

URGENCY ORDINANCE NO. 1679

URGENCY ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF BUENA PARK, CALIFORNIA, ENACTING A MORATORIUM ON EVICTIONS FOR TENANTS OF RESIDENTIAL AND COMMERCIAL PROPERTIES IN THE CITY

A. Recitals.

(i) In late December 2019, several cases of unusual pneumonia began to emerge in the Hubei province of China, and on January 7, 2020, a novel coronavirus now known as COVID-19 was identified as the source of the illness;

(ii) Scientific evidence indicates that COVID-19 is highly contagious, and since first discovered COVID-19 has spread globally to over 140 countries, infecting more than 200,000 persons and killing more than 8,000 individuals worldwide;

(iii) The first case of COVID-19 in the United States was confirmed in late January, and over the ensuing two (2) months the pandemic spread throughout the United States creating a significant health risk to residents, causing the closure of schools across the country, bringing the national and local economies to a standstill, and threatening to overwhelm healthcare facilities;

(iv) On March 4, 2020, California Governor Gavin Newsom proclaimed a “state of emergency” throughout the State in response to COVID-19, and in furtherance of this proclamation has issued several Executive Orders that include extraordinary measures directed at slowing the spread of COVID-19 and reducing impacts to residents and businesses;

(v) On March 15, 2020, the Governor of the State of California released statewide guidance, urging the highest risk of population (individuals who are 65 years or older, or have compromised immune system) to self-isolate at home;

(vi) On March 16, 2020, the President of the United States issued “The President’s Coronavirus Guidelines for America: 15 Days to Slow the Spread” which recommended, and among other things, social distancing and gathering guidelines intended to slow the spread of the illness;

(vii) As of March 17, 2020, California reported a total of 598 positive cases of COVID-19, and as of March 19, 2020, Governor Newsom advised that half of California’s population could be infected over the next eight (8) weeks;

(viii) The widespread and community transmission of COVID-19, has created conditions that are likely to be beyond the control of local resources and require the combined forces of other political subdivisions to combat;

(ix) The City of Buena Park’s ability to mobilize local resources, coordinate interagency response, accelerate procurement of vital supplies, use mutual aid, and seek future reimbursement by the State and Federal governments will be critical to successfully responding to COVID-19;

(x) Given these conditions, pursuant to the California Emergency Services Act, Chapter 8 of the Buena Park Municipal Code, and applicable provisions of the City’s Emergency

Operations Plan, on March 17, 2020, the City Council for the City of Buena Park held an “emergency” meeting to update the local community on the COVID-19 crisis, and unanimously adopted a Resolution proclaiming a “local emergency” thereby formalizing the City’s initiation of its Emergency Operations Plan, allowing prompt response to emergency conditions at the local level, and providing the City access to federal, state, and local resources during the crisis;

(xi) On March 19, 2020, in an unprecedented step to slow the spread of COVID-19, Governor Newsom issued Executive Order No. 33-20 ordering all California residents and businesses to stay and work at home for an indeterminate period of time, at least through April 19, 2020, with the only exceptions from this order being essential services and industries;

(xii) The City Council has reconsidered the conditions giving rise to the “local emergency” proclamation made on March 17, 2020, and has determined that the conditions giving rise to the local emergency continue to exist, and in fact have become more dire since the original proclamation was made.

(xiii) On March 16, 2020, the Governor of the State of California issued Executive Order No. 28-20, which suspended any provision of state law that would preempt or otherwise restrict a local governments’ exercise of its police power to impose substantive limitations on residential or commercial evictions;

(xiv) The City Council finds this Urgency Ordinance is a temporary moratorium intended to promote stability and fairness within the residential and commercial rental markets in the City during the COVID-19 pandemic outbreak, and to prevent avoidable homelessness 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;

(xv) The City Council further finds and declares as a result of sudden and unexpected income loss by residents, as well as the precautions recommended by public health officials to avoid or postpone group events, this Urgency Ordinance is necessary to avoid unnecessary displacement of commercial businesses, the stability of which is conducive to public health;

(xvi) The City Council further finds during the COVID-19 pandemic outbreak, affected tenants who have lost income due to impact 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;

(xvii) The City Council further finds and declares that it is necessary and appropriate to adopt this Ordinance as an urgency measure, pursuant to Article XI, Section 5, of the California Constitution and Government Code section 36937, given that displacement through eviction destabilizes the living and business situation of tenants and impacts the health of Buena Park’s residents by uprooting children from schools, disrupting the social ties and networks that are integral to citizens’ welfare and the stability of communities within the City; displacement through eviction creates undue hardship for tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing; the ability to stay indoors is necessary to prevent the spread of COVID-19 and protect the public health and safety; which justify adoption of this Ordinance as an urgency measure to be effective immediately upon adoption by a four-fifths vote of the City Council.

(xviii) All legal prerequisites to the adoption of this Ordinance have occurred, and the City Council has duly considered all evidence presented in connection with its consideration of this Urgency Ordinance.

B. Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BUENA PARK, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. RECITALS. The facts set forth in the Recitals, Part A, of this Ordinance are true and correct, and incorporated into this Urgency Ordinance as substantive findings.

SECTION 2. URGENCY DECLARATION. This Ordinance is adopted as an urgency measure pursuant to Government Code Section 36937 for the immediate preservation of the public health, safety, and welfare, and is adopted and justified based on the findings of the City Council in Recitals, Part A, of this Ordinance; which are supported by substantial evidence in the record associated with the City Council's consideration hereof.

SECTION 3. MORATORIUM. A Moratorium on eviction for non-payment of rent by residential tenants and commercial tenants impacted by the COVID-19 pandemic is imposed as set forth herein.

SECTION 4. SCOPE OF MORATORIUM. During the period of local public health emergency and/or local emergency declared in response to COVID-19:

A. For residential properties, no landlord or agent of a landlord shall endeavor to evict a residential 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 if any member of the household is sick, in isolation, or under quarantine. A landlord who knows that a tenant cannot pay some or all of the rent temporarily for the reasons set forth above shall not serve a notice pursuant to California Code of Civil Procedure Section 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 Urgency Ordinance and thus knows the tenant has a substantive defense to any eviction if the tenant, within 30 days after the date that rent is due, notifies the landlord or an agent of the landlord in writing of lost income and inability to pay full rent due to financial impacts related to COVID-19, and provides documentation to support the claim.

B. For commercial properties, no landlord or agent of a landlord shall endeavor to evict a commercial tenant for non-payment of rent if a commercial tenant is unable to pay rent due to financial impacts related to COVID-19.

C. Nothing in this Urgency Ordinance shall relieve the tenant of liability for the unpaid rent, which the landlord may seek to collect after expiration of the local emergency and the tenant must pay within six (6) months of the expiration of the local emergency.

D. A landlord or agent of a landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Urgency Ordinance; nor may a landlord or agent of a landlord seek to recover rent that is delayed or the reasons stated in this Urgency Ordinance through the eviction process.

E. For purposes of this Urgency Ordinance, "financial impacts related to COVID-19" include, but are not limited to a substantial decrease in household or business income as a result of, including but not limited to, any of the following: (a) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (b) lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19; (c) compliance with a recommendation from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (d) extraordinary out-of-pocket medical expenses; (e) child care needs arising from school closures related to COVID-19; and (f) in addition for commercial tenants, loss of business income from full or partial closure of the business (either voluntarily or by mandate) to prevent the spread of COVID-19.

F. For purposes of this Urgency 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 medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim.

G. For purposes of this Urgency Ordinance, "no-fault eviction" refers to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant including, but not limited to, eviction notices served pursuant to Code of Civil Procedure Sections 1161(1), 1161(5), or 1161c.

SECTION 5. NATURE AND USE. This Urgency Ordinance may be asserted as an affirmative defense in an unlawful detainer action. Any failure to comply with this Urgency Ordinance does not constitute a criminal offense. This Urgency Ordinance shall not be read in any way to prohibit any terminations of tenancy for just cause, or other terminations of tenancy where this Urgency Ordinance does not apply.

SECTION 6. EFFECTIVENESS. As applied to notices of termination issued prior to the effective date of this Urgency Ordinance, this Urgency Ordinance shall apply to tenancies where, as of the effective date of this Urgency Ordinance, said tenant remains in possession and/or any unlawful detainer action has not reached final judgment or issuance of a final order, after all appeals have been exhausted. This Urgency Ordinance shall be deemed to have taken effect as of March 17, 2020, the date of the City Council's proclamation of a "local emergency," and shall remain in full force and effect for the period of time set forth in Executive Order No. 28-20, as the same may be extended from time to time, unless sooner terminated or repealed by the City Council.

SECTION 7. SEVERABILITY. The City Council declares that, should any provision, section; paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences and words of this Ordinance shall remain in full force and effect.

SECTION 8. This Ordinance is adopted as an urgency ordinance and shall take effect immediately upon a 4/5 vote of the City Council.

SECTION 9. The City Clerk of the City of Buena Park shall certify to the passage of the Ordinance and shall cause the same to be posted in the manner required by law.

PASSED AND ADOPTED this 24th day of March 2020, by the following called vote:

AYES: COUNCILMEMBERS: Brown, Park, Swift, Traut, Smith

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk



I, Adria Jimenez, MMC, City Clerk of the City of Buena Park, California, do hereby certify that the foregoing ordinance was introduced and passed at a regular meeting of the City Council of the City of Buena Park held on the 24th day of March 2020.

  
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City Clerk