Residential Rental Units shall immediately resume, subject to any other applicable federal, state, or local limitations that may be in place.
 4. This Ordinance does not apply when a unit becomes vacant and the Property Owner sets the initial rent for a new tenancy.
- B. Within thirty (30) days of its effective date, Property Owners must notify Tenants of Residential Rental Units that are subject to this Ordinance of their eligibility for a rent freeze upon submission of a Declaration of COVID-19-Related Financial Distress.

SECTION 5. Property Owner's Right to Petition for Fair Return.

1. Fair Return Petition. To effectuate the purposes of this Ordinance and the requirements of law, a Property Owner may file a petition for an upward adjustment of the Rent for any given Residential 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 Property Owner with a just and reasonable rate of return on a Residential Rental Unit. It is the intent of this Section that individual upward adjustments in Rent be granted only when the Property Owner demonstrates that such adjustments are necessary to provide the Property Owner with a fair rate of return.

- a. **Procedures for Petition.** A Property Owner may file a petition for a fair return hearing pursuant to this Section on a form provided by the Town. The Town Council hereby delegates authority to and directs the Town Manager to adopt policies and procedures to implement the fair hearing petition process that are consistent with this Section.
- b. **Hearing Officer Appointed.** A Hearing Officer, appointed by the Town Manager, shall conduct a hearing to act upon a petition for an upward adjustment of the Rent for any given Residential Rental Unit. The Hearing Officer shall have the power to administer oaths and affirmations, and to render a decision on the merits of the petition, subject to the provisions of this Section and the petition procedures established by the Town Manager.
- c. **Failure to Comply with Ordinance.** No upward adjustment of Rent shall be authorized by a Hearing Officer under this Section if the Property Owner has failed to comply with any provision of this Ordinance or regulations adopted by separate resolution of the Town Council or implementing policies and procedures adopted by the Town Manager, or has failed to maintain the Residential Rental Unit in compliance with any applicable Federal, State, or local law or administrative regulation.
- d. **Upward Adjustment of Rent.** In making an upward adjustment of Rent based on a Property Owner's Petition to ensure a fair rate of return, the Hearing Officer shall approve an adjustment in accordance with the following criteria:
 - i. **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 Property Owner to be necessary to provide the Property Owner with a fair rate of return.
 - ii. **Maintenance of Net Operating Income.** The Petition shall establish and the Hearing Officer shall consider a Property Owner's ability or inability to maintain a fair rate of return on any given Residential Rental Unit. The Hearing Officer shall consider a Property Owner's ability to maintain net operating income for any given Residential Rental Unit. Net operating income equals gross income minus operating expenses.

(1) 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 Residential Rental Units;
- e) For purposes of calculating gross income, the Hearing Officer may take into account factors necessary to assure that the Property Owner receives a fair and reasonable return on their investment.

(2) Operating expenses includes 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 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 tenant;
- h) Capital improvements, provided they are not compensated by insurance proceeds, subject to the following conditions: 1) that said expenses be amortized; and 2) capital improvements constructed in the interior areas of the Residential Rental Unit can be included only to the extent required by state or local laws.

(3). 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 Residential Rental Unit;
- c) Depreciation of the property;
- d) Any expense for which the Property Owner 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 6. Affirmative Defense; Civil Remedies.

Non-compliance with any provision of this Ordinance shall constitute an affirmative defense for a Tenant in any unlawful detainer action brought pursuant to California Code of Civil Procedure section 1161, as amended. Said affirmative defenses shall survive the termination or expiration of this Ordinance. Any Tenant, or any other person or entity acting on behalf of the Tenant who will fairly and adequately represent the Tenant's interests, including the Town, may enforce the provisions of this Ordinance by means of a civil action seeking civil remedies and/or equitable relief.

SECTION 7. Enforcement.

The Town, at its sole discretion, may choose to enforce the provisions of this ordinance through administrative fines and any other administrative procedure set forth in Title 1, Chapters 2 and 4 of the San Anselmo Municipal Code. The Town's decision to pursue or not pursue enforcement of any kind shall not affect a tenant's rights to pursue civil remedies.

SECTION 10. Severability.

The Town Council hereby declares every section, paragraph, sentence, clause, and phrase is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 11. Effective Date.

This Ordinance shall go into effect thirty (30) days from its adoption and shall be in effect until December 31, 2021, unless repealed earlier, and shall be posted or published as required by State law.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the San Anselmo Town Council on _____, 2021, and was adopted at a regular meeting of the San Anselmo Town Council on _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Brian Colbert, Mayor

ATTEST: Carla Kacmar, Town Clerk