ORDINANCE NO. 20-____

An Ordinance Of The City Council Of The City Of Emeryville Amending Section 5-40.03(e)(1)(i) Of The Emeryville Municipal Code, Which Requires Landlords To Provide A Repayment Plan For Rent In Arrears To Residential Tenants Impacted By COVID-19 Emergency; CEQA Determination: Exempt Pursuant to California Public Resources Code Section 21080(b)(4) and State CEQA Guidelines 15269(c) and 15061(b)(3)

WHEREAS, the United States of America has confirmed cases of individuals who have a severe acute respiratory illness caused by a novel (new) corona virus ("COVID-19" or "the virus") first detected in Wuhan, Hubei Province, People's Republic of China ("China"). The virus was first reported in China on December 31, 2019. As of March 2, 2020, the World Health Organization ("WHO") has reported more than 3,000 deaths stemming from over 100,000 confirmed cases of COVID-19 and the virus is present in 100 countries. 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; 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

WHEREAS, the United States Centers for Disease Control and Prevention (CDC) has determined that the 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 12, 2020, 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, on March 16, 2016, the California Department of Public Health issued a directive that all individuals who are 65 or older, who have serious chronic medical conditions or who have a compromised immune system should self-isolate during the COVID-19 pandemic as these individuals are particularly at risk of encountering medical complications due to the virus; and

WHEREAS, on March 16, 2020, based on evidence of increasing occurrence of COVID-19 within Alameda County and throughout the Bay Area, the Alameda County Health Officer, along with Health Officers in five other Bay Area counties, issued an order "directing all individuals living in the County to shelter at their place of residence…directing all businesses and governmental agencies to cease non-essential operations at physical locations in the County; prohibiting all non-essential gatherings of any number of individuals; and ordering cessation of all non-essential travel"; and

WHEREAS, on March 16, 2020 the Alameda County Director of Emergency Services declared a local emergency based on conditions of extreme peril to the safety of persons and property within the County from the introduction of a novel coronavirus (named COVID-19) in the County; and

WHEREAS, on March 16, 2020, the Governor of the State of California issued Executive Order N-28-20 to suspend any state law that would preempt a local government's authority to impose a moratorium on residential evictions; and

WHEREAS, on March 17, 2020, following the directive of the Alameda County Health Officer, the City of Emeryville closed all City facilities and assigned many employees to work remotely if possible, while maintaining public safety and some public works operations as "Essential Governmental Functions"; and

WHEREAS, on March 17, 2020, in light of actual or threatened conditions of disaster or extreme peril to the safety of persons and property have arisen within the City of Emeryville caused by the introduction COVID-19, as to which there is no known natural immunity and for which there is currently no vaccine, which has become a pandemic, and which is contributing to a shortage of essential health care supplies, pursuant to section 4-2.08(a)(1) of the Emeryville Municipal Code, the City Manager declared an emergency; and

WHEREAS, on March 19, 2020, the City Council for the City of Emeryville adopted Resolution 20-23, ratifying the City Manager's said declaration of an emergency; and

WHEREAS, on March 27, 2020, the Governor of the State of California issued Executive Order N-37-20, which implemented a statewide moratorium on rental evictions, but provided for local moratoriums that provided more protection to residential renters; and

WHEREAS, on March 31, 2020, based on evidence of continuing and increasing occurrence of COVID-19 within Alameda County and throughout the Bay Area, the Alameda County Health Officer, along with Health Officers in five other Bay Area counties, issued an order "directing all individuals living in the County to shelter at their place of residence…directing all businesses and governmental agencies to cease non-essential operations at physical locations in the County; prohibiting all non-essential gatherings of any number of individuals; and ordering cessation of all non-essential travel", which clarifies and supersedes the order from March 16, 2020; and

WHEREAS, during this time of shelter in place, self-isolation, and other social distancing, many individuals are not able to work, and will not be able to earn income to pay rent; and

WHEREAS, the vast majority of housing in Emeryville consists of multi-unit family structures, either as residential rental units or residential condominium units, and displacement of these residents through eviction for failure to pay rent or foreclosure for failure to pay association assessments destabilizes the living situation of these residents, and impacts the health of the community by removing the location where these residents may be sheltering in place, self-isolating or practicing other social distancing measures; and

WHEREAS, the City Council of the City of Emeryville desires to create stability for the impacted residents and to ensure that all residents can comply with federal, local and state directives to practice social distancing which is the interest of the public peace, health, safety and welfare, and adopted Ordinance Nos. 20-002, -007 and -008 ("Ordinances") imposing a moratorium on residential rental evictions due to failure to pay rent; and

WHEREAS, the Ordinances do not relieve Affected Residential Tenants, as that term is defined in the Section 4 of the Ordinances from their legal obligation to pay rent; but the City Council of the City of Emeryville finds that Affected Residential Tenants may not be able to immediately repay rent owed once the COVID-19 emergency terminates because it may take time to replace household income lost due to the shelter in place during the COVID-19 emergency and other impacts from the COVID-19 emergency; and

WHEREAS, the City Council of the City of Emeryville finds that the City's shelter crisis, which was declared by the City Council in adopting Resolution No. 18-156, on October 30, 2018, and the State's housing crisis are on-going and continue; and

WHEREAS, displacement of residential tenants following the COVID-19 emergency for failure to pay rent due to reduction in household income due to the COVID-19 emergency and the federal, state and local governments response to it would further exacerbate the City's declared shelter crisis and the State's housing crisis; and

WHEREAS, providing residential stability after the COVID-19 emergency is necessary to abate the City's declared shelter crisis and to promote economic recovery, which is in the interest of the public health, safety and welfare.

WHEREAS, on April 21, 2020, the City Council adopted Ordinance No. 20-006, amending Chapter 40 of Title 5 of the Emeryville Municipal Code, to require landlords to offer Affected Residential Tenants a repayment plan to repay the uncollected rent due during the City's moratorium on residential evictions; and

WHEREAS, the City Council desires to further amend Section 5-40.03(e)(1)(i) of the Emeryville Municipal Code to provide clarity in implementation.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. AMENDING SECTION 5-40.03(e)(1)(i) OF THE EMERYVILLE MUNICIPAL CODE

Section 5-40.03(e)(1)(i) of the Emeryville Municipal Code is hereby amended as follows. Additions are in **bold underline** text. Deletions are in ~~strikeout~~ text. Those portions not specifically amended remain unchanged.

Failure to Pay Rent. Tenant failed to pay rent within three (3) days of receiving written notice from the landlord demanding payment in accordance with California Code of Civil Procedure Section 1161.2 ~~("3 Day Notice")~~. In the case of an affected residential tenant, as defined in Emeryville Municipal Code section 5-40.02(a), and prior to delivery of a notice of termination for nonpayment of rent, the landlord must offer the affected residential tenant a reasonable repayment plan for the total sum of unpaid rent accruing between April 1, 2020 and the expiration of the ~~Governor's COVID-19 State of Emergency~~ **the City's moratorium on residential rental evictions imposed by City Ordinance Nos. 20-002, 20-007 and 20-008** . The repayment plan must be presented in writing and may not be for less than a twelve-month period beginning from the expiration of the ~~Governor's COVID-19 State of Emergency~~ **the City's moratorium on residential rental evictions imposed by City Ordinance Nos. 20-002, 20-007 and 20-008**.

SECTION TWO. CEQA DETERMINATION

The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 21080(b)(4) of the California Public Resources Code and Section 15269(c) of the State CEQA Guidelines because adoption of this ordinance is to mitigate an emergency and under Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

SECTION THREE. SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses or phrases.

SECTION FOUR. EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

SECTION FIVE. CODIFICATION

This Ordinance shall NOT be codified.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a special meeting on Tuesday, June 9, 2020, and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, June 16, 2020.

AYES:	_____	_____
NOES:	_____	_____
ABSTAIN:	_____	_____
ABSENT:	_____	_____

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

Michael Guina

_____
CITY ATTORNEY