

ORDINANCE NO. 2020-1195

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, ENACTING A TEMPORARY MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT FOR RESIDENTIAL AND COMMERCIAL TENANTS IMPACTED BY THE NOVEL CORONAVIRUS (COVID-19)

WHEREAS, a novel coronavirus referred to as COVID-19, which causes infectious disease, was first detected in December 2019, and has now spread throughout the world; and

WHEREAS, the COVID-19 disease is believed to be spread through person-to-person contact between people who are in close proximity with others up to 6 feet and through respiratory droplets when a person coughs or sneezes, even when that person is asymptomatic; and

WHEREAS, on January 31, 2020, the U.S. Secretary of Health and Human Services declared a public health emergency related to the COVID-19 outbreak pursuant to Section 319 of the Public Health Service Act; and

WHEREAS, on February 14, 2020, the San Diego County Public Health Officer declared a local health emergency due to the threat of COVID-19; and

WHEREAS, on February 19, 2020, the San Diego County Board of Supervisors ratified the Declaration of Local Health Emergency and Proclamation of Local Emergency arising out of the COVID-19 outbreak; and

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

WHEREAS, various health organizations throughout the world, including the CDC and the World Health Organization (WHO), consider the COVID-19 virus to be a very serious health threat, a “public health emergency of international concern,” and as of March 11, 2020, the WHO identified it as a pandemic; and

WHEREAS, on March 12, 2020, Governor Newsom issued Executive Order N-25-20 which, in part, took various actions pursuant to the Emergency Services Act (Government Code Sections 8550, *et. seq.*) including an order to ensure adequate facilities to address the impacts of COVID-19; and

WHEREAS, on March 12, 2020, the San Diego County Public Health Officer issued an Order to ban large gatherings in the County of San Diego from March 13, 2020 through March 31, 2020 and announced that there were at least 6 positive cases of COVID-19 in the County along with at least one from community transmission; and

WHEREAS, section 2.52.060 of the Imperial Beach Municipal Code empowers the Director of Emergency Services to proclaim the existence or threatened existence of a local emergency when the City is affected or likely to be affected by a public calamity and the City Council is not in session; and

WHEREAS, on March 12, 2020, the City's Director of Emergency Services proclaimed the existence of a local emergency within the City and on March 16, 2020, the City Council for the City of Imperial Beach adopted Resolution 2020-13, ratifying the declaration of the Director of Emergency Services and declaring the existence of an ongoing local emergency pursuant to COVID-19; and

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States, issued a Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

WHEREAS, on March 13, 2020, the County of San Diego Office of Education announced multiple school closures effective March 16, 2020, and school districts and colleges throughout the County of San Diego initiated school closing orders for their schools for durations of approximately one month; and

WHEREAS, the CDC issued guidance as of March 15, 2020, to the effect that in-person events consisting of fifty (50) persons or more should be canceled for the next eight (8) weeks, and that gatherings of more than ten (10) persons for organizations that serve higher-risk populations should be canceled; and

WHEREAS, on March 16, 2020, the Health Officer of the County of San Diego issued an Amended Order and Emergency Regulations, which prohibited gatherings of 50 or more persons in a single room or space at the same time, and which provided for the closure of all bars and entertainment establishments, prohibited all on-site dining, and limited restaurants and food service providers to take out, drive-through or delivery and such Amended Order has been further amended to prohibit gatherings of 10 or more; and

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-20, which delegated to local jurisdictions the authority to enact temporary moratoria on commercial and residential evictions based on impacts related to COVID-19 and extended the time limitation set forth in Penal Code section 396, subdivision (f) concerning protections against residential eviction until May 31, 2020; and

WHEREAS, on March 17, 2020, the City Council passed Resolution 2020-15 to place a temporary moratorium on residential evictions for nonpayment of rent as a result of a substantial decrease of household or business income as a direct result of COVID-19; and

WHEREAS, on March 17, 2020, the Health Officer of the County of San Diego issued an Amended Order and Emergency Regulations, which provided that all public or private schools, colleges and universities shall not hold classes or other activities where students gather on campus; and

WHEREAS, on March 19, 2020, the Governor of the State of California issued Executive Order N-33-20 ordering all individuals to stay at home with the exception of those providing essential services or for essential needs with no specific end date; and

WHEREAS, on March 29, 2020, the Health Officer of the County of San Diego issued an Order of the Health Officer and Emergency regulations which extends its regulations with no specific end date; and

WHEREAS, according to the Centers for Disease Control and Prevention (CDC) and public health officials in the County of San Diego there have been numerous deaths attributed to COVID-19 in the United States and throughout San Diego County and the infection cases and death toll are likely to increase over time; and

WHEREAS, as of March 30, 2020, the County of San Diego reports six hundred and three (603) San Diego County resident cases which have tested positive or are presumptive positive for COVID-19, and seven (7) deaths, and the number is expected to increase; and

WHEREAS, pursuant to Health and Safety Code section 12175.5(b) and the Order of the Health Officer and Emergency Regulations (“County Order”) issued by the Health Officer of the County of San Diego, all government entities in San Diego County are required to take necessary measures within the government entity’s control to ensure compliance with the County Order; and

WHEREAS, the Governor of the State of California has stated that individuals exposed to COVID-19 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, on March 27, 2020, Governor Newsom made substantive factual findings regarding the need for individuals to stay at home and businesses and courts to stay closed and thereupon issued Executive Order N-37-20 which effectively placed a statewide moratorium on residential evictions resulting from certain COVID-related conditions; and

WHEREAS, as a result of the public health emergency and the precautions recommended and required by health authorities to address the COVID-19 virus, many residential and commercial tenants in the City of Imperial Beach have

experienced and are expected to experience sudden and unexpected income loss which is out of their control; and

WHEREAS, during this Local Emergency, and in the interest of protecting the public health and preventing the transmission of COVID-19, it is essential to avoid unnecessary housing and business displacement, to avoid the violation of local and state health stay-at-home orders with moving residents and businesses caused by evictions, to protect the City's available housing stock, and to prevent housed individuals from falling into homelessness; and

WHEREAS, further substantial and long-term economic impacts caused by COVID-19 are anticipated, leaving both residential and commercial tenants vulnerable to eviction; and

WHEREAS, pursuant to Chapter 2 of the Imperial Beach Municipal Code, the Director recommends that the City Council adopt the below Ordinance as a local measure in order to protect life and property of the residents and businesses of Imperial Beach affected by the declared emergency; and

WHEREAS, as a result of the public health emergency, the closures or reduced operations of many local businesses, and the precautions recommended by health authorities, many tenants in Imperial Beach have experienced or expect soon to experience sudden and unexpected income loss; and

WHEREAS, promoting stability amongst commercial tenancies is also conducive to public health and safety, thereby allowing commercial establishments to decide whether and how to remain open providing both income to employees and needed services to residents and not simply closing due to economic pressures; and

WHEREAS, current state law, including Penal Code Section 396, subsections (e) and (f), does not provide sufficient protections to residential and commercial tenants experiencing the unprecedented economic consequences of shuttered businesses, mass layoffs and the inability to find replacement work and housing caused by the COVID-19 pandemic; and

WHEREAS, the City Council has the power under Government Code Sections 36934 and 36937 to adopt an ordinance that takes effect immediately if it is an ordinance for the immediate preservation of the public peace, health or safety, contains a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the City Council; and

WHEREAS, the City finds it is necessary for the City Council to adopt this Ordinance as an Urgency Ordinance, as set forth in the above recitals, which are incorporated herein by reference, and pursuant to the powers under Government Code Sections 36934 and 36937, for the immediate preservation of the public health and safety, as affected by the emergency caused by the spread of COVID-19.

WHEREAS, this ordinance is exempt from review under the California Environmental Quality Act (CEQA; California Public Resources Code Section 2100 et seq.) and CEQA regulations (Title 14, California Code of Regulations Section 15000, et seq.) because this ordinance is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3)).

NOW, THEREFORE, the City Council of the City of Imperial Beach does ordain as follows:

SECTION 1. The above recitals are true and correct and are incorporated herein as findings as though set forth in full.

SECTION 2. City Council Resolution No. 2020-13 ratifying the local emergency declaration of the Emergency Services Director and declaring the existence of an ongoing Local Emergency related to COVID-19, and California Governor Gavin Newsom's Executive Orders N-28-20 and N-37-20, are hereby incorporated into this Ordinance as if fully set forth herein.

SECTION 3. The recitations in City Council Resolution No. 2020-13 and Governor Newsom's Executive Orders N-28-20 and N-37-20 are true and correct.

SECTION 4. Pursuant to the authority granted to the City of Imperial Beach under Art. XI, section 7 of the California Constitution, and as prescribed by state law including, but not limited to, Executive Orders N-28-20 and N-37-20, the Imperial Beach Municipal Code and the ongoing federal, state and Local Emergency, the City Council hereby enacts a temporary moratorium on evictions of residential and commercial tenants (collectively "tenant") impacted by the COVID-19 pandemic for non-payment of rent as follows:

- a. It shall be unlawful and prohibited for a landlord to evict a tenant or otherwise recover possession of a tenancy for nonpayment of rent due on or after March 12, 2020, if the tenant has provided notice to the landlord within seven (7) days after the rent is due, or within such time as possible due to events outside of the tenant's reasonable control but in no event more than thirty (30) days after the rent is due, that the tenant is unable to pay rent due to financial impacts related to COVID-19.
- b. For purposes of this Ordinance, "financial impacts related to COVID-19" is defined as follows:
 1. 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; and

2. The decrease in household or business income or the out-of-pocket medical expenses described in subparagraph (1) was caused by the COVID-19 pandemic; or by any local, county, state, or federal government response to COVID-19; and
 3. The decrease in household or business income or the out-of-pocket medical expenses described in subparagraph (1) and causation by COVID-19 described in subparagraph (2) must be documented in writing.
 4. As otherwise provided for in state law, including but not limited to Executive Order N-37-20.
- c. For purposes of this Ordinance, “notice” must be given in writing and delivered pursuant to the notice required under the terms of a lease or other rental agreement. If no written lease or rental agreement exists, the notice must be delivered personally, or by U.S. mail, email or text messaging to the landlord, the landlord’s representative or agent, and/or at the address where rent is customarily paid.
 - d. Upon receipt of the required notice from the tenant pursuant to this Ordinance, a landlord who has already commenced eviction proceedings or other efforts to recover possession of the rented or leased premises must immediately cease all such efforts.
 - e. Within seven (7) days of providing notice described in this Ordinance, or within such time as possible due to events outside of the tenant’s reasonable control but in no event more than thirty (30) days after rent is due, the tenant shall provide the landlord documentation or other objectively verifiable information that due to financial impacts related to COVID-19, the tenant is unable to pay rent. Documentation may include, but is not limited to, paystubs, letters from employers, financial or bank statements, business records, physician’s letters, and/or other monthly bills or evidence of financial responsibilities. Any medical or financial information provided to the landlord for purposes related to this Ordinance, shall be held in confidence and only used for evaluating the tenant’s claim.
 - f. If the tenant does not provide evidence of financial impacts related to COVID-19 within the time frame described in subparagraph (e), the landlord may pursue any enforcement action permissible under state law and as provided for in the underlying rental or lease agreement.

SECTION 5. This Ordinance applies to nonpayment eviction notices and unlawful detainer actions for commercial and residential tenants based on such notices, served or filed on or after March 12, 2020, the date on which a Local Emergency was proclaimed.

SECTION 6. Nothing in this Ordinance shall relieve a tenant of the obligation to pay rent, nor restrict a landlord's ability to recover past rent due, imposed by an underlying rental or lease agreement.

SECTION 7. The City of Imperial Beach reserves the right to enforce this Ordinance pursuant to Imperial Beach Municipal Code section 2.52.130(B) and any other applicable section and to pursue any other remedies legally available against individuals or entities who knowingly or intentionally violate the provisions of this Ordinance or falsifying information to qualify for the relief granted in this Ordinance.

SECTION 8. A tenant with the financial impacts related to COVID-19 as defined in this Ordinance and who complies with all of the provisions in this Ordinance may use the protections in this Ordinance as an affirmative defense in an unlawful detainer action.

SECTION 9. This Ordinance is intended to supplement, not to duplicate or contradict, applicable state and federal law and shall be interpreted in light of that intent. This Ordinance supersedes City Council Resolution No. 2020-15.

SECTION 10. Unless extended by City Council, this Ordinance shall remain in effect until close of business on May 31, 2020.

SECTION 11. The City Manager may, but is not required to, adopt rules and regulations reasonably necessary to implement this Ordinance. If the State of California issues law or guidance on implementing an eviction moratorium or defining terms contained herein, that law or guidance shall control over the City Manager's adopted rules and regulations.

SECTION 12. The City Manager is directed to research prohibitions on late penalties for nonpayment of rent and future deadlines for the payment of rent by tenants protected by this Ordinance as potential rules and regulations that are reasonably necessary to implement this Ordinance. If appropriate, the City Manager is authorized to adopt such rules and regulations and/or submit an amendment to this Ordinance to the City Council.

SECTION 13. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 14. Pursuant to Government Code Section 36936, this Ordinance shall be effective immediately upon its adoption by a 4/5ths vote of the City Council.

SECTION 15. The City Clerk is hereby directed to certify to the passage of this Ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation for the City of Imperial Beach.

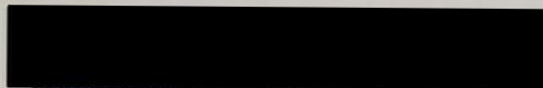
PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its regular meeting held on the 1st day of April 2020, by the following vote:

AYES: COUNCILMEMBERS: PATTON, WEST, SPRIGGS, AGUIRRE
NOES: COUNCILMEMBERS: NONE
ABSENT: COUNCILMEMBERS: DEDINA



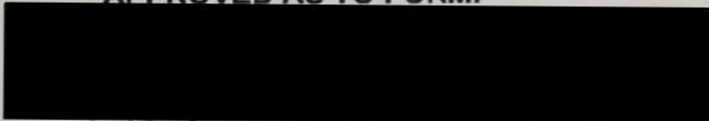
**PALOMA AGUIRRE,
MAYOR PRO TEMPORE**

ATTEST:



**JACQUELINE M. KELLY, MMC
CITY CLERK**

APPROVED AS TO FORM:



**JENNIFER M. LYON,
CITY ATTORNEY**