



CITY OF SOUTH PORTLAND

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City Manager

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City Clerk

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District Two
KATHERINE W. LEWIS

District Three
MISHA C. PRIDE

District Four
LINDA C. COHEN

District Five
DEQA DHALAC

At Large
VACANT

At Large
SUSAN J. HENDERSON

**IN COUNCIL
ORDINANCE #24-21/22**

AS AMENDED & ADOPTED AS AN EMERGENCY ORDINANCE ON 6/7/2022

THE COUNCIL of the City of South Portland hereby ordains that Chapter 12, "Housing," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended by the enactment of a new Article XI as follows (deletions are ~~struck through~~; additions are underlined):

CHAPTER 12

HOUSING

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ARTICLE XI. MORATORIUM ON CERTAIN EVICTIONS AND RENT INCREASES

Sec. 12-260. Necessity of Moratorium.

The City makes the following findings:

WHEREAS, many City residents have experienced a decrease in inflation-adjusted wages and a reduced ability to find adequate and affordable housing;

WHEREAS, many City residents have recently experienced sudden and significant increases in rent, in some instances as high as 25-30%, jeopardizing those residents' ability to remain in their homes and/or afford to pay for other basic necessities;

WHEREAS, according to the Housing Needs Assessment and Strategy Final Report prepared by Crane Associates, Inc. and Economic & Policy Resources for the City dated May 16, 2022 (the "Report"), of the 12,463 residences in South Portland as of 2020, 6,836 are owner-occupied, 5,003 are renter-occupied, and 624 are vacant;

WHEREAS, according to the Report, a renter household must earn \$25.88/hour or \$53,830/year to be able to afford median rent and not pay more than 30% of their income for rent;

WHEREAS, according to the Report, 85.1% of the 5,003 rentals in South Portland are not affordable for the 14.8% of households making \$29,180/year or less (60% and below of Area Median Income);

WHEREAS, according to the Report, 14.7% of South Portland children experience poverty (*i.e.*, a family of 4 earning less than \$25,000/year);

WHEREAS, Housing Choice Voucher Fair Market Rents, as determined by the U.S. Department of Housing and Urban Development (HUD) for Fiscal Year 2022 are as follows:

| | <u>Efficiency</u> | <u>1-bedroom</u> | <u>2-bedroom</u> | <u>3-bedroom</u> | <u>4-bedroom</u> |
|--|-------------------|------------------|------------------|------------------|------------------|
| <u>So. Portland, Portland, Westbrook</u> | <u>\$1,143</u> | <u>\$1,330</u> | <u>\$1,721</u> | <u>\$2,195</u> | <u>\$2,689</u> |

WHEREAS, under the State’s general assistance statute, 22 M.R.S. § 4301(4), an “emergency” means any life threatening situation or a situation beyond the control of the individual which, if not alleviated immediately, could reasonably be expected to pose a threat to the health or safety of a person;

WHEREAS, under the State’s general assistance statute, 22 M.R.S. § 4308(2), a person experiencing or facing homelessness who does not have sufficient resources to provide one or more basic necessities in an emergency may be eligible for emergency general assistance;

WHEREAS, stable and affordable homes are necessary determinants of health for children to succeed in school and workers and families to thrive;

WHEREAS, the combination of high rents and low vacancy rates has resulted in heightened housing uncertainty for many City residents;

WHEREAS, the uncertainty created by the possibility of losing affordable housing and homelessness is a danger to the public health, safety and welfare;

WHEREAS, the City Council finds that an emergency measure is necessary and essential to prevent the irreparable injury tenants will suffer due to unanticipated, unbudgeted, and significant rent increases, or due to the service of certain eviction notices upon tenants;

WHEREAS, under Secs. 222 and 225 of the City Charter, the City Council has the power to enact an emergency ordinance, not in conflict with general laws, as necessary to protect public health, safety and welfare;

WHEREAS, the above-identified issues constitute a current and immediate threat to the public health, safety and welfare of the community, and should be adopted to temporarily prevent further rent increases and evictions of tenants without cause until such time as the City may evaluate the need for, and to consider, what additional or different ordinance provisions and regulations, if any, might be appropriate as well as to prepare reasonable ordinances and regulations governing rent stabilization;

WHEREAS, it is anticipated that such a study, review, and preparation of ordinances and regulations will take not more than 180 days from the Applicability Date of this Moratorium on Certain Evictions and Rent Increases (“Moratorium”);

WHEREAS, for the reasons set forth above, this Moratorium is declared by the City Council to be necessary for immediate preservation of the public peace, health, and safety, and the recitals above taken together constitute the City Council’s statements of the reasons constituting such necessity and emergency; and

WHEREAS, in the judgment of the City Council, the recitals above taken together constitute an emergency within the meaning of the City Charter that necessitates final passage of this Moratorium upon first reading.

Sec. 12-261. Title; Authority.

This Article XI is entitled “Moratorium on Certain Evictions and Rent Increases” and is hereinafter referred to as the “Moratorium.” This Moratorium is adopted pursuant to the City’s home rule authority under Article VIII, Part Second of the Maine Constitution and 30-A M.R.S. § 3001; 30-A M.R.S. § 4356; and any other enabling statutes.

Sec. 12-262. Definitions.

Applicability Date means May 31, 2022.

Applicable Law means all controlling applicable federal, state and local statutes, regulations, and ordinances, as well as all administrative rules and orders that have the effect of law, as well as all applicable final, non-appealable judicial opinions.

Housing Services means those services that were provided by the Landlord as of April 1, 2022, in connection with a Lease Tenancy or Tenancy at Will in a Housing Unit, including, but not limited to: repairs; replacement; maintenance; painting; light; heat; water; elevator service; laundry facilities and privileges; janitor service; trash removal; furnishings; telephone; parking; any rights permitted the Tenant under the terms of a

Lease or Rental Agreement, including the right to have a specific number of occupants and the right to keep pets; and any other benefits, privileges or facilities.

Housing Unit means one or more rooms, including a building, forming a single unit used or intended for use as a residence under the terms of a Lease or Rental Agreement.

Landlord means the Owner(s) of a Housing Unit, or the sub-lessor(s) of a Housing Unit, and any Person acting as an agent, representative, successor, or assignee of any such owner or sub-lessor with respect to the Housing Unit.

Lease means a written agreement between, and signed by, a Landlord and a Tenant, or a sub-lessor and a subtenant, for the lease or sub-lease of a Housing Unit for residential purposes during a Lease Term, including any amendments to, and extensions of, that agreement, but shall not include any agreement to the extent that it creates a tenancy at will.

Lease Tenancy means any tenancy, other than a Tenancy at Will, created in a Lease.

Lease Term means the period, including any extensions of the same, during which the tenancy granted to the Tenant in a Lease is to run as provided in that Lease, unless earlier terminated as provided in that Lease for breach of its terms or other contingent event.

Moratorium Period means the period beginning on the Applicability Date and ending on November 27, 2022.

No-Fault Cause means existence of any of the following:

- (a) Whether the Tenant is a Tenant at Will or holds a Lease Tenancy in a Housing Unit, any of the causes for termination of a tenancy or the filing of a forcible entry and detainer action listed in either:
 - (i) 14 M.R.S. § 6002(1), provided, however, that the meaning of rent shall not include a Prohibited Rent Increase; or
 - (ii) 14 M.R.S. § 6025(3);
- (b) A Tenant's refusal to provide a Landlord with access to a Housing Unit as required by the terms of a Lease, a Rental Agreement, or 14 M.R.S. § 6025;
- (c) A Tenant's actual or attempted:
 - (i) Assignment of any rights under the terms of a Lease or Rental Agreement; or

(ii) Subletting of all or any part of a Housing Unit

to the extent that such action violates the terms of a Lease or a Rental Agreement;

(d) An individual Owner's intent to occupy the Housing Unit, or the intent of any Owner to permit the occupation of the Housing Unit by the spouse, domestic partner, children, grandchildren, parents, or grandparents of an individual Owner, or of any individual who, directly or indirectly, holds an ownership interest in the Owner;

(e) The Landlord intends to withdraw the Housing Unit from the residential rental market for a period of not less than 12 months;

(f) The Landlord intends to demolish the Housing Unit or the building in which a Housing Unit is located no more than 60 days after the date on which the Landlord delivers a Notice to Quit to any Tenant of that Housing Unit which includes the same as a No-Fault Cause for the termination of the Tenant's tenancy in that Housing Unit;

(g) The Landlord is complying with Applicable Law, or the terms of a deed or other document recorded in the Cumberland County Registry of Deeds prior to April 1, 2022, or the terms of any other agreement which became binding upon, and enforceable against, the Landlord on or before that date and which otherwise continues to be enforceable against the Landlord despite the enactment of the Moratorium; or

(h) The Tenant is in violation of any term of a Lease, other than nonpayment or late payment of a Prohibited Rent Increase that, under the terms of that Lease, constitutes grounds for termination of the Tenant's tenancy in a Housing Unit.

Notice to Quit means any written notice sent by a Landlord to a Tenant of a Housing Unit to terminate a Tenancy at Will, to terminate a Lease Tenancy prior to the end of the Lease Term, or to otherwise terminate a Tenant's right to possession of a Housing Unit.

Owner means any Person that holds title, singly or with others, to one or more Housing Units in any manner that permits that Owner, by itself or in combination with other Owners of any such Housing Units, to create a Lease Tenancy or Tenancy at Will in those Housing Units.

Person means an individual, corporation, business or other trust, estate, limited or general partnership, limited liability company or partnership, association, joint venture, or any other legal or commercial organization, and also includes any employee, agent,

independent contractor, servant, or other representative of the same with respect to a Housing Unit.

Prohibited Rent Increase means any increase in excess of 10%, on or after April 1, 2022 through the end of the Moratorium Period, of: (i) any rent charged by a Landlord for a Housing Unit then used for residential purposes; or (ii) any other charge or fee imposed for a Housing Service in the terms of a Lease or Rental Agreement other than increases resulting from, and not exceeding, increases in costs or expenses imposed by parties other than the Landlord, but which are incurred by the Landlord and that, under the terms of the Lease or Rental Agreement, are to be paid by the Tenant. Any late charges or fees imposed by a Landlord for non-payment or late payment of any amount that is otherwise a “Prohibited Rent Increase” shall also constitute a “Prohibited Rent Increase.”

Rental Agreement means any written or oral agreement that creates or extends a Tenancy at Will for residential purposes in a Housing Unit.

Tenant means any individual, other than a Landlord, who becomes entitled to possession of a Housing Unit for residential purposes as a Tenant at Will or as the holder of a Lease Tenancy.

Tenancy at Will means a tenancy at will as that term is used in 14 M.R.S. § 6002.

Tenant at Will means any Person who is in possession of, or is entitled to be in possession of, a Housing Unit as a party to and under the terms of a Rental Agreement.

Sec. 12-263. Moratorium.

(a) During the Moratorium Period, a Landlord shall not, and shall not threaten to:

- (1) Deliver a Notice to Quit to a Tenant, unless that Notice states and describes a No-Fault Cause for its issuance and delivery;
- (2) Commence or prosecute a forcible entry and detainer action under 14 M.R.S. § 6001 to obtain possession of a Housing Unit, unless the complaint filed to initiate the action states and describes a No-Fault Cause for the termination of the Tenant’s right to possess the Housing Unit and the Landlord proves the existence of such reason at any evidentiary hearing that may be held in that action; or
- (3) Obtain a judgment in any forcible entry and detainer action based upon a 30-day Notice to Quit issued pursuant to 14 M.R.S. § 6002 that states and describes a No-Fault Cause for its issuance and delivery as required by Sec. 12-263(a)(1) of this Moratorium, unless the Landlord proves the existence of the No-Fault Cause described in that Notice at any evidentiary hearing that may be held in that action.

(b) Unless the Housing Unit is exempt from this Moratorium under Sec. 12-263(d), a Landlord shall not (i) impose a Prohibited Rent Increase on any Tenant or Housing Unit; or (ii) reduce any Housing Services provided to that Tenant. To the extent that a Landlord and Tenant had reached agreement after April 1, 2022 on a Prohibited Rent Increase, which was not in effect prior to the Applicability Date, the Landlord shall not impose such Prohibited Rent Increase on the Tenant or Housing Unit, and such Prohibited Rent Increase shall be void and unenforceable to the extent accruing during any part of the Moratorium Period, but the Prohibited Rent Increase shall, instead, only be effective and enforceable to the extent that it accrues for any period following the end of the Moratorium Period and otherwise complies with Applicable Law (including without limitation any rent stabilization ordinance that may be enacted during the Moratorium Period) in effect at that time.

(c) Any Landlord that, as of April 1, 2022, was accepting federal, state or local public assistance, including medical assistance and housing subsidies, for:

(1) Any full or partial payment of rent for a Housing Unit then being used for residential purposes by a Tenant;

(2) Any full or partial payment of rent for a Housing Unit then being used for residential purposes made by another Person on behalf of a Tenant; or

(3) A Housing Unit then being used for residential purposes

shall continue to accept such payments as rent for that Tenant and for any such Housing Unit during the Moratorium Period.

(d) This section shall not apply to the following types of Housing Units, residential real properties, or residential circumstances:

(1) Any Housing Unit owned, in whole or in part, by an Owner who, at the time that Housing Unit was or is rented to a Tenant, owns 10 or fewer Housing Units within the City;

(2) Any rental property or rental unit to the extent that it is not rented pursuant to an agreement that creates a Lease Tenancy or Tenancy at Will in that property or unit, and the party occupying or in possession of the same does not hold any such tenancy in that property or unit;

(3) Housing Units and housing accommodations in a nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly, or continuing care retirement community facility;

(4) Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school;

- (5) Housing Units and housing accommodations in which the Tenant shares bathroom or kitchen facilities with an individual Owner who maintains their principal residence at the residential real property;
- (6) Single-family Owner-occupied residences, including a residence in which the Owner-occupant rents or leases an “authorized accessory dwelling unit” as defined in Sec. 14-801 of Article XVII, Short-Term Residential Rentals, of Chapter 14 of the Code of Ordinances;
- (7) “Short-term rentals” provided to “short-term rental guests,” as those terms are defined in Sec. 14-801 of Article XVII, Short-Term Residential Rentals, of Chapter 14 of the Code of Ordinances; or
- (8) Housing Units for which the amount, or maximum amount, of rent charged is otherwise controlled, limited, or set by a federal, state, or local governmental agency.

Sec. 12-264. Effective Date.

This Moratorium shall become effective pursuant to Sec. 225 of the City Charter (the “Effective Date”) and shall remain in full force and effect until the earlier of the following: (i) 180 days from the Applicability Date, as that 180-day period may be extended, repealed, or modified pursuant to Applicable Law; or (ii) the effective date of a new City ordinance, or amendments to one or more existing City ordinances or regulations, adopted to address rent stabilization.

Sec. 12-265. Applicability Date.

Notwithstanding the provisions of 1 M.R.S. § 302 or any other law to the contrary, and regardless of the Effective Date, this Moratorium when enacted shall apply on or any time after the Applicability Date, as defined herein.

Sec. 12-266. Non-Waivability.

The provisions of this Moratorium may not be waived, and any term of any Lease, Rental Agreement, contract, or other agreement that purports to waive or limit a Tenant’s substantive or procedural rights under this Moratorium is contrary to public policy, unenforceable, and void.

Sec. 12-267. Conflicts; Savings Clause.

Any provisions of the City's ordinances that are inconsistent with or conflict with the provisions of this Moratorium are hereby repealed to the extent applicable for the duration of this Moratorium. If any section or provision of this Moratorium is declared by a court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

Sec. 12-268. Enforcement; Violations.

The provisions of this Moratorium shall be investigated and enforced by the City Manager or his/her duly authorized designee(s). Each failure to comply with the requirements set forth in this Moratorium with respect to an individual Tenant shall be deemed a separate offense triggering a separate fine of, at a minimum, the greater of 12 months' periodic rent at the rental rate as of April 1, 2022 or 12 months' periodic rent at the rental rate the Landlord announced or implemented on or after April 1, 2022. A Landlord's delivery of a Notice to Quit that does not comply with the requirements of this Moratorium shall render that Notice to Quit void and illegal. The City may allocate fines collected for violations of this Moratorium for the Affordable Housing Trust Fund or rent relief. The City shall be entitled to all rights available to it, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations.

Fiscal Note: Less than \$1,000

Date: June 7, 2022