

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA (1) ENACTING A TEMPORARY MORATORIUM ON EVICTIONS DUE TO A NONPAYMENT OF RENT FOR RESIDENTIAL AND COMMERCIAL TENANTS WHERE THE FAILURE TO PAY RENT RESULTS FROM INCOME LOSS RESULTING FROM THE NOVEL CORONAVIRUS (COVID-19); AND (2) TRIGGERING THE SUSPENSION OF FORECLOSURE REMEDIES THAT COULD LEAD TO EVICTION UNDER SIMILAR CIRCUMSTANCES PURSUANT TO EXECUTIVE ORDER N-28-20

WHEREAS, on January 30, 2020, the World Health Organization (“WHO”) declared 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; and

WHEREAS, on February 14, 2020, the San Diego County Health Officer declared a Local Health Emergency as a result of the COVID-19 virus, which was subsequently ratified by the Board of Supervisors on February 19, 2020; and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments and help the State prepare for a broader spread of COVID-19. The declaration was issued as the number of positive California cases continued to rise and following one official COVID-19 death; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency as a result of the COVID-19 virus; and

WHEREAS, on March 13, 2020, due to the escalating number of COVID-19 virus cases nationwide, with many cases in the State of California, the City of Chula Vista Director of Emergency Services issued a Proclamation declaring a Local Emergency, as authorized by Government Code section 8630 and Chula Vista Municipal Code section 2.14.080(a); and

WHEREAS, the Centers for Disease Control and Prevention, the California Department of Public Health, and the San Diego County Department of Public Health have all issued recommendations, including, but not limited to, 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 this communicable virus; and

WHEREAS, on March 12, 2020 and subsequently amended on March 16, 2020, pursuant to California Health and Safety Code sections 101040, 120175, and 120175.5 (b) the Health Officer of the County of San Diego (Health Officer) issued an Order of the Health Officer and Emergency Regulations (the “County Order”) that is effective from Tuesday, March 17, 2020 through March 31, 2020 for San Diego County. The County Order prohibits all public or private "gatherings," an event or convening that brings together 50 or more people in a single room or

single space at the same time, the closure of all bars, adult entertainment establishments, and other business establishments that serve alcohol and do not serve food, the closure of on-site dining of all restaurants and other business establishments that serve food, and cessation of classes or other school activities where students gather on the school campus for all public or private schools, colleges, and universities; and

WHEREAS, pursuant to Health and Safety Code section 120175.5(b) and the County Order, all governmental entities in San Diego County are required to take necessary measures within the governmental entity's control to ensure compliance with the County Order; and

WHEREAS, as a result of the public health emergency and the precautions recommended by health authorities to address the COVID-19 virus, many tenants in Chula Vista have experienced or are expected to soon experience sudden and unexpected income loss; and

WHEREAS, the Governor of the State of California has stated that individuals may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19 and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks; and

WHEREAS, the Governor of the State of California, in Executive Order N-28-20 dated March 16, 2020, which is hereby fully incorporated into this Ordinance, delegated to local entities, including cities, the authority to enact moratoriums to prevent evictions (including evictions from rental or leased residential or commercial property or as a result of judicial foreclosure) based on impacts related to the COVID-19 virus; and

WHEREAS, further economic impacts are anticipated, leaving tenants vulnerable to eviction; and

WHEREAS, during this Local Emergency, and in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement, to protect the City's affordable housing stock, and to prevent housed individuals from falling into homelessness; and

WHEREAS, in accordance with Chula Vista Municipal Code section 2.14.080(F)(1), the City of Chula Vista Director of Emergency Services recommends that the City Council adopt the below Ordinance as a local measure in order to protect the life and property of the residents of Chula Vista affected by the emergency declared as a result of the COVID-19 virus;

WHEREAS, based on the facts and circumstances stated above, it is necessary to establish this Ordinance as an Emergency Ordinance, within the meaning of City of Chula Vista Charter section 311(d), for preserving the public peace, health, safety, and general welfare as a result of the impacts of the COVID-19 virus.

NOW THEREFORE the City Council of the City of Chula Vista does ordain as follows:

Section I. Temporary Moratorium on Evictions Based Upon Failure to Pay Rent and Judicial Foreclosures Due to COVID-19.

1. Lease-Rent Eviction Moratorium. A temporary moratorium on eviction for non-payment of rent by residential or commercial tenants (collectively “tenant”) impacted by the COVID-19 virus is hereby enacted as follows:
 - A. It shall be unlawful and prohibited for a landlord to evict a residential or commercial tenant in either of the following situations: (1) for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19 or (2) for a no-fault eviction unless necessary for the for the health and safety of tenants, neighbors, or the landlord.
 - B. A landlord who knows that a tenant cannot pay some or all of the rent temporarily for the reasons set forth in Paragraph A, above, shall not serve notice pursuant to Code of Civil Procedure 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for nonpayment of rent. A landlord knows of a tenant’s inability to pay rent within the meaning of this Ordinance if the tenant, within 30 days after the rent is due, notifies the landlord in writing of lost income and inability to pay full rent due to financial impacts of COVID-19, and provide documentation to support the claim.
 - C. For purposes of this Ordinance, “in writing” includes email or text communications to a landlord or landlord’s representative or agent with whom the tenant has previously corresponded by email or text. Any medical or financial information provide to the landlord shall be held in confidence, and only used for evaluating the tenant’s claim. Nothing in this Ordinance shall relieve the tenant of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency and the tenant must pay within six (6) months of the expiration of the local emergency. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance; not may landlord seek rent that is delayed for reasons stated in this Ordinance through the eviction process.
 - D. For purposes of this Ordinance, “financial impacts related to COVID-19” includes, but is not limited to, tenant lost household income as a result of any of the following: (1) being sick with the COVID-19 virus or caring for a household or family member who is sick with the COVID-19 virus; (2) lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19; (3) compliance with an order from a government health authority to stay home, self-quarantine, or avoid congregation with others during a the state of emergency; (4) extraordinary out-of-pocket medical expenses; or (5) child care needs arising from school closures related to COVID-19.

- E. For purposes of this Ordinance, “no-fault eviction” means any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant, including, but not limited to, evictions notices served pursuant to Code of Civil Procedure sections 1161(1), 1161(5), or 1162c.
 - F. A tenant for purposes of this Ordinance also includes a person who leases or rents space in a mobilehome park for a mobilehome in which they reside.
 - G. This Ordinance applies to nonpayment eviction notices, no-fault eviction notices, and unlawful detainer actions based on such notices, served or filed on or after the date on which the State of California declared a State of Emergency.
2. Foreclosure Suspension. Pursuant to Executive Order N-28-20 issued by the California Governor on March 16, 2020, evictions based upon foreclosure proceedings are prohibited as follows:
- A. The statutory cause of action for judicial foreclosure, Code of Civil Procedure section 725a *et. seq.*; the statutory cause of action for unlawful detainer, Code of Civil Procedure section 1162., *et. seq.*, and any other statutory cause of action that could be used to evict or otherwise eject a residential or commercial tenant or occupant of residential real property after foreclosure is suspended only as applied to any tenancy, or residential real property, and any occupation thereof, in which the eviction is based on the following:
 - i. The basis for the eviction is a foreclosure, arising out of a substantial decrease in household or business income (including, but not limited to, a substantial decrease in household income cause by the layoffs or a reduction in the compensable hours of work, or a substantial decrease in business income caused by a reduction of opening hours or consumer demand), or substantial out-of-pocket expenses; and
 - ii. The decrease in household or business income or the out-of-pocket expenses described above, was caused by the COVID-19 pandemic, or by local, state, or federal government response to COVID-19, and is document.
 - B. This Paragraph 2 shall become inoperative effective May 31, 2020, unless extended by Executive Order issued by the Governor of the State of California.
3. Penalties-Remedies. This Ordinance shall be punishable as set forth in Municipal Code Section 1.20.010(A). This Ordinance may also be enforced as set forth in Municipal Code section 1.20.010(G).
4. Payment Obligation. This ordinance shall not relieve tenant of any obligation to pay lawfully due rent, lease, or mortgage payments to landlord or mortgagor.

5. Rules and Regulations. The Director of Emergency may also make and issue rules and regulations pursuant to Chula Vista Municipal Code section 2.14.080 to implement this Ordinance.
6. Duration. Unless stated otherwise, this Ordinance shall remain in effect until the City Council of Chula Vista terminates this Ordinance.

Section II. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IV. Effective Date

Based on the facts and circumstances set forth above, it is necessary to establish this Ordinance as an Emergency Ordinance, within the meaning of City of Chula Vista Charter section 311(d), for preserving the public peace, health, safety, and general welfare as a result of the COVID-19 virus and is hereby effective upon passage by City Council.

This Ordinance shall also take effect and be in force on the thirtieth day after its final passage.

In the event of conflict of effective dates, this Ordinance shall be effective upon the earliest lawful effective date.

Section V. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Gary Halbert
City Manager

Approved as to form by

Glen R. Googins
City Attorney