

ORDINANCE NO. 20-04

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BUELLTON, CALIFORNIA, TEMPORARILY PROHIBITING EVICTIONS OF RESIDENTIAL AND COMMERCIAL TENANTS ARISING OUT OF FINANCIAL IMPACTS OF THE COVID-19 PANDEMIC

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency within the State of California ("State") due to the threat posed by Novel Coronavirus ("COVID-19");

WHEREAS, on March 12, 2020, the Santa Barbara County Health Officer issued a Declaration of Local Health Emergency due to the introduction of COVID-19 cases to Santa Barbara County;

WHEREAS, on March 12, 2020, Santa Barbara County Board of Supervisors ("Board") concurred and issued a Proclamation ("Proclamation") declaring a local emergency within the County of Santa Barbara regarding the imminent spread of COVID-19;

WHEREAS, on March 16, 2020, Governor Newsom issued an Executive Order that will aid Californians affected by COVID-19 by authorizing local governments to halt evictions for renters, encouraging financial institutions to slow foreclosures, and protecting renters and homeowners against utility shutoffs;

WHEREAS, on March 19, 2020 Governor Newsom issued an Executive Order that requires all persons to remain at home to the extent possible and requires all non-essential businesses to be closed;

WHEREAS, on March 24, 2020, the Santa Barbara County Board of Supervisors issued an Executive Order prohibiting residential and commercial evictions in the unincorporated portions of the County under certain circumstances related to COVID-19;

WHEREAS, on March 27, 2020 Governor Newsome issued an Executive Order placing a Statewide moratorium on evictions of residential tenants arising from nonpayment of rent due to circumstances related to COVID-19, but that has been interpreted by the Governor to allow more restrictive orders by local governments;

WHEREAS, businesses that are temporarily closed by the Safer at Home orders are not generating tax revenues needed for public services, and evictions and replacement of such tenants will further delay generation of tax revenues once the Safer at Home orders are lifted. Further, even businesses that continue in operation as "Essential Businesses" such as restaurants, are still subject to reductions in income as a result of the "Safer at Home" orders;

WHEREAS, California Government Code sections 8634, 36934 and 36937 authorize the City Council to take action by ordinance to take effect immediately for the preservation of the public peace, health or safety when adopted by a four-fifths vote of the City Council;

WHEREAS, as a result of the COVID-19 public health emergency and the precautions recommended by health authorities, many residential and commercial tenants in the City have experienced or expect to experience sudden and unexpected income loss;

WHEREAS, further economic impacts are anticipated, leaving residential and commercial tenants potentially unable to pay rent and vulnerable to eviction;

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, and prevent housed individuals from falling into homelessness;

WHEREAS, during this local emergency, and in the interest of protecting the public health and welfare, it is essential to avoid unnecessary loss of commercial tenants that could create long-term vacancies in commercial areas leading to blight and a loss of important community amenities even after the emergency has ended.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BUELLTON DOES ORDAIN AS FOLLOWS:

SECTION 1. A temporary moratorium on eviction for non-payment of rent by residential or commercial tenants impacted by the COVID-19 crisis is imposed as set forth herein.

SECTION 2. From the date of this Ordinance through its expiration, as set forth herein, in response to COVID-19 no landlord shall endeavor to evict a tenant for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to Financial Impacts related to COVID-19.

SECTION 3. A landlord who knows or is deemed to know that a tenant cannot pay some or all of the rent temporarily for the reasons set forth above in Section 2 shall not serve a notice pursuant to CCP 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.

SECTION 4. A landlord shall be deemed to know of a tenant's inability to pay rent within the meaning of this Ordinance if the tenant, within 30 days after the date that rent is due, notifies the landlord in writing and provides documentation that the tenant is unable to pay rent due to Financial Impacts related to COVID-19. 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, as well as traditional written communication. Any medical or financial information provided to the landlord shall be held in confidence, and only be used for evaluating the tenant's claim.

SECTION 5. Nothing in this Ordinance shall relieve the tenant of liability for the unpaid rent, nor restrict a landlord's ability to recover rent due. A tenant shall not be deemed in default of rent payment obligations unless the Tenant fails to tender rent payments which were unpaid due to Financial Impacts related to COVID-19, within 6 months of May 31, 2020, or within 6 months of the date upon which an extension of this Ordinance expires, whichever is later. A landlord shall not impose, charge, or collect a late fee or equivalent surcharge for any rent payments which were unpaid due to Financial Impacts related to COVID-19. Tenants and landlords are encouraged to agree to a payment plan during this six-month period, but nothing in this Ordinance shall be construed to prevent a tenant from paying a landlord any amount due incrementally during this six-month period. Any three-day notices to pay or quit or no-fault eviction notices served prior to the effective date of this ordinance, but not yet expired, are automatically deemed served upon the conclusion of the Moratorium Period if arising from Financial Impacts related to COVID-19.

SECTION 6. For purposes of this Ordinance, "Financial Impacts related to COVID-19" ("Financial Impact") include nonpayment of rent arising out of a substantial decrease in household or business income (including, but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or a substantial decrease in business income caused by a reduction in opening hours or consumer demand), or substantial out-of-pocket medical expenses, or a tenant's lost household income as a result of caring for minor children affected by school, pre-school and/or childcare closures; *provided that*, the Financial Impact was caused by the COVID-19 pandemic, or by any local, state or federal government response to COVID-19, and is documented by the tenant.

SECTION 7. This Ordinance applies to terminations of tenancies for nonpayment of rent, including eviction notices, no-fault eviction notices as defined herein, and unlawful detainer actions based on such notices, served or filed during the effective period of this Ordinance and for six months thereafter. For purposes of this Ordinance, "no-fault eviction notices" refer to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant.

SECTION 8. In the event of a violation of this Ordinance, this Ordinance grants a defense to eviction where an unlawful detainer action is commenced in violation of this Ordinance. Additionally, an aggrieved tenant may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages, and whatever other relief the court deems appropriate. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to ordinance of the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the tenant under local, state or federal law.

SECTION 9. This Ordinance shall be in force and effect until May 31, 2020, unless superseded by a duly enacted Ordinance of the City Council or a further Ordinance by the Director of Emergency Services adopted during the local emergency that expressly supersedes this Ordinance. Should the Governor extend Executive Order N-28-20, this Ordinance will continue automatically beyond May 31, 2020 to the date of the Governor's extension, unless superseded. Should the Governor, the State or Federal Legislature, or the President issue an order or regulation on the topic of this Ordinance which provides equal or greater eviction protection that applies Statewide or nationwide, this Ordinance shall be of no further force or effect.

SECTION 10. If any provision of this Ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this chapter which can be implemented without the invalid provisions, and to this end, the provisions of this chapter are declared to be severable. The City Council hereby declares that it would have adopted this ordinance and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional or otherwise unenforceable.

SECTION 11. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary in the manner required by law.

SECTION 12. For the reasons set forth above in the recitals, this Ordinance is an urgency ordinance and shall take effect immediately upon adoption by a 4/5 vote of the City Council, due to the immediate need to protect the public health, safety and welfare.

PASSED, APPROVED, AND ADOPTED this 1st day of April, 2020.

Holly Sierra
Mayor

ATTEST:

Linda Reid
City Clerk

CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: SW
Council Agenda Item No.: 2

To: The Honorable Mayor and City Council

From: Scott Wolfe, City Manager

Meeting Date: April 1, 2020

Subject: Resolution No. 20-10 – “A Resolution of the City Council of the City of Buellton, California, Authorizing the Deferral of Water and Wastewater Payments and the Waiving of Penalties”

BACKGROUND

The various responses to the COVID-19 pandemic in the form of public health orders from the federal, state, and county governments have resulted in severe restrictions on many businesses, leading to the need to either cease operations or reduce staffing levels through layoffs. These necessities are severely impacting the economic stability of many residents and businesses that subscribe to water and wastewater service from the City, leaving many with difficult decisions when deciding which bills to pay.

To assist our residents and businesses, staff is proposing a plan to allow the temporary deferral of water and wastewater payments to the City. Under the proposed plan, deferral of payments would be permitted for a period which would end on July 31, 2020, or 60 days following the lifting of the Governor’s stay at home order and any similar order from Santa Barbara County, whichever occurs last.

Municipal Code Section 13.48.030 imposes a late fee of 10 percent of the outstanding balance if payment is not received within 20 days of the billing date. Given the severity of this economic crisis, such penalties may prove to be a hindrance to ratepayers trying to bring their charges current after the lifting of the health orders. A waiver of this penalty is recommended to minimize the economic hardship associated with paying deferred charges.

To further assist these residents and businesses, staff would propose that the City Council direct staff to refrain from the termination of water service due to non-payment for a period of one year from the end of the deferral period described above, as long as the resident or business is working in good faith with the city and establishes a payment arrangement which will result in the payment of outstanding charges within the one year period.

To accomplish the implementation of the proposed plan, the City Council will need to adopt a resolution permitting the extended deferrals, waiving penalties, and directing staff to refrain from terminating water service. The accompanying resolution includes the authorization, waiver, and direction for the plan as described in this report. Should the City Council make changes to the proposed plan prior to approval, staff will implement the City Council's direction and return at the next City Council meeting with a resolution ratifying that direction.

FISCAL IMPACT

The deferral of utility payments for a limited time, and the associated waiver of penalties and interest on those deferrals, will result in fiscal impacts, primarily associated with the loss of interest that may accrue on the funds were they paid to the City on time. Total fiscal impacts are expected to be substantial, but are unable to be estimated, as they will depend upon the length of time the Health Orders remain in place, the degree of economic disruption that occurs as a result, and the speed of economic recovery and re-employment following the lifting of the orders.

RECOMMENDATION

Staff recommends that the City Council consider adoption of Resolution No. 20-10 – “A Resolution of the City Council of the City of Buellton, California, Authorizing the Deferral of Water and Wastewater Payments and the Waiving of Penalties”

ATTACHMENTS

Resolution No. 20-10

RESOLUTION NO. 20-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BUELLTON, CALIFORNIA, AUTHORIZING THE DEFERRAL OF WATER AND WASTEWATER PAYMENTS AND THE WAIVING OF PENALTIES

WHEREAS, on March 4, 2020, Governor Newsom declared a state of emergency for conditions caused by COVID-19, which the Centers for Disease Control and Prevention considers a very serious public health threat; and

WHEREAS, on March 12, 2020, the Santa Barbara County Health Officer issued a Declaration of Local Health Emergency, ordering cancellations of large gatherings and implementation of social distancing for all areas of Santa Barbara County; and

WHEREAS, on March 19, 2020, Governor Newsom issued an executive order (N-33-20) requiring residents to stay at home unless required to work in a critical infrastructure setting, effectively closing or severely limiting businesses throughout California, resulting in a sharp rise in unemployment; and

WHEREAS, the compliance with this order has resulted in severe economic hardship for many Buellton residents and businesses, and an inability to pay their City water and wastewater bills in a timely manner; and

WHEREAS, Buellton Municipal Code Section 13.48.030 and City Council Resolution No. 20-05 require the payment of a penalty for failure to remit water and wastewater charges by the due date, and establish a process in which continued non-payment will result in shut-off of water service; and

WHEREAS, it is the desire of the City Council to provide some relief to residents and businesses who are struggling with the impacts of the COVID-19 pandemic and the related public health mandates.

NOW, THEREFORE, BE IT RESOLVED as follows:

SECTION 1. The City Council of the City of Buellton hereby authorizes the City Finance Director, or authorized designee, to defer payment of water and wastewater bills for residents and businesses for a period ending July 31, 2020 or 60 days from the date of the lifting of Executive Order N-33-20, and any public health orders issued by the Santa Barbara County Public Health Officer requiring the closure of businesses or implementing a “Stay at Home” policy, whichever occurs last.

SECTION 2. The City Council also waives the penalties associated with the late payment of water and wastewater bills deferred within the time frame established in Section 1. This waiver of penalties will continue through any payment arrangement period to avoid water service termination, as established in Section 3.

SECTION 3. The City Council further declares that no water service for business or residence shall be terminated for non-payment for a period of 1 year from the end date of the timeframe established in Section 1, so long as the business or resident establishes a payment arrangement with the City Finance Director or authorized designee which would result in the payment of outstanding charges within the 1 year period.

PASSED, APPROVED AND ADOPTED on this 1st day of April, 2020.

Holly Sierra
Mayor

ATTEST:

Linda Reid
City Clerk



CITY OF BUELLTON

SPECIAL MEETING - CITY COUNCIL AGENDA

**Special Meeting of April 1, 2020 – 5:00 p.m.
City Council Chambers, 140 West Highway 246
Buellton, California**

Copies of staff reports or other written documentation relating to each item of business referred to on this Agenda are on file in the office of the City Clerk and are available for public inspection

CORONAVIRUS (COVID-19) ADVISORY NOTICE

Consistent with Executive Orders No.-25-20 and No. N-29-20 from the Executive Department of the State of California and a Declaration of Local Health Emergency from the County of Santa Barbara, City Council meetings will not be physically open to the public and one or more (or even all) City Council Members may be teleconferencing into the meeting. To maximize public safety while still maintaining transparency and public access, members of the public can observe the meeting through the City's website, via City TV Live Stream at: <http://www.cityofbuellton.com/government/cityTV.php> and may provide public comment by sending comments to the City Clerk via email at lindar@cityofbuellton.com (reference subject matter or agenda item in the subject line of email). Please include name and address in contents of message. Comments will then be read into the record, with a maximum allowance of 3 minutes per individual comment, subject to the Mayor's discretion. All comments should be a maximum of 500 words, which corresponds to approximately 3 minutes of speaking time. If a comment is received after the agenda item is heard but before the close of the meeting, the comment will still be included as a part of the record of the meeting but will not be read into the record.

Any member of the public who needs accommodations can contact the City Clerk at (805) 688-5177 and best efforts will be made to provide reasonable accommodations to provide as much accessibility as possible while also maintaining public safety in accordance with the City of Buellton's procedure for resolving reasonable accommodation requests.

CALL TO ORDER

Mayor Holly Sierra

PLEDGE OF ALLEGIANCE

ROLL CALL

Council Members Ed Andrisek, Dave King, John Sanchez, Vice Mayor Art Mercado, and Mayor Holly Sierra

REORDERING OF AGENDA

PUBLIC COMMENTS

Speaker Slip to be completed and turned in to the City Clerk prior to commencement of meeting. Limited to matters not otherwise appearing on the agenda. Limited to three (3) minutes per speaker. No action will be taken at this meeting.

BUSINESS ITEMS**(POSSIBLE ACTION)**

1. **Ordinance No. 20-04 – “An Urgency Ordinance of the City Council of the City of Buellton, California, Temporarily Prohibiting Evictions of Residential and Commercial Tenants Arising out of Financial Impacts of the Covid-19 Pandemic”**
❖ *(Staff Contact: City Manager Scott Wolfe)*
2. **Resolution No. 20-10 – “A Resolution of the City Council of the City of Buellton, California, Authorizing the Deferral of Water and Wastewater Payments and the Waiving of Penalties”**
❖ *(Staff Contact: City Manager Scott Wolfe)*

CITY MANAGER’S REPORT**CLOSED SESSION ITEMS****(POSSIBLE ACTION)**

3. **Closed Session Pursuant to Government Code Section 54956.9(d)(4)
Potential Initiation of Litigation**

ADJOURNMENT

The next regular meeting of the City Council will be held on Thursday, April 9, 2020 at 6:00 p.m.

CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: SW
Council Agenda Item No.: 1

To: The Honorable Mayor and City Council

From: Scott Wolfe, City Manager

Meeting Date: April 1, 2020

Subject: Ordinance No. 20-04 – “An Urgency Ordinance of the City Council of the City of Buellton, California, Temporarily Prohibiting Evictions of Residential and Commercial Tenants Arising out of Financial Impacts of the Covid-19 Pandemic”

BACKGROUND

On March 4, 2020, Governor Newsom of the State of California declared a State of Emergency in response to the COVID-19. On March 12, 2020, the Santa Barbara County Health Officer issued a Declaration of Local Health Emergency due to the introduction of COVID-19 cases to Santa Barbara County. On March 16, 2020, Governor Newsom issued an Executive Order that will aid Californians affected by COVID-19 by authorizing local governments to halt evictions for renters, encouraging financial institutions to slow foreclosures, and protecting renters and homeowners against utility shutoffs. On March 13, 2020, the President of the United States declared a national state of emergency regarding COVID-19. On this same day, the City Council adopted Resolution No. 20-5457, declaring a local state of emergency which gave authority to the City Manager in his role as Director of Emergency Services to implement measures in line with state and county health officials’ recommendations to slow the spread of COVID-19 while not impacting critical services. On March 19, 2020, to mitigate the spread of COVID-19, state and county officials ordered residents to stay home or at their place of residence. On March 24, 2020, the Santa Barbara County Board of Supervisors issued an Executive Order prohibiting residential and commercial evictions in the unincorporated portions of the County under certain circumstances related to COVID-19. On March 27, 2020 Governor Newsome issued an Executive Order placing a Statewide moratorium on evictions of residential tenants arising from nonpayment of rent due to circumstances related to COVID-19, but that has been interpreted by the Governor to allow more restrictive orders by local governments;

California Government Code sections 8634, 36934 and 36937 authorize the City Council to take action by ordinance to take effect immediately for the preservation of the public peace, health or safety when adopted by a four-fifths vote of the City Council.

As a result of the COVID-19 public health emergency, the initial precautions recommended by health authorities, and the State Safer at Home order requiring residents to stay at home and requiring “non-essential” businesses to close and essential businesses to severely curtail operations, residential and commercial tenants in the City have experienced or expect to experience sudden and unexpected income loss soon. Further economic impacts are anticipated, leaving some tenants unable to pay rent and therefore vulnerable to eviction.

Businesses that are temporarily closed by the Safer at Home order are not generating tax revenues needed for public services, and evictions and replacement of such tenants will further delay generation of tax revenues once the Safer at Home order is lifted. Further, even businesses that continue in operation as “Essential Businesses” such as restaurants are still subject to reductions in income as a result of the Safer at Home order. 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, and prevent housed individuals from falling into homelessness.

If adopted, this moratorium ordinance would prohibit evictions of residential and commercial tenants due to non-payment of rent during the period of the moratorium ordinance. It would not affect evictions unrelated to non-payment of rent or for which non-payment is not a result of COVID-19 related financial issues. In covered circumstances, the initial responsibility would fall on the tenant to explain to the landlord that the inability to pay stems from COVID-19 issues.

The ordinance would be in effect for the term of the Governor’s Executive Order on the subject – May 31, 2020, unless further extended by the Governor. After that time, a tenant would have six months to pay the delinquent amount of rent, in addition to any then-currently due rent. There would be no penalties or interest accrued during the moratorium and the six-month period, but the tenant would have to make the landlord whole by the end of six months. In addition, nothing in the ordinance would prohibit a tenant and landlord from agreeing to a partial payment of rent during the moratorium so as to decrease the tenant’s financial burden after the moratorium.

This ordinance would be a measure that tenants can use to defend against an unlawful detainer action arising from a covered eviction. City staff would publicize the ordinance, but the City would not undertake enforcement as a violation of the City’s code. As a final matter, notwithstanding the Governor’s Executive Order suspending restrictions on local eviction protection legislation, the applicability of the City’s ordinance may still be subject to determination by a court. And while the Governor has issued an order addressing residential evictions, that order provides far less protection than local orders being adopted across the State and provides no protection for commercial tenants. Adoption of this ordinance would grant residential and commercial tenants in the City the same protections given to those in other jurisdictions while still ensuring that landlords are made whole within six months of the end of the health emergency.

The recommended action is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15061(b)(3): the General Rule that CEQA only applies to projects that may have an effect on the environment.

A 4/5th vote of the City Council is required for adoption of Ordinance No. 20-04.

RECOMMENDATION

That the City Council consider the adoption of Ordinance No. 20-04 – “An Urgency Ordinance of the City Council of the City of Buellton, California, Temporarily Prohibiting Evictions of Residential and Commercial Tenants Arising out of Financial Impacts of the Covid-19 Pandemic” with approval by 4/5’s of the City Council, by title only and waive further reading.

ATTACHMENTS

Ordinance No. 20-04