ORDINANCE NO. 20-11

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAYWARD EXTENDING ORDINANCE NO. 20-07, WHICH ADOPTED A TEMPORARY MORATORIUM ON RESIDENTIAL AND COMMERICAL EVICTIONS IN THE CITY OF HAYWARD FOR NON-PAYMENT OF RENT OR MORTGAGE PAYMENTS CAUSED BY THE CORONAVIRUS (COVID-19) PANDEMIC, OR FOR A NO-FAULT REASON UNLESS THE EVICTION IS NECESSARY FOR THE IMMINENT HEALTH AND SAFETY OF THE TENANT OR LANDLORD, SAID EXTENSION TO EXPIRE ON SEPTEMBER 30, 2020 UNLESS REPEALED EARLIER, AND EXTENDING THE REPAYMENT PERIOD TO 180 DAYS AFTER THE EXPIRATION OF THE MORATORIUM, UNLESS RENTAL OR MORTGAGE PAYMENT AGREEMENT TERMS NEGOTIATED DURING THE MORATORIUM ARE BREACHED

THE CITY COUNCIL OF THE CITY OF HAYWARD hereby ordains as follows:

SECTION 1.
Extension of Temporary Moratorium on Evictions.

The Temporary Moratorium on Evictions, adopted by the Hayward City Council as an emergency ordinance on April 7, 2020, is hereby extended until September 30, 2020, unless repealed earlier.

SECTION 2.
Findings and Statement of Urgency.

A. Pursuant to Article XI, Sections 5 and 7 of the California Constitution, Government Code Sections 36934 and 36937, and section 617 of the Charter of the City of Hayward, the City may make and enforce all regulations and ordinances using its police powers to regulate municipal affairs and may enact emergency ordinances for the immediate preservation of the public peace, health, or safety.

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

C. On January 30, 2020, the World Health Organization ("WHO") 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.

D. On March 4, 2020, the Governor of California declared a State of Emergency due to the COVID-19 pandemic.

E. On March 11, 2020, the City Manager declared a Local Emergency in the City of Hayward due to the COVID-19 pandemic, which was affirmed by resolution of the Hayward City Council on March 17, 2020.

F. On March 13, 2020, the President of the United States declared a National Emergency due to the COVID-19 pandemic.

G. On March 16, 2020, the health officers of seven jurisdictions in the San Francisco Bay Area, including the County of Alameda, 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. As of 5:00 p.m. on March 15, 2020, 15 cases of COVID-19 were known to exist in Alameda County, as well as at least 258 confirmed cases and at least three deaths in the seven Bay Area jurisdictions jointly issuing the Order, including a significant and increasing number of suspected cases of community transmission and likely further increases in transmission.

H. 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. The Executive Order also requested all financial institutions holding mortgages to implement an immediate moratorium on foreclosures and related evictions when the default by the borrower was caused by the COVID-19 pandemic and directed certain state agencies to work with financial institutions to identify tools to be used to afford borrowers relief from the threat of residential foreclosures.

I. On March 24, 2020 the Hayward City Council adopted Ordinance No. 20-06, an emergency ordinance imposing a moratorium on residential evictions where non-payment of rent is due to a substantial decrease in household (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 substantial out-of-pocket medical expenses caused by the COVID-19 pandemic, or by any local, state, or federal government response to the COVID-19 pandemic, or evictions for a no-fault reason unless the eviction is necessary for the imminent health and safety of the tenant and landlord.

J. The City of Hayward has one of the least affordable housing markets in California and the United States. Renters occupy about 49 percent of the City's housing stock and 57 percent of renters spend more than 30 percent of their income on housing.

K. During the COVID-19 pandemic outbreak, as a result of the State of Emergency declarations and the Shelter in Place Order, many tenants and homeowners have experienced sudden income loss and further income impacts are anticipated, leaving tenants vulnerable to eviction due to failure to pay rent or mortgage payments.

L. Affected tenants and homeowners who have lost income due to impact on the economy or their employment as a result of the State of Emergency declarations and the Shelter in Place Order are at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted.

M. Displacement through eviction destabilizes the living situation of tenants and homeowners and impacts the health of Hayward's residents by uprooting children from schools, disrupting the social ties and networks that are integral to the community's welfare and the stability of communities within the City.

N. Displacement through eviction creates undue hardship for tenants and homeowners through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing.

O. During the COVID-19 pandemic outbreak, as a result of the State of Emergency declarations and the Shelter in Place Order, bars and restaurants have been ordered to only serve food for delivery or pick-up; many other businesses have been determined to be non-essential, and thus ordered to effectively cease operations. Consequently, many businesses have experienced sudden income loss due to reduced business hours, business closure, or reduced consumer demand, and further income impacts are anticipated.

P. The loss of income caused by the effects of COVID-19 and the public health orders have, and will, impact commercial tenants' ability to pay rent when due, leaving them vulnerable to eviction.

Q. Providing commercial tenants with short-term protection from eviction due to the inability to pay rent will help avoid further business closures and job losses

R. Eviction of commercial tenants disrupts the social ties and networks that are integral to the community's welfare and the stability of communities within the City.

S. Eviction of commercial tenants creates undue hardship for business owners through additional relocation costs, stress and anxiety, and the threat of losing residential housing due to lack of business income.

T. The City Council finds and determines that during this state of emergency the public interest in preserving peace, health, and safety and preventing further transmission of COVID-19, would be served by avoiding unnecessary displacement and homelessness.

U. The City Council further finds and determines that extension of the temporary moratorium on residential and commercial evictions is necessary to protect public health and safety, where inability to pay is due to 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 caused by the COVID-19 pandemic, or by any local, state, or federal government response to the COVID-19 pandemic, or evictions for a no-fault reason unless the eviction is necessary for the imminent health and safety of the tenant and landlord.

V. Based upon the above-described facts and circumstances, and for these same reasons, the City Council finds that this ordinance is necessary as an emergency measure for preserving the public peace, health and safety, and therefore it may be introduced and adopted at one and the same meeting, and shall become effective immediately upon its adoption by five (5) or more affirmative votes of the Hayward City Council until September 30, 2020, unless repealed earlier.

SECTION 3. Definitions.

A. Commercial Rental Agreement. An oral, written, or implied agreement between a Landlord and a Tenant for use or occupancy of a Commercial Rental Unit.

B. Commercial Rental Unit. Any building, structure, or part thereof, or appurtenant thereto, or any other rental property rented or offered for rent, other than for living or dwelling purposes.

C. Covered Reason for Delayed Payment. A tenant's or homeowner's inability to pay rent or mortgage payments which arises from 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 was unable to work because their children were out of school, 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 the decrease in household or business income or the out-of-pocket medical expenses were caused by the COVID- 19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented.

D. Homeowner. The owner or owners of a Residence subject to a mortgage payment or similar loan secured by the residential unit. Homeowner includes the owner of a Mobile home.

E. Housing Service. A service provided by the Landlord related to the use or occupancy of a Residential Rental Unit, including but not limited to, insurance, repairs, replacement, maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.

F. Landlord. Any owner, lessor, or sublessor of real Property who receives or is entitled to receive Rent for the use or occupancy of any Residential or Commercial Rental Unit or portion thereof in the City of Hayward, and the designated representative, agent, or successor of such owner, lessor, or sublessor.

G. Lender. The mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more Residences, which person has the right to mortgage or similar payments from the Homeowner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.

H. Moratorium Period. The period from the effective date of this Ordinance and continuing until September 30, 2020, unless repealed earlier

I. Mobile home. A structure transportable in one or more sections, designed and equipped to contain no more than one dwelling unit, to be used with or without a foundation system.

J. Mortgage Payment. The predetermined set of payments that a borrower is obliged to pay to a lender pursuant to a debt instrument, which is secured by specified real estate property as collateral.

K. No-Fault Eviction. No-fault eviction refers to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant, including but not limited to, the circumstances described in Hayward Municipal Code section 12-1.13(b)(7)-(10) or any notice served pursuant to Code of Civil Procedures 1161, et seq, or other applicable law.

L. Rent. 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 Landlord for use or occupancy of a Residential Rental Unit and Housing Services under a Rental Housing Agreement or a Commercial Rental Unit under a Commercial Rental Agreement, as the case may be.

M. Rental Housing Agreement. An oral, written, or implied agreement between a Landlord and a Tenant for use or occupancy of a Rental Unit and Housing Services.

N. Residence. A structure, including a mobile home, or the portion thereof 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 person or household pays mortgage payments to a lender for the use and/or occupancy of the structure or Mobile home, or the space where a Mobile home is located.

O. Residential Rental Unit. 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, together with all Housing Services connected with the use or occupancy of such Property. For purposes of this ordinance a Residential Rental Unit shall also include a mobile home or mobile home space.

P. Tenant. A Tenant, subtenant, lessee, sublessee, or a person entitled under the terms of a Rental Housing Agreement or Commercial Rental Agreement, to the use or occupancy of a Residential Rental Unit, or a Commercial Rental Unit, respectively.

SECTION 4. Imposition of Extension of Temporary Moratorium on Certain Non-Payment and No-Fault Evictions

A. During the Moratorium Period, no Landlord shall evict a tenant, nor shall any lender evict a homeowner, under either of the following circumstances: (1) for nonpayment of rent or mortgage payments if the tenant or homeowner demonstrates that inability to pay arises 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 was unable to work because their children were out of school, 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 the decrease in household or business income or the out-of-pocket medical expenses were caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented, or (2) for a no-fault eviction unless necessary for the imminent health and safety of tenants, neighbors, or the landlord.

B. A landlord or lender who reasonably knows that a tenant or homeowner cannot pay some or all of the rent or mortgage payments temporarily for the reasons set forth in paragraph A of this section shall not serve a notice informing a tenant or homeowner of the termination of their right to occupy a Residential Rental Unit, Commercial Rental Unit, or Residence, in accordance with applicable California law, including but not

limited to a 3- or 30-day notice to pay or quit, or otherwise seek to evict for nonpayment of rent or mortgage payments. A landlord or lender knows of the tenant's or homeowner's inability to pay within the meaning of this Ordinance if the tenant or homeowner notifies the landlord or lender in writing of lost income and inability to pay full rent or mortgage payments and is able to provide documentation to support the claim. Requirements to notify the landlord or lender do not preclude the tenant or homeowner from protections under the Moratorium if the tenant or homeowner was unable to notify the landlord or lender in writing.

C. For purposes of this section, "in writing" includes email or text communications to the landlord or lender, or the landlord's or lender's representative with whom the tenant or homeowner has previously corresponded by email or text.

D. For the purposes of this section, documentation to support a claim of inability to pay due to the COVID-19 pandemic may include, without limitation: a statement signed under penalty of perjury that the inability to pay is due to a Covered Reason for Delayed Payment as defined herein; medical bills or reports; documents showing reduced income such as pay stubs or unemployment benefit documents; correspondence from an employer citing COVID-19 as a basis for reduction in work hours or termination of employment; documents showing reduced business income; correspondence by a business owner citing COVID-19 as a basis for reduced business hours or business closure Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim.

E. Nothing in this Ordinance shall relieve the tenant or homeowner of liability for the unpaid rent or mortgage payments, which the landlord or lender may seek after expiration of the moratorium, unless the parties agree otherwise. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance.

F. A tenant or landlord may request to participate in a mediation process through the City of Hayward Rent Review Office, to assist the parties with negotiating, among other things, reduced rental payment amounts during the moratorium period and repayment schedules for unpaid rent during the moratorium period. Any negotiated reduced rent during the mediation process would not affect the base rent calculation of rent-controlled units pursuant to Chapter 12, Article 1 of the Hayward Municipal Code. The parties may request the assistance of the Rent Review Office, to renegotiate agreements as circumstances change. This paragraph shall only apply to tenants and landlords of residential rental units.

SECTION 5. Application

A. This Ordinance applies to all residential rental units, commercial rental units, and residences in the City of Hayward.

B. This Ordinance applies to nonpayment eviction notices, no-fault eviction notices, unlawful detainer actions under California Code of Civil Procedure section 1161, termination of tenancy in a Mobile home park under the Mobile home Residency Law (see Civil Code sections 798.55, et. seq.), petition for writ of possession, or any other action to recover possession of the Residential Rental Unit, Commercial Rental Unit, or Residence, or to otherwise cause tenants or homeowners to vacate the Residential Rental Unit, Commercial Rental Unit, or Residence, based on such notices served or filed during the effective period of this Ordinance. With respect to delayed payment covered by this Ordinance, a landlord may seek such rent after expiration of the moratorium. No landlord or lender may institute unlawful detainer proceedings under California Code of Civil Procedure section 1161, termination of tenancy in a Mobile home park under the Mobile home Residency Law (see Civil Code sections 798.55, et. seq.), petition for writ of possession, or any other action to recover possession of the Residential Rental Unit, Commercial Rental Unit, or Residence, or to otherwise cause tenants or homeowners to vacate the Residential Rental Unit, Commercial Rental Unit, or Residence, for non-payment for a period of 180 days after expiration of the moratorium, unless the tenant or homeowner has breached the terms of a rental or mortgage payment agreement negotiated during the term of this moratorium. In any event the landlord or lender must meet and confer with the tenant or homeowner prior to commencement of any proceedings described in this section.

C. Non-compliance by a landlord or lender with any applicable provision of this Ordinance shall constitute an affirmative defense for a tenant or homeowner against any proceeding instituted by a landlord or lender described in this section.

SECTION 6. Retaliation Prohibited.

A landlord or lender shall not retaliate against a tenant or homeowner for nonpayment of rent or mortgage payments caused by COVID-19 or for exercising their rights under this Ordinance, including but not limited to shutting off any utilities or reducing services or amenities to which the tenant or homeowner would otherwise be entitled.

SECTION 7. Enforcement

The City, at its sole discretion, may choose to enforce the provisions of this ordinance through administrative fines and any other administrative procedure set forth in Hayward Municipal Code Chapter 1, section 1-3.00. Violations of the provisions of this ordinance may be subject to fines of up to $4,000. The City's decision to pursue or not pursue enforcement of any kind shall not affect a tenant's rights to pursue civil remedies. The City Attorney is authorized to institute a civil action or pursue criminal prosecution to enforce any provisions of this Ordinance.

SECTION 8. Civil Remedies.

A Tenant or homeowner may bring a civil suit in the courts of the state alleging that a Landlord or lender has violated any of the provisions of this Ordinance or any regulations promulgated hereunder. In a civil suit, a Landlord or lender found to violate this Ordinance shall be liable to the Tenant or homeowner for all actual damages, which may include an award for mental and/or emotional distress and/or suffering, or for minimum damages in the sum of one thousand dollars ($1,000.00), whichever is greater, and whichever other relief the court deems appropriate. A prevailing Tenant or homeowner in a civil action brought to enforce this Ordinance shall be awarded reasonable attorneys' fees and costs. Additionally, upon a showing that the Landlord or lender has acted willfully or with oppression, fraud, or malice, the Tenant or homeowner shall be awarded treble damages. No administrative remedy need be exhausted prior to filing suit pursuant to this Section.

SECTION 9. Severability.

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 10. Effective Date and Expiration Date.

This Ordinance shall become effective immediately upon its adoption by five (5) or more affirmative votes of the Hayward City Council and shall be in effect until September 30, 2020, unless repealed earlier.

SECTION 11. California Environmental Quality Act (CEQA)

The City Council independently finds and determines that this action is exempt from CEQA pursuant to Public Resources Code section 21065, based on the finding that this Ordinance is not a "project" within the meaning of Section 15378 of the CEQA Guidelines. The City Council further independently finds and determines that this action is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

INTRODUCED at a special meeting of the City Council of the City of Hayward, held the 30th day of June, 2020, by Council Member Mendall.

ADOPTED at a special meeting of the City Council of the City of Hayward, held the 30th day of June, 2020, by the following votes of members of said City Council:

AYES: COUNCIL MEMBERS: Lamnin, Márquez, Mendall, Salinas, Wahab, Zermeño
MAYOR: Halliday

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

MAYOR: _____
Barbara Halliday

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

_____
City Attorney of the City of Hayward

DATE: July 1, 2020