

**RESOLUTION NO. 2020-059**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, TEMPORARILY SUSPENDING EVICTIONS OF COMMERCIAL TENANTS LOCATED IN THE CITY OF CARLSBAD FOR NONPAYMENT OF RENT DUE TO COVID-19 RELATED DECREASES IN BUSINESS INCOME

WHEREAS, COVID-19 is an emerging respiratory disease and older adults and persons with severe underlying health conditions are at increased risk of more serious illness after contracting COVID-19;

WHEREAS, in a short period of time, COVID-19 has rapidly spread throughout California, including the County of San Diego and the City of Carlsbad; and

WHEREAS, on January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a Public Health Emergency for the United States, effective January 27, 2020, to aid the nation's health care community in responding to COVID-19; and

WHEREAS, on February 14, 2020, the San Diego County Public Health Officer determined there was an imminent and proximate threat to the public health from the introduction of COVID-19 in San Diego County and declared a Local Health Emergency, which the San Diego County Board of Supervisors ratified on February 19, 2020; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency to exist in California because of the threat of COVID-19; and

WHEREAS, on March 11, 2020, the World Health Organization began characterizing COVID-19 as a pandemic; and

WHEREAS, on March 12, 2020, Governor Newsom issued Executive Order N-25-20, which ordered all residents to heed any orders or guidance of state and public health officials, including the imposition of social distancing measures, to control the spread of COVID-19; and

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

WHEREAS, on March 16, 2020, the City of Carlsbad's City Manager, in his role as Director of Emergency Services, proclaimed a State of Emergency to exist in the City of Carlsbad, which the City Council ratified on March 17, 2020; and

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-20, authorizing local governments to impose limits on residential or commercial evictions if: (1) the basis for the

eviction is either nonpayment of rent or a foreclosure; (2) the nonpayment of rent or foreclosure resulted from a substantial decrease in household or business income, or substantial out-of-pocket medical expenses; and (3) the decrease in income or out-of-pocket medical expenses are documented and were caused either by the COVID-19 pandemic or government response to COVID-19; and

WHEREAS, on March 17, 2020, the County of San Diego Public Health Officer issued an amended order limiting gatherings of a certain number, closing certain business establishments, limiting the operations of other business establishments, and requiring social distancing, increased sanitation standards, and the use of telecommuting; and

WHEREAS, on March 19, 2020, the State Public Health Officer ordered all individuals living in California to stay home or at their place of residence, except as needed to maintain the continuity of operations of federal critical infrastructure sectors or additional critical sectors designated by the State Public Health Officer; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, ordering all residents to immediately heed the March 19, 2020, order of the State Public Health Officer; and

WHEREAS, on March 27, 2020, Governor Newsom issued Executive Order N-37-20, extending by 60 days the time by which a residential tenant must respond to an unlawful detainer complaint and prohibiting the enforcement of a writ of a possession if the tenant satisfies specified criteria; and

WHEREAS, on March 27, 2020, the County Public Health Officer issued a new order, effective March 29, 2020 and continuing until further notice, limiting gatherings of a certain number, closing certain business establishments, limiting the operations of other business establishments, and requiring social distancing, increased sanitation standards, and the use of telecommuting; and

WHEREAS, paragraph 9 of the County Public Health Officer's March 27, 2020 Order directs, pursuant to Health and Safety Code Section 120175.5, subdivision (b), that all governmental entities in the county take necessary measures within their control to ensure compliance with the order; and

WHEREAS, the effects of the COVID-19 pandemic on the global economy and supply chains are impacting many local companies due to overseas factories operating at lesser capacity and a drastic reduction in tourism; and

WHEREAS, as a result of the various Executive Orders and public health orders, businesses located in the City of Carlsbad have been unable to operate or unable to fully operate, resulting in a substantial decrease in their income; and

WHEREAS, loss of income from COVID-19 may inhibit businesses from fulfilling their financial obligations; and

WHEREAS, further adverse economic impacts from COVID-19 are anticipated, leaving commercial tenants vulnerable to eviction; and

WHEREAS, displacement of commercial tenants by eviction would worsen COVID-19's economic impacts by causing financial instability for business owners and employees and by reducing the available jobs for City of Carlsbad residents once the state of emergency has ended; and

WHEREAS, this resolution enacts a temporary suspension of commercial evictions intended to promote economic stability and fairness, and to promote a stable business and job market for employers and employees to return to once the state of emergency has ended; and

WHEREAS, it is in the public interest, and necessary to the protection of life and property, to take steps to ensure local commercial tenants are not evicted during this state of emergency.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carlsbad, California, as follows:

1. That the above recitations are true and correct.
2. That under the authorization in Governor Newsom's Executive Order N-28-20 and the City Council's power under California Government Code Section 8634 to issue orders necessary to protect life and property during a local emergency, and to the extent permitted by federal law, the City Council orders evictions of commercial tenants located in the City of Carlsbad to be suspended until the local emergency is terminated, or the withdrawal of Governor Newsom's Executive Order N-28-20, whichever occurs sooner, if the commercial tenant satisfies all of the following requirements:
  - a. Prior to Governor Newsom's proclamation of a State of Emergency on March 4, 2020, the commercial tenant was current on rent due to the landlord under the terms of the commercial tenant's rental agreement with the landlord.
  - b. The commercial tenant notifies the landlord in writing, which includes email, before the rent is due, or within a reasonable time afterwards not to exceed 10 business days, that the commercial tenant needs to delay all or some payment of rent because of an inability to pay the full amount due to reasons related to COVID-19, including, without limitation, the following:

i. The commercial tenant was unable to operate or fully operate the commercial tenant's business because:

1. the business was not in one of the federal critical infrastructure sectors or one of the additional critical sectors designated by the California State Health Officer, or
2. the business was in a federal or state critical sector, but could not be operated in compliance with the social distancing and related requirements imposed by state or local public health officers, or
3. the business was in a federal or state critical sector, but was owner-operated and the owner was sick with, showing symptoms of, or had been directly exposed to COVID-19; was caring for another who was sick with, showing symptoms of, or had been directly exposed to COVID-19; or was caring for a minor child who did not have school or child care supervision.

ii. The commercial tenant experienced a substantial decrease in the tenant's business income resulting from COVID-19, the state of emergency, or related government response.

c. Within 10 business days of providing notice under paragraph 2(b), the commercial tenant provides the landlord with documentation or objectively verifiable information showing the commercial tenant's inability to pay rent was due to reasons related to COVID-19. Documentation may include, without limitation, financial statements, business records, physician's letter, and/or bills. If the commercial tenant does not provide the landlord with the documentation or objectively verifiable information within this time period, the landlord may pursue any enforcement action permitted under applicable law and the parties' rental agreement.

3. That nothing in this resolution shall allow a commercial tenant who is able to pay all or some of the rent due to delay paying that rent amount.
4. That nothing in this resolution shall relieve a commercial tenant of liability for unpaid rent or applicable late fees, which the landlord may seek after the expiration of the local

emergency declaration and which the commercial tenant must pay within three months of the expiration of the local emergency, unless the landlord and the commercial tenant agree upon an alternative payment arrangement. If a commercial tenant elects to vacate the premises while this resolution is effective, all rent due is owed at the time of the vacancy.

5. That this resolution may be used as an affirmative defense in an unlawful detainer proceeding commenced in violation of it.
6. That this resolution does not affect any non-eviction legal remedies available to the landlord or the landlord's ability to enter into alternative payment arrangements with commercial tenants.
7. That nothing in this order is intended to create, or creates, any rights or benefits, substantive or procedural, enforceable at law or in equity, against the City of Carlsbad, its subsidiaries, departments, officers, employees, agents, or any other person.
8. That if state or federal authorities enact laws or issue orders or regulations providing commercial tenants located in the City of Carlsbad with COVID-19 related eviction relief, those state or federal laws, orders, or regulations will control over this resolution and any implementing regulations adopted by the City Manager.
9. That as soon as possible, this resolution is to be filed with the City Clerk's Office and is to be given widespread notice and publicity.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the 7th day of April, 2020, by the following vote, to wit:

AYES: Blackburn, Bhat-Patel, Schumacher.

NAYS: Hall.

ABSENT: None.



MATT HALL, Mayor



BARBARA ENGLERSON, City Clerk

(SEAL)

