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CONSENT CALENDAR

April 20, 2021

To: Honorable Members of the City Council
 From: Vice Mayor Sophie Hahn (Author)
 Subject: Personal Liability Protection for Small Businesses Impacted by COVID-19

RECOMMENDATION

1. Adopt an urgency ordinance adding Berkeley Municipal Code (BMC) Chapter 13.113, relating to personal liability in commercial leases during the COVID-19 pandemic; declaring the urgency thereof; and declaring that this ordinance shall take effect immediately, in order to protect the health, safety, and economic wellbeing of the people of Berkeley.
2. Direct the City Manager to conduct outreach to all commercial tenants regarding any protections enacted by the City Council, with a particular focus on businesses that were required to stop serving food or beverages (e.g., restaurants, bars); close to the public (e.g., hair salons, barbershops, tattoo parlors); cease operations (e.g., gyms, fitness centers); or sharply limit operations (e.g., schools, retail shops, nurseries) due to the COVID-19 crisis.

SUMMARY

On December 1, 2020, the Council passed a measure directing the City Manager and City Attorney to draft and submit to the City Council for consideration an emergency ordinance to prohibit the enforcement of personal liability provisions in commercial leases and commercial rental agreements in the City of Berkeley for lessees/renters who have experienced financial impacts related to the Covid-19 pandemic.¹

The measure was put forward in response to the pronounced impact that health orders issued in Berkeley and throughout the Bay Area have had upon small businesses who have been forced to close or drastically reduce services and/or customer capacity in order to protect the health, safety, and economic wellbeing of the people of Berkeley. The restrictions set forth in these public health orders have had lasting impacts upon many businesses in Berkeley. Moreover, mandatory statewide industry guidance has forced many businesses to remain closed or to operate at extremely limited capacities. Eviction protections authorized by the Governor and by the City of Berkeley have not prevented many local businesses from being forced to permanently close, and many

¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/12_Dec/City_Council_12-01-2020_-_Regular_Meeting_Agenda.aspx

other local businesses that remain open have been forced to default on their rent obligations and cannot hope to completely pay back what they owe in the foreseeable future.

Berkeley has come together as a community to share the burdens imposed by the COVID-19 pandemic, but many small business owners remain in desperately precarious financial circumstances. Some of these individuals have personally guaranteed their businesses' lease obligations, making them personally responsible for unpaid rent, utilities, or taxes in the event the business fails. These valued community members should be able to make sound business decisions and live without the fear that the pandemic will cost them not only their customers and revenues but also their personal assets and homes.

This item puts forward an urgency ordinance prepared by the City Attorney, and includes information on the economic impact of the COVID-19 pandemic, and on the continuing risks faced by Berkeley's small businesses and small business owners.

BACKGROUND

Economic Impact of the COVID-19 Shutdown

Due to the rapidly spreading COVID-19 virus, on March 17, 2020, the City of Berkeley, along with the health officers of six Bay Area counties, issued orders for residents to stay at home and for all but a few essential businesses to cease operations.² Recommendations by the City's Public Health Officer issued included social distancing, staying home if sick, canceling or postponing large group events, working from home, and other precautions to protect public health and prevent transmission of COVID-19. People in Berkeley were prohibited from a wide variety of activities, including dining in at a restaurant, going to a bar, concert, or movie, getting a haircut, massage, or tattoo, or working out at a gym.³

The halting of economic activity had widespread impacts on the Berkeley economy, resulting in significant revenue reductions and job losses in a variety of sectors, including retail, hospitality, and the performing arts.⁴ In late April 2020, a poll of small businesses found the pandemic was already taking a steep toll.⁵ More than two-fifths of the businesses surveyed expected greater than 80% revenue loss over the three months from when the pandemic began impacting the community. More than half (56%)

² https://www.cityofberkeley.info/City_Manager/Press_Releases/2020/2020-03-16-health-officers-order-residents-to-stay-home/

³ https://www.cityofberkeley.info/City_Manager/Press_Releases/2020/2020-03-19_Stay_home_to_protect_our_community_especially_the_vulnerable.aspx

⁴ https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Item_26_Berkeley_Economic_Dashboards_Update.aspx

⁵ Most of the Berkeley respondents were small businesses: 97% had less than 10 employees; more than 40% were sole proprietors; 22% were minority-owned; 46% were woman-owned.

expected to close permanently if they had to stay closed for 3-4 months. More than a third “shifted to online sales or virtual services”, and 33% “reduced salaries or staff hours” to avoid business closure.

The COVID-19 pandemic left thousands unemployed in key Berkeley industry sectors. As the county-wide unemployment rate nearly tripled, job losses were most significant in Berkeley sectors like tourism and hospitality (especially lodging, food and beverage, and arts and cultural industries); retail (especially clothing and accessories); personal and professional service industries (e.g. gyms and fitness studios, salons, employment services), and others.⁶

In 2020, Berkeley hospitality industries suffered deeply from COVID-19 and related health orders.⁷ 100% of meetings, conferences and events were cancelled indefinitely. 90% of Berkeley hotel employees were laid off or furloughed from March to October, as approximately 75% of Berkeley hotel rooms were temporarily closed during that period. Lodging tax revenues declined by 70% (a loss of \$4.7 million) year-over year from March to November.

With regard to food and beverages services, health orders banned indoor dining for more than three-quarters of 2020 forcing restaurants to earn revenues through delivery and takeout services, catering, outdoor dining, and new business models.⁸ More than 40 Berkeley restaurants and bars closed forever, with the greatest number of closures in Downtown Berkeley and the Telegraph district, both near UC Berkeley’s campus.

Importance of Berkeley’s Small Businesses

Small businesses are the heart and soul of Berkeley. As of 2019, there were approximately 5,000 small businesses in Berkeley, accounting for approximately 40% of the jobs in the City.⁹ Small businesses offer high quality goods and services that reflect the community’s eclectic tastes and are infused with the care and expression of their owners. Berkeley’s unique and distinctive small businesses link neighbors in economic and social relationships, binding the community together.

Small businesses are a critical part of Berkeley’s local economy, providing access to essential goods and services, and creating jobs and economic opportunities. The fiscal

⁶ https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Item_26_Berkeley_Economic_Dashboards_Update.aspx

⁷ https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Item_26_Berkeley_Economic_Dashboards_Update.aspx

⁸ https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Item_26_Berkeley_Economic_Dashboards_Update.aspx

⁹ https://www.cityofberkeley.info/uploadedFiles/Manager/Economic_Development/2019-02-05%20WS%20Item%2002%20Referral%20Response%20Small%20Business.pdf;
https://www.cityofberkeley.info/uploadedFiles/Manager/Economic_Development/Attachment3_DemographicandEconomicProfile.pdf

impact of businesses to the City of Berkeley is substantial; roughly a quarter of the City's general fund revenues are generated by business-related taxes.¹⁰ Of these revenues, approximately 11% is derived from business license fees, 5% from the transit occupancy tax (TOT) or hotel tax, and 10% from sales tax. In California, small businesses account for nearly two-thirds of new jobs.¹¹

Small businesses invest a significant share of their revenues back into the local economy.¹² A report by the consulting firm Civic Economics found that local businesses recirculate 45% of their revenues locally, compared to 17% recirculated locally by national corporations.¹³ Local businesses thus have a significant economic multiplier effect, re-circulating dollars that boost local economic activity, employ more local workers, and generate multiple layers of economic activity, and tax revenue, for Berkeley.

In addition to economic impacts, small local businesses impact the people of Berkeley's perception of well being. Vibrant commercial corridors give life to the community, attracting people to eat and drink at cafes and restaurants, shop at local retail stores, and enjoy entertainment and recreation. Conversely, shuttered businesses and empty storefronts have a negative impact on the City. Commercial vacancies can have a contagious effect, and are linked to reduced property values, increased fire risk, elevated crime, and negative health impacts.¹⁴

The City of Berkeley's Response to the COVID-19 Emergency

In March 2020, several Berkeley business associations wrote to the City Council regarding the impact of the COVID-19 outbreak, noting that many of Berkeley's small businesses had "already seen a 25-75% drop in gross receipts since the COVID-19 outbreak as compared to this time last year."¹⁵ The groups continued:

The situation is quickly going from bad to worse, with many of our arts and entertainment venues having closed or likely needing to close soon. Many small businesses, nonprofits, arts organizations, and other businesses do not have a cushion in their budget to weather this type of pandemic. It is incumbent upon the City of Berkeley to do what is necessary to help these businesses survive the economic impact of this unprecedented crisis.

¹⁰ https://www.cityofberkeley.info/uploadedFiles/Manager/Economic_Development/2019-02-05%20WS%20Item%2002%20Referral%20Response%20Small%20Business.pdf

¹¹ <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04142955/2020-Small-Business-Economic-Profile-CA.pdf>; <https://www.dir.ca.gov/smallbusiness/index.htm>

¹² <https://ilsr.org/why-support-locally-owned-businesses/>

¹³

<http://nebula.wsimg.com/31f003d5633c543438ef0a5ca8e8289f?AccessKeyId=8E410A17553441C49302&disposition=0&alloworigin=1>

¹⁴ <https://www.urban.org/urban-wire/local-policies-can-protect-commercial-corridors-pandemic-continues>

¹⁵ March 13, 2020, Letter from the Berkeley Chamber, Downtown Berkeley Association, Telegraph Business Improvement District and Visit Berkeley

As a result of the State of Emergency and the government-recommended precautions by federal, state and local officials, many commercial and residential tenants experienced sudden income loss, and ongoing economic impacts, leaving residential and commercial tenants vulnerable to eviction. Tenants who contracted COVID-19 were required to self-quarantine, which required time away from work. In the interests of protecting public health and preventing transmission of the COVID-19, it was essential for Berkeley to avoid unnecessary displacement and homelessness.

The City Council therefore acted quickly to protect the health, safety, and economic wellbeing of the people of Berkeley, enacting a robust suite of measures to provide support to Berkeley small businesses, nonprofits, and arts organizations, and to create protections for commercial and residential tenants.

On March 17, 2020, the City Council adopted a measure creating a tax-exempt relief fund to provide gap resources to small businesses, arts organizations, and others significantly impacted by the COVID-19 emergency.¹⁶ Thanks to the generosity of the community and \$3 million approved by the Berkeley City Council over \$4.5 million was distributed to qualified organizations by the Office of Economic Development (OED) during the first year of the program.¹⁷ The City's Economic Development staff worked quickly to support businesses and organizations in many other ways, including to ensure access to resources made available by the state and federal governments.

In addition, the City Council directed the City Manager to identify additional funding and increase the allocation to the Flexible Housing Pool, administered by Bay Area Community Services (BACS), and amend the contract and program guidelines if necessary, to provide emergency rental assistance and flexible funding for housing, and to report back to Council on the funding allocated and outcomes.¹⁸

The City Council also approved an urgency ordinance to provide protections to residential tenants, commercial tenants, and individuals in default of mortgage payments during the declared state of emergency to preserve the health and safety of the Berkeley community.¹⁹ The ordinance prohibited evictions for non-payment of rent for tenants, and for those in default, and prohibited no-fault evictions, except for those necessary for public safety and permitted under the state Ellis Act, if the occupant demonstrated that the inability to pay was due to COVID-19, the state of emergency, or government-recommended coronavirus precautions. The ordinance allowed a landlord to collect back rent due and included a waiver provision if the landlord could demonstrate hardship. In addition, the ordinance permitted the City Manager to develop

¹⁶ https://www.cityofberkeley.info/Clerk/City_Council/2020/03_Mar/Documents/2020-03-17_Special_Item_03_Berkeley_COVID-19_Relief_Fund_pdf.aspx

¹⁷ <https://berkeleyrelieffund.org>

¹⁸ https://www.cityofberkeley.info/Clerk/City_Council/2020/03_Mar/Documents/2020-03-17_Special_Item_03_Berkeley_COVID-19_Relief_Fund_pdf.aspx

¹⁹ https://www.cityofberkeley.info/Clerk/City_Council/2020/03_Mar/Documents/2020-03-17_Special_Item_02_Urgency_Ordinance_Adopting_BMC_-_Rev.aspx

implementing regulations and standards for what might constitute grounds for a waiver modification of the requirements.

On April 14 2020, the City Council approved the creation of a special structured financial recovery loan fund -- the Save Our Small (SOS) Business Loan Fund -- to provide a supplemental source of capital for small businesses impacted by the COVID-19 emergency.²⁰ Under the SOS Business Loan Fund, the City would act as a sponsor of the fund, working with one or more financial institutions to pool capital from private investors and the City to lower the risk of the loans and support low interest rates. The State of California later announced a statewide loan fund based on the SOS model Berkeley passed, making these kinds of loans available to small businesses in Berkeley and across the state.²¹

Continuing Risk to Small Businesses and Small Business Owners

Despite the City's extraordinary response to the COVID-19 emergency, many Berkeley small businesses remain in jeopardy of failure while their owners and operators face significant personal financial risk as well. Restrictions set forth in the public health orders have had lasting impacts upon many businesses. Moreover, mandatory statewide industry guidance has forced many businesses to remain closed or to operate at extremely limited capacities. Eviction protections authorized by the Governor and by the City of Berkeley have not prevented many local businesses from being forced to permanently close, and many other local businesses that remain open have been forced to default on their rent obligations and cannot hope to completely pay back what they owe in the foreseeable future.

Berkeley has come together as a community to share the burdens imposed by the COVID-19 pandemic, but many small business owners remain in desperately precarious financial circumstances. In November 2020, a small business owner in Downtown Berkeley, and a local resident of 20 years, wrote to Councilmember Hahn:

I own a [business] in Downtown Berkeley which has been shut since March 16th due to Covid 19 lockdown orders. While I am still hopeful that we might reopen at some point, we are very behind on rent, and the possibility of closing permanently is very real. My business partner and I, like most small tenants, were required to personally guaranty our commercial lease in order to do business with our landlord. This means that, in the event of a default, after evicting us the landlord can come after our personal assets to recover unpaid rent; we could lose what little we have left even after losing our entire business: our homes, our kids' savings, everything is at risk. And all due to no fault of our own.

²⁰ https://www.cityofberkeley.info/Clerk/City_Council/2020/04_Apr/City_Council_04-14-2020_-_Regular_Meeting_Agenda.aspx

²¹ https://haas.berkeley.edu/wp-content/uploads/CA-Rebuilding-Fund_Local-Government-Forum.pdf

In December 2020, the proprietor of a prominent Berkeley food establishment wrote to the City Council that her financial situation was dire (emphasis added):

I own a business in Berkeley that has been shut-down by health officials since mid-March, due to Covid-19. With zero revenue since then, I have been unable to pay the rent, which is approximately \$500./day—or \$15,000./month. Because of the nature of my business, I will be among the last allowed to re-open (and possibly the 1st to be shuttered again!). The amount of rent past-due is approximately \$135,000. and growing quickly, and there is no end in sight to this mess!

If I'm eventually allowed to re-open, there's no way I will be able to repay the past rent, and it's unlikely that I'll be able to keep up with the current rent in this new business climate. And if I default on the Commercial Lease, the landlord will come after my business and will probably come after me personally! I'm so worried about losing not only my hard-earned business and livelihood, but my house and my daughter's college savings as well! **I'm scared I could be ruined.**

Please pass the emergency ordinance to prohibit the enforcement of personal liability provisions in leases. We shouldn't have to fear our landlords coming after our personal life savings and assets because of a disaster no one saw coming!²²

These valued community members should be able to make sound business decisions and live without the fear that the pandemic will cost them not only their customers and revenues but also their personal assets and homes.

Across the Bay, a report released by the San Francisco Budget and Legislative Analyst's Office estimated unpaid commercial rent in San Francisco to be between \$172 million and \$404 million.²³ According to the report, nine-tenths of the unpaid rent (excluding hotels) may come from the retail sector, including restaurants and bars. One small business owner who owns a business supporting the live music industry testified that he faces bankruptcy, which could force him to liquidate his home and childrens' college savings accounts.²⁴ According to the Lawyers' Committee For Civil Rights in the San Francisco Bay Area, some landlords have sued small businesses for damages over unpaid back rent and illegally locked tenants out of storefronts.²⁵

At the time this report was drafted, the author did not have specific information regarding lawsuits targeting Berkeley small business owners for personal liability for unpaid rent or other expenses related to their small businesses. Nevertheless, the risk

²² December 1, 2020, Letter from Berkeley food establishment proprietor in support of personal liability protection (noting that, "Because of the sensitivity of my situation, I am not including my name.")

²³ <https://sfbos.org/sites/default/files/BLA.UnpaidCommercialRent.031821.pdf>

²⁴ <https://www.sfchronicle.com/local/article/S-F-small-businesses-owe-up-to-400-million-in-16036698.php>

²⁵ <https://www.sfchronicle.com/local/article/S-F-small-businesses-owe-up-to-400-million-in-16036698.php>

of personal financial ruin for many Berkeley small business owners is real without the protections provided in this ordinance.

Conclusion

This legislation does not forgive or erase the rent debts accrued by small businesses during the pandemic. It merely seeks to protect the owners of those businesses from devastating personal financial consequences. In enacting this legislation, the City seeks to prevent the loss of even more of the small businesses that make our local economy vibrant and unique.

No one could have predicted the pandemic, nor could anyone have predicted that a year later many local businesses would still be required to operate at reduced capacity. Landlords and business owners alike must share the burdens of these public health restrictions, and should share the goal of rebuilding a vibrant local economy.

Failure to prevent Berkeley's small business owners from being pushed into personal bankruptcy would be a tragedy for the City. It would not only compromise the ability of small business owners to maintain their businesses and life's work, but could also further exacerbate the economic crisis citywide. Given the critical role small businesses play both economically and in creating Berkeley's distinctive character, ensuring the financial survival of small business owners is critical to the City's recovery from the COVID-19 pandemic.

FISCAL IMPACTS

Staff time and expenses for outreach and communications to impacted businesses.

CONTACT INFORMATION

Vice Mayor Sophie Hahn, Council District 5, 510-682-5905 (cell)

ATTACHMENTS

1. Dec. 1, 2020 Council item, Personal Liability Protection for Small Businesses
2. Urgency Ordinance adding Chapter 13.113, Relating to Personal Liability in Commercial Leases During the Covid-19 Pandemic

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25CONSENT CALENDAR

December 1, 2020

To: Honorable Members of the City Council
 From: Vice Mayor Sophie Hahn (Author), Councilmember Wengraf (Co-Sponsor)
 Subject: Personal Liability Protection for Small Businesses

RECOMMENDATION

1. Direct the City Manager and City Attorney to draft and submit to the City Council for consideration an emergency ordinance to prohibit the enforcement of personal liability provisions in commercial leases and commercial rental agreements in the City of Berkeley for lessees/renters who have experienced financial impacts related to the Covid-19 pandemic.
2. Direct the City Manager to conduct outreach to all commercial tenants regarding any protections enacted by the City Council, with a particular focus on businesses that were required to stop serving food or beverages (e.g., restaurants, bars); close to the public (e.g., hair salons, barbershops, tattoo parlors); cease operations (e.g., gyms, fitness centers); or sharply limit operations (e.g., schools, retail shops, nurseries) due to the COVID-19 crisis.

BACKGROUND

The outbreak of the COVID-19 pandemic and subsequent orders to stay at home and practice social distancing have had a profound impact on Berkeley. Although Berkelyans have exercised extraordinary patience and cooperation as the City has worked to contain the coronavirus and reopen our challenged economy, the pandemic has been crushing for vulnerable families and individuals, and for small businesses, the arts sector, schools, not-for-profits, and other local organizations.

This spring, many Berkeley businesses and organizations saw a 25-75% drop in gross receipts due to the shutdown.¹ Unable to absorb such a steep loss of revenue, many were forced to reduce services, lay off workers, or even shutter their establishments. Some owners and organizations face the possibility that the enterprises into which they have poured their lives may never return.

¹ March 13, 2020, Letter from the Berkeley Chamber, Downtown Berkeley Association, Telegraph Business Improvement District and Visit Berkeley

Small, local businesses, as well as nonprofit and arts organizations, are key to Berkeley's economic health -- not only through economic activity, but also because they give life to our community, impacting our perception of economic well being.

This spring, the Berkeley City Council acted quickly to meet the crisis, creating a tax-exempt relief fund to provide gap resources to small businesses, arts organizations, and renters significantly impacted by the COVID-19 emergency. Through this program, grants of up to \$10,000 were made available. The City's Economic Development staff worked quickly to support businesses and organizations in many other ways, including to ensure access to resources made available by the state and federal governments.

On April 14, 2020, the City Council approved the creation of a special structured financial recovery loan fund -- the Save Our Small (SOS) Business Loan Fund -- to provide a supplemental source of capital for small businesses impacted by the COVID-19 emergency. Under the SOS Business Loan Fund, the City would act as a sponsor of the fund, working with one or more financial institutions to pool capital from private investors and the City to lower the risk of the loans and support low interest rates.

The State of California has announced a statewide loan fund based on the SOS model Berkeley passed, making these kinds of loans available to small businesses across the state.

Despite these and other bold actions by the City of Berkeley, our small businesses and organizations including arts, not-for-profits and schools, continue to face extraordinary hardship. In addition to risks to their businesses and organizations, many owners and operators in Berkeley face significant personal financial risk as well. A small business owner in Downtown Berkeley, and local resident of 20 years, recently wrote to my office and lays out the situation in very stark terms:

"I own a [business] in Downtown Berkeley which has been shut since March 16th due to Covid 19 lockdown orders. While I am still hopeful that we might reopen at some point, we are very behind on rent, and the possibility of closing permanently is very real. My business partner and I, like most small tenants, were required to personally guaranty our commercial lease in order to do business with our landlord. This means that, in the event of a default, after evicting us the landlord can come after our personal assets to recover unpaid rent; we could lose what little we have left even after losing our entire business: our homes, our kids' savings, everything is at risk. And all due to no fault of our own."

Unfortunately, personal liability guarantees are all too common in small businesses leases. Such provisions mean, with respect to a commercial lease or other rental agreement, that a small business owner becomes wholly or partially personally liable for an obligation arising under the lease or agreement in the case of a default or other event.

In cases where the Covid shutdown has deprived a small business owner of sufficient revenue to keep up with rent payments, the owner might be able to access personal assets including the business owner's home and savings.

This measure will help ensure that small business owners, and arts, not-for-profit, schools and other organizations in Berkeley that are impacted by the Covid-19 health emergency do not face the potential for personal financial ruin, including loss of their homes, as a result of this pandemic.

These enterprises -- restaurants, salons, arts organizations, schools, and others -- have been damaged through no fault of their own. Protecting the owners and operators of Berkeley businesses and organizations -- and their families -- is not only fair, it is also essential to ensuring that Berkeley is able to recover from the COVID-19 emergency and economic downturn.

FISCAL IMPACTS

Staff time and expenses for outreach and communications to impacted businesses.

CONTACT INFORMATION

Vice Mayor Sophie Hahn, Council District 5, 510-682-5905 (cell)

ATTACHMENTS

1. [NYC Council Int. No. 1932-A](#)

Ordinance No. -N.S.

URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BERKELEY ADDING CHAPTER 13.113, RELATING TO PERSONAL LIABILITY IN COMMERCIAL LEASES DURING THE COVID-19 PANDEMIC; DECLARING THE URGENCY THEREOF; AND DECLARING THAT THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY.

BE IT ORDAINED By the Council of the City of Berkeley as follows:

Section 1. Title

This ordinance shall be known as the Personal Liability Provisions of Commercial Leases During the COVID-19 Pandemic Ordinance

Section 2. That Chapter 13.113 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 13.113

Personal Liability Provisions of Commercial Leases During the COVID-19 Pandemic

- 13.113.010 Findings and Purpose**
- 13.113.020 Prohibition on Enforcement of Personal Liability Provisions Arising from Commercial Leases**
- 13.113.030 Definitions**
- 13.113.040 Severability.**

13.113.010 Findings and Purpose.

The global pandemic caused by the novel coronavirus named "SARS-CoV-2", ("COVID-19") has resulted in extraordinary measures by state and local government to reduce the spread of infection. These measures have had their most pronounced impact upon small businesses who have been forced to close or drastically reduce services and/or customer capacity in order to do their part in protecting public health.

On March 16, 2020, the City of Berkeley Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel.

This Shelter in Place Order was subsequently extended and amended and economic activity in Berkeley remains constrained by both state and local public health orders.

On March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants. This order was extended by Executive Order N-03-21, through June 30, 2021.

The restrictions set forth in these public health orders have had lasting impacts upon many businesses in Berkeley, resulting in significant revenue reductions and job losses in a variety of sectors, including retail, hospitality, and the performing arts. In April 2020, a poll of small businesses found the pandemic was already taking a steep toll: more than two-fifths of the businesses surveyed expected greater than 80% revenue loss over the three months from when the pandemic began impacting the community; more than half (56%) expected to close permanently; and 33% “reduced salaries or staff hours” to avoid business closure. Thousands were left unemployed in key Berkeley industry sectors, including significant job losses tourism and hospitality (especially lodging, food and beverage, and arts and cultural industries); retail (especially clothing and accessories); and personal and professional service industries (e.g. gyms and fitness studios, salons, employment services). Moreover, mandatory statewide industry guidance has forced many businesses to remain closed or to operate at extremely limited capacities. The eviction protections authorized by the Governor and the City of Berkeley have not prevented many local businesses from being forced to permanently close, and many other local businesses that remain open have been forced to default on their rent obligations and cannot hope to completely pay back what they owe in the foreseeable future.

Small businesses are the cultural and economic lifeblood of Berkeley, giving the City its distinctive character, providing access to essential goods and services, and creating jobs and economic opportunities. As of 2019, there were approximately 5,000 small businesses in Berkeley, accounting for approximately 40% of the jobs in the City. The fiscal impact of businesses to the City of Berkeley is substantial; roughly a quarter of the City’s general fund revenues are generated by business-related taxes.

Berkeley has come together as a community to share the burdens imposed by the COVID-19 pandemic, but many small business owners remain in desperately

precarious financial circumstances. These valued community members should be able to make sound business decisions and live without the fear that the pandemic will cost them not only their customers and revenues but also their personal assets and homes. This legislation does not forgive or erase the rent debts accrued by small businesses during the pandemic, it merely seeks to protect the owners of those businesses from devastating personal financial consequences. In enacting this legislation, the City seeks to prevent the loss of even more of the small businesses that make our local economy vibrant and unique.

No one could have predicted the pandemic, nor could anyone have predicted that a year later many local businesses would still be required to operate at reduced capacity. Landlords and business owners alike must share the burdens of these public health restrictions, and should share the goal of rebuilding a vibrant local economy.

13.113.020 Prohibition on Enforcement of Personal Liability Provisions Arising from Commercial Leases

No Personal Liability Provision arising from the default in payments due under the terms of a Commercial Lease may be enforced against an individual where the default allowing for such enforcement occurred during the COVID-19 Period and is the result of the Impacts of COVID-19 Public Health Orders.

13.113.030 Definitions

- A. COVID-19 Period. The term "COVID-19 Period" means March 16, 2020 through the 30th day after the expiration of the prohibition on commercial evictions authorized by Executive Order N-28-20 as extended by Executive Order N-03-21 and any subsequent extension thereof.
- B. Impacts of COVID-19 Public Health Orders. The term "Impacts of COVID-19 Public Health Orders" means a material decrease in business income (or a material increase in operating expenses) caused by a public health order or applicable industry guidance, during the effective period of such order or guidance. Impacts of COVID-19 Public Health Orders include but are not limited to forced closure or substantial reduction in operating capacity, and costs incurred to achieve compliance.

- C. Personal Liability Provision. The term “Personal Liability Provision” means, with respect to a Commercial Lease, a term that provides for an individual who is not the tenant to become wholly or partially personally liable for the rent, charges, or other sums required to be paid by the business, upon the occurrence of a default in payment. The term “Personal Liability Provision” includes the execution of a separate instrument that would otherwise qualify as a Personal Liability Provision if it were included within the terms of the underlying Commercial Lease under which the rent came due, and the individual to be held liable for the rent is a natural person rather than a business entity.
- D. Commercial Lease. The term “Commercial Lease” means a lease, sublease or any other rental agreement involving commercial real property as defined as defined in subdivision (d) of Section 1954.26 of the California Civil Code.

13.113.040 Severability.

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Section 3. Vote Required, Immediately Effective

Based on the findings and evidence in Section 13.112.010 of this Urgency Ordinance, the Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article XIV Section 93 of the Charter of the City of Berkeley and must therefore go into effect immediately. This Ordinance shall go into effect immediately upon a seven-ninths vote of the City Council, in satisfaction of the Charter of the City of Berkeley.

