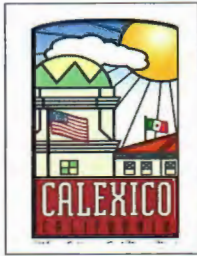


**AGENDA
ITEM**


8



AGENDA STAFF REPORT

DATE: January 20, 2021

TO: Mayor and City Council

APPROVED BY: Miguel Figueroa, City Manager 

PREPARED BY: Miguel Figueroa, City Manager
Carlos Campos, Best Best & Krieger LLP, City Attorney

SUBJECT: An Urgency Ordinance of the City of Calexico, California, Enacting a Temporary Moratorium on Commercial Evictions Due to Non-Payment of Rent Where the Failure to Pay is Due to COVID-19-Related Income Loss, and Setting Forth the Facts Constituting Such Urgency

=====

Recommendation by Council Members Ureña and Romo:

Approval of the Urgency Ordinance of the City of Calexico, California, Enacting a Temporary Moratorium on Commercial Evictions Due to Non-Payment of Rent Where the Failure to Pay Is Due to COVID-19-Related Income Loss, and Setting Forth the Facts Constituting Such Urgency.

Legal Background

On March 4, 2020, the Governor of the State of California declared a state of emergency in the State of California as a result of the threat of COVID-19. On March 5, 2020, the Imperial County Health Officer declared a local health state of emergency in response to the increased spread of COVID-19. The County Executive Officer serving as the Director of Emergency Services issued a Proclamation of Local Emergency regarding COVID-19 to aid the regional healthcare and governmental community in responding to COVID-19.

On March 18, 2020, the City Council adopted Resolution No. 2020-012 to proclaim the existence of a local emergency to ensure the availability of mutual aid and an effective response to COVID-19.

On March 16, 2020, the Governor issued Executive Order N-28-20, which among other things, suspended any state law that would preempt cities' exercise of their police power to impose substantive limitations on residential or commercial evictions, if the basis for the



eviction is nonpayment of rent arising out of a substantial decrease in household or business income, or substantial out-of-pocket medical expenses. In addition, under Executive Order N-28-20, any local eviction protections imposed must require the tenant to document that the decrease in household or business income or medical expenses was caused by the COVID-19 pandemic or a government response to COVID-19. This Executive Order was extended twice, first via Executive Order N-66-20 and then Executive Order N-71-20 through September 30, 2020. Some cities and counties in California elected to adopt local moratoria on residential and commercial evictions until Executive Order N-28-20, and its subsequent extensions, expired. Neither the City of Calexico nor any other city in Imperial County currently has an eviction moratorium in effect.

Partly to promote uniformity of protections governing residential eviction of tenants during the COVID-19 pandemic, the Governor signed into law Assembly Bill 3088 ("AB 3088") on August 31, 2020. Effective immediately, AB 3088 established a statewide process to protect residential tenants facing eviction for nonpayment of rent due to COVID-19-related financial distress. The state law partially supersedes local residential eviction moratoria, but has no effect on commercial eviction moratoria. As a result, unless a commercial tenant leased property within the jurisdiction of a city or county that enacted a commercial eviction moratorium, commercial tenants have no legal protection to prevent their eviction during the COVID-19 crisis if they are unable to pay rent.

With evictions of residential tenants fully addressed by AB 3088, on September 23, 2020, the Governor issued Executive Order N-80-20 to extend Executive Order N-28-20 through March 31, 2021 with respect to commercial evictions only. Like the original Executive Order, the extension grants cities and counties authority to enact moratoria on commercial evictions by suspending preemption by state laws that could impede enactment of these local protections.

Proposed Urgency Ordinance

This Urgency Ordinance would impose a temporary moratorium on the eviction of commercial tenants for nonpayment of rent if the failure to pay is due to COVID-19-related financial impacts. Specifically, from the date upon which Ordinance goes into effect through March 31, 2021 (when Executive Order N-80-20 expires), landlords may not attempt to evict a commercial tenant who qualifies for protection under the Ordinance. This three-month period is defined as the "moratorium period" for purposes of the Ordinance.

To receive eviction protections, a commercial tenant must show to the landlord that the tenant's business is subject to a government directive restricting its operations or is otherwise limited or closed (voluntarily or by mandate) to prevent the spread of COVID-19, and that as a result of such limitation or closure, the tenant lost income and is unable to pay the full monthly rent. The tenant may also provide the landlord documentation of any other financial impact related to COVID-19 that prevented full payment of rent.

The tenant must therefore complete two steps: First, notify the landlord, in writing, of the inability to pay rent within 30 days after rent is due; and, second, provide supporting documentation of the tenant's inability to pay rent due to a COVID-related financial hardship within 30 days after giving notice. Tenants who suffer only a partial loss of net income must pay a pro-rated share of rent that corresponds to the net income generated during the period of loss.

In addition, the Ordinance grants tenants a defense in an unlawful detainer action if commenced in violation of the Ordinance. So long as a tenant complies with the provisions of the Ordinance, the nonpayment of rent that came due during the moratorium period can never be grounds for eviction. However, the tenant will still owe the landlord for the rental debt and is not relieved of this liability.

Landlords may seek unpaid rent that came due during the moratorium period starting on April 1, 2021 (i.e. the day after the moratorium period expires). However, commercial tenants with 20 employees or fewer will have twelve (12) months from the date the moratorium period ends (April 1, 2021- March 31, 2022) to repay the landlord for amounts owing from that period and commercial tenants with 21 employees or more will have six (6) months from the date the moratorium period ends (April 1, 2021 - September 31, 2021) to repay the landlord for amounts owing from that period. During these repayment periods, tenants must pay their regular monthly rent on time. Failure to do so entitles landlords to commence an eviction for nonpayment of the regular monthly rent that came due during a repayment period; it does not, however, entitle landlords to unpaid rent from January to March 2021 until after the repayment period expires. In other words, small businesses will have no defenses for rental debt that accrued during the moratorium period as of April 1, 2022, and all other businesses will lose this defense as of October 1, 2021.

Finally, landlords may not charge or collect a late fee or interest for delayed rent that came due during the moratorium period, and tenants may draw from their security deposits any time to pay back-rent so long as they replenish the security deposit by the end of their applicable repayment period or by a date mutually upon in writing. The Ordinance is intended to be narrow and no other legal remedies available to a landlord are affected by this Ordinance.

If approved, the Ordinance will go into effect immediately upon adoption. In order to prevent inconsistencies in the law, the City Manager (acting as Director of Emergency Services) may also suspend the local ordinance if a similar federal or state law is adopted.

COVID-19-Related Impacts on Local Economy Justifying the Proposed Ordinance

The degree of the health and economic impact of the pandemic is unprecedented and unknown. Millions of people have filed for unemployment, further fueling a decline in business revenues. The economic blow to local businesses has been exacerbated by the State's Regional Stay at Home Order ("Regional Order"), that went into effect on

December 7, 2020, and by shutdowns of commercial sectors that preceded the Regional Order.

Before the Regional Order went into effect, the Governor released the Blueprint for a Safer Economy on August 28, 2020. The Blueprint for a Safer Economy is a four-tiered, color-coded system used to track counties by COVID-19 cases and positivity rates that imposes corresponding restrictions on economic sectors for a safe and gradual reopening of the economy. Imperial County was assigned to Tier One (Purple) indicating that COVID-19 cases in the county were “widespread”. Being in the Purple Tier required many non-essential indoor business operations in the Imperial County to close until the 7-day average of daily case rates and positivity rate dropped county-wide.

In the week before the Thanksgiving holiday, the California Department of Health Officer then issued a Limited Stay at Home Order applicable to Purple Tier counties like Imperial County. As of November 19, 2020, Imperial County residents were prohibited from gathering with members of other households and engaging in activities outside their residences with members of other households between 10:00 pm PST and 5:00 am PST, except for those activities associated with the operation, maintenance, or usage of critical infrastructure or required by law.

Most recently, on December 3, 2020, the Governor signed the Regional Order in response to the alarming and unprecedented rise in COVID-19 cases to avoid overwhelming the hospital system. The Regional Order imposes greater restrictions on Imperial County than those that were already in place under California’s Blueprint for a Safer Economy and Limited Stay at Home Order. The Regional Order does not replace the Blueprint for a Safer Economy, but supplements it.

Under the Regional Order, restrictions are tightened on a region depending on that region’s intensive care unit (ICU) hospital bed availability. Once a region has less than 15 percent ICU availability, all counties within the region are required to follow the Regional Order within 24 hours for at least three weeks. The City is part of the Southern California region, which as of December 28, 2020, was at 0.0% ICU availability.

As part of the Southern California region, the City is currently subject to the following restrictions: (1) grocery stores, shopping malls and retail stores must limit indoor capacity to 20%, or 35% if a standalone grocery store; (2) restaurants are restricted to take-out or delivery only; and (3) the following sectors must close: hair salons and barbershops; personal care services; museums, zoos, and aquariums; movie theaters (except drive in); wineries, bars, breweries, and distilleries (with exception for production, manufacturing, distribution, and retail sale for off-site consumption); family entertainment centers; cardrooms and satellite wagering; limited services; live audience sports, and amusement parks. A Supplemental Order to the Limited Stay at Home Order also requires non-essential retail to cease operations between 10:00 pm PST and 5:00 am PST.

While these measures are necessary to fight the global pandemic, they have had extreme economic impacts. Fear of the widening public health crisis has impacted consumer behavior. Many retail businesses have been ordered closed, and restaurants may now only provide delivery or takeout service. Investments in expanding outdoor dining have gone to waste. There has been reduced non-essential travel to the City due to these operational limits on businesses. And as a result of these emergency measures, commercial tenants within our community have seen and will continue to see their incomes decrease. In the face of this uncertainty, people may need to make difficult financial decisions and may be unable to pay rent due to reduced income. Even commercial evictions undermine the efficacy of stay-at-home and shelter-in-place orders issued by federal, state, and local health authorities because commercial evictions result in group activities such as packing, loading, transporting, and unpacking materials, equipment, and other property, and repairing premises.

Alternatives:

1. Do not adopt the Urgency Ordinance.
2. Provide additional direction.

Recommended Alternative(s):

None.

Discussion/Analysis:

The respiratory virus “SARS-CoV-2” and the disease it causes named “corona virus disease 2019” (abbreviated COVID-19) (“COVID-19”) was first detected in December 2019 and has since ravaged many parts of the world. Though the state of California was initially praised for its quick response to community spread and halting the rates of COVID-19, according to the Centers for Disease Control and Prevention (CDC), the state now ranks #1 in the country for the average number of daily cases. On December 28, 2020, the CDC reported there were 2,122,806 confirmed cases with over 24,000 deaths in California. Health experts and leaders expect these numbers to rise following the holiday season and New Year’s Day.

Fiscal Impact:

None Anticipated.

Attachment(s):

1. Urgency Ordinance of the City of Calexico, California, Enacting a Temporary Moratorium on Commercial Evictions Due to Non-Payment of Rent Where the Failure to Pay is Due to COVID-19-Related Income Loss, and Setting Forth the Facts Constituting Such Urgency.

URGENCY ORDINANCE NO. ____

**AN URGENCY ORDINANCE OF THE CITY OF CALEXICO,
CALIFORNIA, ENACTING A TEMPORARY MORATORIUM ON
COMMERCIAL EVICTIONS DUE TO NON-PAYMENT OF RENT
WHERE THE FAILURE TO PAY IS DUE TO COVID-19-RELATED
INCOME LOSS, AND SETTING FORTH THE FACTS CONSTITUTING
SUCH URGENCY**

The City Council of the City of Calexico does hereby ordain as follows:

SECTION 1. Findings.

A. International, national, state, and local health and governmental authorities continue to respond to an unrelenting outbreak of a novel coronavirus named “SARS-CoV-2,” and the disease it causes which has been named “coronavirus disease 2019,” abbreviated COVID-19 (“COVID-19”).

B. On March 4, 2020, the Governor of the State of California 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 broader spread of COVID-19.

C. On March 5, 2020, the Imperial County Health Officer issued a Declaration of Local Health Emergency pursuant to California Health and Safety Code. The County Executive Officer serving as the Director of Emergency Services issued a Proclamation of Local Emergency regarding COVID-19 to aid the regional healthcare and governmental community in responding to COVID-19.

D. On March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19.

E. On March 16, 2020, the Governor issued Executive Order N-28-20, authorizing local governments through their police power to impose substantive limitations on residential and commercial evictions for nonpayment of rent for tenants financially impacted by COVID-19, extended via Executive Order N-66-20 and Executive Order N-71-20 through September 30, 2020.

F. On March 18, 2020, the City Council adopted Resolution No. 2020-012 to proclaim the existence of a local emergency to ensure the availability of mutual aid and an effective response to COVID-19.

G. On March 19, 2020, the Governor also issued Executive Order N-33-20, which contained an Order of the State Public Health Officer ordering all individuals living in California

to stay home or at their place of residence except as needed to maintain continuity of operations of outlined federal critical infrastructure sectors.

H. On August 31, 2020, the Governor signed Assembly Bill 3088 (AB 3088) enacting a statewide moratorium on residential evictions through January 31, 2021. The eviction protections of AB 3088, however, do not apply to the commercial tenants.

I. On September 23, 2020, the Governor issued Executive Order N-80-20 to extend Executive Order N-28-20 through March 31, 2021 with respect to commercial evictions only, thereby granting cities continuing authority to enact local moratoriums on commercial evictions.

J. On November 19, 2020, the California Department of Public Health Officer issued a Limited Stay at Home Order applicable to counties falling under Tier One (Purple) of California's Blueprint for a Safer Economy;

K. Imperial County fell under Tier One, triggering the requirement that all gatherings with members of other households and all activities conducted outside the residence, lodging, or temporary accommodation with members of other households are to cease between 10:00pm PST and 5:00am PST, except for those activities associated with the operation, maintenance, or usage of critical infrastructure or required by law.

L. On December 3, 2020, the Governor issued a State Regional Stay at Home Order that would trigger greater restrictions on a region consisting of multiple counties depending on that region's intensive care unit (ICU) hospital bed availability. Once a region has less than 15 percent ICU availability, all counties within the region are required to follow the Regional Stay at Home Order within 24 hours for at least three weeks.

M. The Southern California Region, of which the City of Calexico is part, was at 0.0 percent ICU availability on December 28, 2020 and is currently under the restrictions of the State Regional Stay at Home Order.

N. As of the time of this Ordinance, the Regional Stay at Home Order provided that (1) grocery stores, shopping malls and retail stores must limit indoor capacity to 20%, or 35% if a standalone grocery store; (2) restaurants are restricted to take-out or delivery only; and (3) the following sectors must close: hair salons and barbershops; personal care services; museums, zoos, and aquariums; movie theaters (except drive in); wineries, bars, breweries, and distilleries (with exception for production, manufacturing, distribution, and retail sale for off-site consumption); family entertainment centers; cardrooms and satellite wagering; limited services; live audience sports, and amusement parks. A Supplemental Order to the Limited Stay at Home Order also requires non-essential retail to cease between 10:00pm PST and 5:00am PST.

O. On December 28, 2020, the Imperial County Public Health Department reported the COVID-19 positivity rate in the County at 31.32%, far exceeding the State of California's positivity rate of 8.4%.

P. As a result of the public health emergency and the restrictions imposed by government health authorities, many commercial tenants in Calexico have experienced or soon

expect to experience severe income loss due to decreased consumer activity and disruptions to the local economy.

Q. This situation is unprecedented and evolving rapidly. Further adverse economic impacts are anticipated, including greater government restrictions in response to foreseeable surges in COVID-19 cases due to gatherings and travel over the holiday season and the significant shift to online shopping, leaving commercial tenants vulnerable to eviction.

R. This Ordinance is only intended to be temporary in nature, to promote stability and fairness within the commercial real estate market in the City during the COVID-19 pandemic outbreak, and to prevent avoidable homelessness and widespread business disruption, thereby serving the public peace, health, safety, and public welfare and to enable tenants in the City whose income and ability to work is affected due to COVID-19 to remain in their homes.

S. In the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary to exercise authority to adopt this ordinance related to the protection of life and property, to ensure that people shelter in place to prevent the spread of COVID-19. During the COVID-19 pandemic outbreak, affected tenants and homeowners who have lost income due to impacts on the economy or their employment may be at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted.

T. Businesses and other tenants of non-residential properties will be harmed if given no choice but to defy government directives and remain open to afford rent for their commercial spaces. In addition, by having to engage in activities with members of other households, employees' and business owners' risk exposure to COVID-19, resulting in grave consequences to the public health, safety, and welfare.

U. Promoting stability amongst commercial tenancies is conducive to public health, allowing businesses to follow the advice and directives of public health officials to close, and allowing employees to avoid public contact, during times of a public health crisis without fear of imminent eviction

V. In view of the serious health and economic costs at stake, the City desires to prohibit evictions due to non-payment of rent for tenants of commercial properties where the failure to pay results from the loss of business income resulting from COVID-19-related financial impacts.

W. The City has authority to adopt this Ordinance under the City's police power and the powers afforded to the city in time of national, state, county and local emergency during an unprecedented health pandemic, such powers being afforded by the State Constitution, State law and the City's Municipal Code to protect the peace, health, and safety of the public. The Calexico City Council finds that this ordinance is necessary for the preservation of the public peace, health, and safety of residents living within the City and finds urgency to approve this ordinance immediately based on the facts described herein, and detailed in the staff report. Under Government Code Section 8634, this Ordinance is necessary to provide for the protection of life and property.

SECTION 2. Temporary Moratorium on Evictions for Non-Payment of Rent by Commercial Tenants Impacted by the COVID-19 Crisis.

A. During the moratorium period declared in response to COVID-19, no commercial landlord shall endeavor to evict a tenant for nonpayment of rent if the tenant demonstrates that the tenant's business is subject to the Orders referenced in Section 1 above or is otherwise limited or closed (voluntarily or by mandate) to prevent or reduce the spread of COVID-19 and the tenant demonstrates lost income and inability to pay rent as a result of such limitation or closure or other demonstrated financial impact related to COVID-19. For purposes of this Ordinance, the moratorium period is January 1, 2021 through March 31, 2021.

B. A landlord knows of a tenant's lost income and inability to pay rent within the meaning of this Ordinance if the tenant, within 30 days after the date rent is due, notifies the landlord in writing of the lost income and inability to pay rent due to a limitation or closure of the tenant's business related to COVID-19. The tenant must provide documentation to support the claim within 30 days of providing the notice. For purposes of this ordinance, "in writing" includes email or text communications to a landlord or the landlord's representative with whom the tenant has previously corresponded by email or text. Any financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim or enforcing this Ordinance.

C. If a tenant suffers only a partial loss of net income, the tenant shall pay the pro-rated share of their rent that corresponds to the income they generated during the period of loss.

D. This Ordinance applies to nonpayment eviction notices and unlawful detainer actions based on such notices, served or filed on or after the date on which this Ordinance is adopted. Violation of this Ordinance shall be punishable as set forth in Chapters 1.24, 1.26, 1.27, 1.28, and Section 2.36.120 of the Calexico Municipal Code.

E. This Ordinance grants a defense in the event that an unlawful detainer action is commenced in violation of this Ordinance.

F. Nothing in this Ordinance relieves the tenant of liability for the unpaid rent, which the landlord may seek after expiration of the moratorium period as follows. Commercial tenants with twenty (20) employees or fewer shall have twelve (12) months to repay their landlords for any amounts due and owing. Commercial tenants with twenty-one (21) or more employees shall have six (6) months to repay their landlords for any amounts due and owing. This repayment shall begin at the conclusion of the moratorium period. Tenants and landlords are encouraged to agree on a payment plan during this moratorium period, and nothing herein shall be construed to prevent a landlord from requesting and accepting partial rent payments, or a tenant from making such payments, if the tenant is financially able to do so. A landlord may not charge or collect a late fee or interest for rent that is delayed for the reasons stated in this ordinance; nor may a landlord seek rent that is delayed for the reasons stated in this ordinance through the eviction process during or after the moratorium period. A landlord shall not commence an eviction during the repayment period after the end of the moratorium period for non-payment of rent, so long as

the tenant pays rent in a timely manner after the moratorium period and is repaying the past due rent that accrued during the moratorium period. Nonpayment of rent in accordance with the terms of this ordinance shall not be grounds for eviction of a tenant even after expiration of the moratorium period. Landlords are strongly encouraged to offer payment plans to tenants after the moratorium period, which may go beyond the repayment period upon mutual agreement of the parties. The security deposit may be used at any time, including during the repayment period, to pay back rent and such security deposit shall be replenished by the end of the repayment period or longer if mutually agreed upon in writing between the parties.

G. No other legal remedies available to landlord are affected by this Ordinance.

SECTION 3. In order to prevent inconsistencies, the Director of Emergency Services may suspend the effectiveness of this Ordinance in the event that the President of the United States, Congress, Governor of the State of California, or California State Legislature adopts an order or legislation that similarly prohibits evictions for failure to pay rent by individuals impacted by the COVID-19 crisis.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the remaining provisions of this Ordinance.

SECTION 5. Environmental Review. The City Council finds that adoption and implementation of this ordinance is not a “project” for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) sections 15061(b)(3), and 15378(b)(5). The effect of the proposed amendment will be to maintain the status quo. No new development will result from the proposed action. No impact to the physical environment will result. The City Council also alternatively finds that the adoption and implementation of this Ordinance is exempt from the provisions of CEQA as an administrative activity by the City of Calexico, in furtherance of its police power, that will not result in any direct or indirect physical change in the environment, per sections 15061(b)(3), and 15378(b)(5) of the CEQA Guidelines, as well as CEQA Guidelines section 15064(e) (economic regulations).

SECTION 6. Urgency Declaration; Effective Date. The City Council **FINDS** and **DECLARES** that the adoption and implementation of this Ordinance is necessary for the immediate preservation and protection of the public peace, health and safety as detailed above and as the City and public would suffer potentially irreversible displacement of commercial tenants and closures of businesses resulting from evictions for failure to pay rent during the COVID-19 crisis. 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 job losses and business closures. Loss of income as a result of COVID-19 may inhibit City residents and businesses from fulfilling their financial obligations, including payment of rent – due for both commercial and residential properties. This Ordinance is necessary so that residents can shelter in place as much as possible without fear of commercial evictions at a time when UCI hospital bed availability is at 0.0% in the Southern California region. Under Government Code Section 8634 and the City’s Municipal Code, this Ordinance is necessary to provide for the protection of life and property for the reasons set out herein. The Council therefore finds and determines that

the immediate preservation of the public peace, health and safety, and protection of life and property, require that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption by four-fifths of the City Council.

SECTION 7. Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published on the City's website and published once in a newspaper of general circulation published and circulated within the City.

PASSED, APPROVED and ADOPTED this ___ day of _____ 2021.

Rosie Arreola-Fernandez
Mayor

ATTEST:

Gabriela T. Garcia
City Clerk

APPROVED AS TO FORM:

Carlos Campos
City Attorney

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) ss.
CITY OF COACHELLA)

I, Gabriela T. Garcia, City Clerk of the City of Calexico, California, do hereby certify that Ordinance No. ____ is a full, true, and correct copy, and was adopted at a regular meeting of the Calexico City Council on _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Calexico, California, this ____ day of _____ 2021.

Gabriela T. Garcia
City Clerk