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**ORDINANCE NO. 2021-10**

**AN URGENCY ORDINANCE OF THE CITY OF ALBANY AMENDING  
URGENCY ORDINANCE NO. 2020-03, AS AMENDED BY URGENCY ORDINANCE  
NOS. 2020-06, 2020-12, 2020-13 AND 2021-05, TO REVISE THE REPAYMENT PERIOD  
FOR UNPAID RENT UNDER THE COMMERCIAL EVICTION MORATORIUM  
DURING THE COVID-19 PANDEMIC AND SETTING FORTH  
THE FACTS CONSTITUTING SUCH URGENCY**

THE ALBANY CITY COUNCIL ORDAINS AS FOLLOWS:

**SECTION 1. FINDINGS**

A. The findings set forth in Ordinance No. 2020-03, No. 2020-06, No. 2020-12, No. 2020-13 and No. 2021-05 are incorporated herein by reference.

B. The California Legislature adopted statewide eviction protection for residential tenants pursuant to the COVID-19 Tenant Relief Act (Chapter 5 (commencing with Section 1179.01) of Title 3 of Part 3 of the Code of Civil Procedure (CCP)) through September 30, 2021. The California Legislature did not adopt equivalent statewide protections for commercial tenants.

C. On June 11, 2021, the California Governor issued Executive Order N-08-21, paragraph 61, extending the timeframe for the protections in Executive Order N-28-20, Paragraph 2, thereby extending authorization for local governments to limit evictions for commercial tenants impacted by the COVID-19 pandemic through September 30, 2021. This authorization has now expired.

D. The City of Albany, Ordinance No. 2021-05, provides that the Albany commercial eviction moratorium is automatically extended if Executive Order N-28-20, Paragraph 2, is extended. With the expiration of Executive Order N-28-20, Paragraph 2, the Albany commercial eviction moratorium has expired as of September 30, 2021.

E. The repayment period for unpaid rent and rent increases under the Albany commercial eviction moratorium provisions was set at twelve months after expiration of the local emergency. (See Ordinance No. 2020-06, Section 3.)

F. The City Council finds that it is premature to end the local emergency. The virus has not disappeared, new variants are circulating in the area, and more variants may arise.

1 Though conditions are significantly better than when the local emergency was first declared, the  
2 City must be ready to immediately respond to unpredictable changes as the economy reopens to  
3 pre-pandemic capacity.

4 G. The City Council recognizes that commercial tenants may need additional time to  
5 recover from over a year of substantially reduced revenue, rehire employees, ramp-up operations,  
6 and raise enough revenue to repay deferred rent. At the same time, some commercial landlords  
7 may have not been paid rent at all during the eviction moratorium period. The City Council  
8 desires to balance the equities between commercial landlords and tenants by amending the  
9 repayment provisions of the commercial eviction moratorium with the intent of facilitating  
10 recovery of the local economy during an unprecedented phase of the COVID-19 pandemic.

11 H. It is critical to provide certainty to both landlords and commercial tenants as to the  
12 repayment period for back rent, so that all businesses have the ability to recover from the impacts  
13 of the COVID-19 pandemic outbreak and continue to provide employment and so that economic  
14 recovery is possible after the emergency is over, all of which are in the interest of the public  
15 peace, health, safety and welfare.

16 I. This Ordinance is adopted pursuant to the City's police powers and powers  
17 afforded to the city in the time of a national, state, county and local emergency during an  
18 unprecedented health pandemic, such powers being afforded by the State Constitution, State law  
19 and Section 2-16 of the Albany Municipal Code to protect the peace, health, and safety of the  
20 public. The Albany City Council finds that this ordinance is necessary for the preservation of the  
21 public peace, health, and safety of businesses and workers working within the City and finds  
22 urgency to approve this ordinance immediately based on the facts described herein and detailed in  
23 the staff report. Under Government Code Section 8634, this ordinance is necessary to provide for  
24 the protection of health, life and property.

25 **SECTION 2. RENT REPAYMENT TERMS**

26 The time periods in Ordinance No. 2020-03, Sections 3(E) and 6(D) (as amended by  
27 Section 3 of Ordinance No. 2020-06) for commercial tenants to repay unpaid rent and unpaid rent

1 increases, respectively, shall be September 30, 2022 (the “repayment period”). A landlord shall  
2 not commence an eviction during this repayment period so long as the tenant pays the unpaid  
3 back rent (or rent increases) that accrued during the eviction moratorium by September 30, 2022  
4 and is current on then-due rent.

5 **SECTION 3. SEVERABILITY.**

6 If any section, subsection, sentence, clause, phrase or word of this Ordinance is found to  
7 be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision  
8 shall not affect the remaining provisions of this Ordinance.

9 **SECTION 4. ENVIRONMENTAL REVIEW.**

10 The City Council finds that adoption and implementation of this ordinance is not a  
11 “project” for purposes of the California Environmental Quality Act (CEQA), as that term is  
12 defined by CEQA guidelines (Guidelines) sections 15061(b)(3), and 15378(b)(5). The effect of  
13 the proposed Ordinance will be to revise the repayment period for commercial tenants’ unpaid  
14 rent and unpaid rent increases under the City’s prior commercial eviction moratorium. No new  
15 development will result from the proposed action. No impact to the physical environment will  
16 result. The City Council also alternatively finds that the adoption and implementation of this  
17 ordinance is exempt from the provisions of CEQA as an administrative activity by the City of  
18 Albany, in furtherance of its police power, that will not result in any direct or indirect physical  
19 change in the environment, per sections 15061(b)(3), and 15378(b)(5) of the CEQA Guidelines,  
20 as well as CEQA Guidelines section 15064(e) (economic regulations).

21 **SECTION 5. URGENCY DECLARATION; EFFECTIVE DATE.**

22 The City Council finds and declares that the adoption and implementation of this  
23 Ordinance is necessary for the immediate preservation and protection of the public peace, health  
24 and safety as detailed above and as the City and public would suffer potentially irreversible  
25 displacement of commercial tenants and loss of employment resulting from evictions for failure  
26 to pay rent due to the COVID-19 crisis. Despite the removal of statewide restrictions for nearly  
27 all businesses on June 15, substantially reduced business revenue as a result of COVID-19 and  
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1 public health orders over the past year and a half have inhibited City businesses from fulfilling  
2 their financial obligations, including payment of rent due under their commercial leases. After  
3 September 30, 2021, there will no longer be moratoria on commercial or residential evictions,  
4 leaving business owners scrambling to pay off deferred and prospective rent. Some business  
5 owners are also residential tenants that must resume payment of monthly rent for housing.  
6 Without the immediate adoption of a date-specific repayment period, a provision the City's  
7 commercial moratorium lacks, tenants and landlords will be without certainty about their rights  
8 and obligations now that the moratorium has ended. This ordinance serves the public welfare  
9 because it will assist businesses with transitioning back into normal operations, which in turn will  
10 increase jobs and enable those businesses to generate the necessary revenue to pay landlords for  
11 back-rent and future rent. Under Government Code Section 8634 and Section 2-16 of the Albany  
12 Municipal Code, this ordinance is necessary to provide for the protection of life and property for  
13 the reasons set out herein. The Council therefore finds and determines that the immediate  
14 preservation of the public peace, health and safety, and protection of life and property, require  
15 that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section  
16 36937 and take effect immediately upon adoption by four-fifths of the City Council.

17 **SECTION 6. CERTIFICATION**

18 The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause  
19 the same, or the summary thereof, to be published or posted in the manner required by law.

20  
21 PASSED, APPROVED AND ADOPTED this 18th day of October 2021.

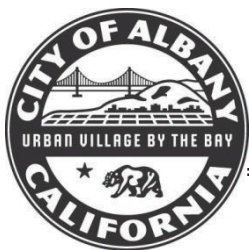
22 AYES:

23 NOES:

24 ABSENT:

25 ABSTAIN:

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GE'NELL GARY, MAYOR



# *City of Albany*

1000 San Pablo Avenue • Albany, California 94706  
(510) 528-5710 • [www.albanyca.org](http://www.albanyca.org)

## **URGENCY ORDINANCE NO. 2021-10**

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

The 18th day of October, 2021, by the following votes:

AYES: Council Members Jordan, McQuaid, Nason, Tiedemann and Mayor Gary

NOES: none

ABSENT: none

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this 19th  
day of October, 2021.

Anne Hsu  
CITY CLERK