

SECOND READING AND ADOPTION

ORDINANCE NO. _____

EMERGENCY ORDINANCE AMENDING EMERGENCY ORDINANCE
3486-A [EVICITION MORATORIUM ORDINANCE] OF THE CITY OF
CHULA VISTA TO EXTEND THE TERMINATION DATE OF THE
ORDINANCE FROM MAY 31, 2020 TO JUNE 30, 2020

WHEREAS, on January 30, 2020, the World Health Organization (“WHO”) declared a Public Health Emergency of International Concern as a result of the COVID-19 virus. On January 31, 2020, the United States Secretary of Health and Human Services also declared a Public Health Emergency as a result of the COVID-19 virus; 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), which was subsequently ratified and adopted by the Chula Vista City Council on March 17, 2020; 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 and orders, 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 30, 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 amended Order of the Health Officer and Emergency Regulations (the “County Order”) for San Diego County, including all cities. The amended County Order, *inter alia*, prohibits all public or private “gatherings,” an event or convening that brings together 10 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, 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) and Executive Order N-37-20 (dated March 27, 2020), which are hereby fully incorporated by reference 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, the United States Department of Labor reported that unemployment insurance claims have increased by 3,001,000 application (<https://www.dol.gov/ui/data.pdf>); and

WHEREAS, in December 2019, over 50,000 new unemployment claims were filed with the California Employment Development Department and in a 12-day period since March 13, 2020, over 1,000,000 Californians filed unemployment claims (<https://www.usatoday.com/story/news/nation/2020/03/25/coronavirus-stimulus-unemployment-census-n-95-cruise-ship-wed-news/5081693002/>); and

WHEREAS, a study by San Diego Workforce Partnership reported that San Diego County may lose up to 350,000 jobs as a result of the COVID-19 virus (<https://workforce.org/news/potential-impact-of-covid-19-on-employment-in-san-diego-county/>); and

WHEREAS, SANDAG has reported the unemployment rate in Chula Vista (based on ZIP code) which varies between 21% and 29% (<https://www.sandiegouniontribune.com/business/economy/story/2020-05-06/san-diego-county-unemployment-estimated-at-27/>); and

WHEREAS, as a result of the public health emergency and the precautions recommended and ordered by health authorities to address the health crisis of the COVID-19 pandemic, the City of Chula Vista, including its residents, have been negatively impacted. Sporting events, concerts, plays, and conferences have been cancelled. School closures have occurred and may continue. Employees have been advised to work at home, have had work hours reduced, or have been laid off. As a result, restaurant and retail business has significantly declined and workers have been impacted by lost wages and layoffs. Parents have had to miss work to care for home-bound school-age children. As the virus spreads, workers may have to stay at home and businesses must restrict their activities or close for extended periods; and

WHEREAS, Chula Vista residents, particularly those within low wage and service industries, are left without work and are experiencing sudden and unexpected loss of income and health care. These households are at risk of maintaining housing and falling into homelessness and may have limited access to health care and therefore, at greater risk of exposure to infectious disease, such as COVID-19; and

WHEREAS, over 42% of the housing stock in the City of Chula Vista is rental housing; and 44% of all Chula Vista renters pay more than 50% of their income towards housing costs (2011-2015 CHAS); and

WHEREAS, 47% of Chula Vista's households are of lower income and earn 80% of the Area Median Income or less (\$68,000 annual income for a family of four) and 46% of these households pay more than 50% of their income towards housing costs as renters and homeowners (2011-2015 CHAS); and

WHEREAS, even before the COVID-19 pandemic, there existed a lack of affordable housing in the State of California, including San Diego County (<https://www.gov.ca.gov/2019/03/11/governor-newsom-announces-legislative-proposals-to-confront-the-housing-cost-crisis/>); and

WHEREAS, given existing income levels of Chula Vista residents and the existing high cost of housing in San Diego County prior to the COVID-19 pandemic, any further reductions in income would exacerbate existing housing affordability issues; and

WHEREAS, the current ordinance is set to expire on May 31, 2020; and

WHEREAS, further economic impacts are anticipated to continue beyond May 31, 2020, leaving tenants (both commercial and residential) vulnerable to eviction; and

WHEREAS, during this Local Emergency, and in the interest of protecting the public health and preventing transmission of COVID-19, the City Council of the City of Chula Vista finds that 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 amendments to Ordinance 3483A 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; and

WHEREAS, based on the facts and circumstances stated above, the Chula Vista City Council hereby finds that 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 and Ordinance 3483A is hereby amended as follows:

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

1. Findings. The City Council of the City of Chula Vista hereby fully incorporates the above Recitals into this Ordinance and finds that they are true and correct.
2. 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 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 if a tenant has complied with the requirements of this Ordinance. A landlord knows of a tenant’s inability to pay rent within the meaning of this Ordinance if the tenant, on the date rent is due or within seven (7) days of the due date, notifies the landlord in writing of lost income and inability to pay rent due to financial impacts of COVID-19, and provides documentation to support the claim within seven (7) of said notice.
 - 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 provided 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 date of this Ordinance and which the tenant must pay within six (6) months after the expiration date of this Ordinance (“Tenant Repayment Period”). If a tenant opts to move while the Ordinance is effective or during the Tenant Repayment Period, all owed rent is due upon move out unless the lease dictates otherwise. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance; nor may a 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, a substantial loss of household or business 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 (including, for commercial tenants, the loss of customer purchases of products or services) or other economic or employer or business 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 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.
3. 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 documented.
4. 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).

5. Payment Obligation. This Ordinance shall not relieve tenant of any obligation to pay lawfully due rent, lease, or mortgage payments to landlord or mortgagor.
6. Affirmative Defense. A tenant with financial impacts related to the COVID-19 virus may use the protections afforded in this Ordinance as an affirmative defense in an unlawful detainer action.
7. Rules and Regulations. The City Manager (pursuant to Chula Vista Charter Section 401) and the Director of Emergency Services (pursuant to Chula Vista Municipal Code section 2.14.080) may also make and issue rules and regulations to implement this Ordinance.
8. Duration. This Ordinance shall remain in effect until June 30, 2020. Further extensions of this Ordinance may be authorized by City Council via resolution.

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, but not to contradict, applicable state and federal law (including Executive Orders Nos. N-28-20 and N-37-20) 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.

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

Approved as to form by

Gary Halbert
City Manager

Glen R. Googins
City Attorney