

ORDINANCE NO. 2020 - 2479

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY (1) ENACTING A TEMPORARY MORATORIUM ON EVICTIONS WITHIN THE CITY OF NATIONAL CITY DUE TO NONPAYMENT OF RENT FOR RESIDENTIAL AND COMMERCIAL TENANTS ARISING OUT OF A SUBSTANTIAL DECREASE IN INCOME OR SUBSTANTIAL OUT-OF-POCKET MEDICAL EXPENSES RESULTING FROM THE NOVEL CORONAVIRUS (COVID-19), GOVERNMENTAL RESPONSE TO COVID-19, OR OTHER FINANCIAL REASON RELATED TO COVID-19 PURSUANT TO CALIFORNIA GOVERNOR EXECUTIVE ORDER N-28-20 AND N-37-20; AND (2) SUSPENDING FORECLOSURE REMEDIES THAT COULD LEAD TO EVICTION UNDER SIMILAR CIRCUMSTANCES PURSUANT TO CALIFORNIA GOVERNOR EXECUTIVE ORDER N-28-20

WHEREAS, a novel coronavirus, COVID-19, causes infectious disease and was first detected in December 2019; and

WHEREAS, COVID-19 symptoms include fever, cough, and shortness of breath, and those who have been afflicted have experienced anything from mild illness to death; and

WHEREAS, the Centers for Disease Control and Prevention considers COVID-19 to be a very serious public health threat and the World Health Organization declared the COVID-19 outbreak to be a pandemic; and

WHEREAS, on February 19, 2020, the San Diego County Board of Supervisors ratified a declaration of local health emergency related to COVID-19; and

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

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-20 suspending any provision of state law that would preempt or otherwise restrict a local government's exercise of its police power to impose substantive limitations on residential and commercial evictions when the basis for eviction is nonpayment of rent arising out of a documented substantial decrease in household or business income or substantial out-of-pocket medical expenses caused by COVID-19 or by any local, state, or federal government response to COVID-19; and

WHEREAS, on March 17, 2020, Mayor Alejandra Sotelo-Solis on behalf of the City Council of the City of National City ("City Council") executed a Resolution ratifying the Declaration of the Existence of a Local Emergency that was proclaimed on March 12, 2020 in the City of National City ("City") as a result of COVID-19; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 ordering all individuals living in the State of California to stay home or at their place of residence, except to obtain essential services; and

WHEREAS, on March 27, 2020, Governor Newsom issued Executive Order N-37-20 which bans the enforcement of eviction orders for renters affected by COVID-19 through May 31, 2020, prohibits landlords from evicting tenants for nonpayment of rent and prohibits enforcement of evictions by law enforcement or courts, and requires tenants to declare in writing, no more than seven days after the rent comes due, that the tenant cannot pay all or part of their rent due to COVID-19.

WHEREAS, as of March 30, 2020, there are currently more than 600 confirmed cases of COVID-19 within San Diego County, at least 7 COVID-19 related deaths, more than 6,932 confirmed cases in California, and at least 150 COVID-19-related deaths in California, and these statistics are increasing daily; 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 reduced capacity and a drastic reduction in tourism; and

WHEREAS, COVID-19 is causing, and is expected to continue to cause, serious negative impacts on the National City economy and serious financial impacts to National City residents and businesses, including substantial loss of income due to the loss of compensable work hours or wages, layoffs, and business closures; and

WHEREAS, the Governor and the San Diego County Public Health Officer have issued a variety of orders and directives to respond to the emergency, including closing or significantly curtailing certain business operations, prohibiting gatherings of 10 people or more, and cancelling conferences, sporting events, and other large group activities; and

WHEREAS, the San Diego County Superintendent of Schools and all district superintendents in the County have closed schools beginning March 16, 2020, requiring many parents to adjust work schedules or take time off from work, whether paid or unpaid, to care for school-aged children; and

WHEREAS, loss of income as a result of COVID-19 may prevent City residents and businesses from fulfilling their financial obligations; and

WHEREAS, approximately 65 percent of the City's households rent their homes; and

WHEREAS, in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement during the emergency and to prevent housed-individuals from falling into homelessness; and

WHEREAS, displacement of residential tenants caused by eviction would create undue hardship on these tenants by making it difficult to follow public health orders and guidance of social distancing and isolation, and would further put them at risk of homelessness due to the City's documented shortage of affordable housing, putting these tenants and the general public at great risk; and

WHEREAS, this Ordinance enacts a temporary moratorium on residential evictions intended to promote economic stability and fairness within the City's rental market during the COVID-19 pandemic, to prevent avoidable homelessness, to preserve the public peace, health, safety, and public welfare, and to enable tenants in the City whose income and ability to work is affected by COVID-19; and

WHEREAS, business closures and reduced business hours, in addition to public health orders to limit public gatherings and socially distance, will have a financial impact on local businesses, and displacement of commercial tenants caused by eviction would worsen the present crisis by causing financial instability for business owners and employees and by reducing the available jobs for City residents once the crisis is abated; and

WHEREAS, this Ordinance enacts a temporary moratorium on residential and 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 emergency is abated; and

WHEREAS, it is in the public interest to take steps to ensure people remain housed and to ensure local businesses are not evicted during this public health emergency; and

WHEREAS, the City Council further requests the County, State and Federal governments work with banks and lenders to alleviate financial hardships of property owners and landlords related to actions taken to address the COVID-19 pandemic; and

WHEREAS, the City Council further requests that banks and lenders work with property owners and landlords to extend similar hardship protections for mortgage relief as found in this ordinance for tenants; and

WHEREAS, Section 16.06.060 of National City Municipal Code vests all legislative authority for the City in the City Council; and

WHEREAS, California Government Code section 8634 allows the City Council, as the governing body, to make orders and regulations necessary to provide for the protection of life and property; and

NOW, THEREFORE THE CITY COUNCIL HEREBY DECREES THE FOLLOWING FINDINGS OF URGENCY:

1. That the foregoing facts recited in the Whereas herein above are true and correct and overwhelmingly establish the existence of an emergency which serves as factual evidences for adopting this Ordinance as an Urgency Measure, and

2. That this emergency situation necessitates that immediate implementation of an Ordinance for the immediate preservation of the public peace, health and safety of residences of National City; and

3. That the facts of this emergency situation requires that the Council pursuant to Government Code §36937 to adopt an Urgency Ordinance as its immediate implementation is necessary and appropriate to address the threats to the public health, safety, and welfare of its citizens related to the significant economic impacts of the COVID-19 pandemic, to protect residents and businesses from being evicted due to nonpayment of rent due to substantial lost income or substantial out-of-pocket medical expenses caused by COVID-19, or by complying with public health orders and recommendations related to COVID-19.

NOW THEREFORE, BE IT ORDAINED, by the City Council of the City of National City, as follows:

Section 1. That a temporary moratorium on evictions for nonpayment of rent by residential or commercial tenants (collectively “tenant”) in the City of National City who are directly impacted by the novel coronavirus disease, known as COVID-19, is imposed as follows:

(a) No landlord shall take action to evict a tenant for not timely paying rent that was due on or after March 17, 2020, if the tenant provided written notice to the landlord, on or before the date the rent was due or within a reasonable period of time not to exceed 7 days (for rent that was due between March 17, 2020 and April 7, 2020, the tenant will have until April 14, 2020 to provide written notice to the landlord), that the tenant is unable to pay rent due to financial impacts related to COVID-19 or other financial reasons related to COVID-19 not limited to the following:

(i) The tenant was unavailable to work because the tenant was sick with a suspected or confirmed case of COVID-19 or caring for a household or family member who was sick with a suspected or confirmed case of COVID-19;

(ii) The tenant experienced a lay-off, loss of hours, or other income reduction resulting from COVID-19, the state of emergency, or related government response; or

(iii) The tenant needed to miss work to care for a child whose school was closed in response to COVID-19.

(b) As used in this Ordinance, “financial impacts” means a substantial decrease in household income for a residential tenant, or in business income for a commercial tenant (including the loss of customer purchases or products or services), due to business closure, loss of compensable hours of work or wages, layoffs, or substantial out-of-pocket medical expenses. A financial impact is “related to COVID-19” if it is caused by the COVID-19 pandemic or any governmental response to the COVID-19 pandemic, including complying with any public health

orders or recommended guidance related to COVID-19 from local, state, or federal governmental authorities.

(c) For purposes of this Ordinance, “in writing” includes email or text communications to a landlord or landlord’s representative or agent with whom the tenant has previously corresponded by email or text. Any medical or financial information provide to the landlord shall be held in confidence, and only used for evaluating the tenant’s claim.

(d) Within 30 days of the date rent was due, the tenant shall provide the landlord documentation or objectively verifiable information that the tenant is unable to pay rent due to financial impacts related to COVID-19. The tenant must provide the landlord with additional documentation for each month that rent is not paid. Examples of verifiable documentation include but are not limited to termination notices, payroll checks, pay stubs, bank statements, medical bills, child care costs, commercial sales receipts and profit and loss statements, signed letters or statements from an employer or supervisor explaining the tenant’s changed financial circumstances to support the tenant’s assertion of an inability to pay. If the tenant does not provide evidence of financial impacts related to COVID-19 within this time frame, the landlord may pursue any enforcement action in accordance with state and local laws.

(e) If a tenant complies with the requirements of this Ordinance, a landlord shall not take any of the following actions based on the tenant’s nonpayment of rent: charge or collect any late fees for rent that is delayed for the reasons set forth in this Ordinance, serve a notice, file, or prosecute any action to obtain possession of the property rented by that tenant or otherwise endeavor to evict that tenant for nonpayment of rent, including resorting to notice pursuant to California Code of Civil Procedure sections 1161, 1161.1, or 1162, filing or prosecuting any unlawful detainer action based on a three-day pay or quit notice, or pursuing a no-fault eviction.

(f) Tenants who were afforded eviction protection under this Ordinance shall have up to six months from the date this Ordinance is effective or the withdrawal of Governor Newsom’s Executive Order N-28-20, whichever occurs soonest, to pay their landlords all unpaid rent (“Tenant Repayment Period”). The tenant may also enter into a mutually agreed repayment plan (“Repayment Plan”) with their landlord to facilitate the payment of unpaid rent after the Tenant Repayment Period has elapsed. The Repayment Plan must be in writing and executed by both the tenant and landlord before the Tenant Repayment Period ends. If a tenant opts to move while the Ordinance is effective, all owed rent is due upon move out unless the lease dictates otherwise. The City Council may extend this Ordinance by subsequent resolution if conditions at that time warrant an extension. During that time period, the protections against eviction in this Ordinance shall apply. At the end of this six-month period, a landlord may evict a tenant who has not paid all outstanding rent and resort to all remedies available to the landlord under the lease and the law.

(g) For purposes of this Ordinance, “no-fault eviction” means any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant, including, but not limited to, evictions notices served pursuant to Code of Civil Procedure sections 1161(1), 1161(5), or 1162c.

(h) A tenant for purposes of this Ordinance also includes a person who leases or rents space in a mobile home park for a mobile home in which they reside.

(i) Nothing in this Ordinance relieves the tenant of liability for unpaid rent after expiration of the provisions of this Ordinance.

(j) A tenant with financial impacts related to COVID-19 may use the protections afforded in this Ordinance as an affirmative defense in an unlawful detainer action.

Section 2. Pursuant to Executive Order N-28-20 issued by the California Governor on March 16, 2020, evictions based upon foreclosure proceedings are prohibited as follows:

(a) The statutory cause of action for judicial foreclosure, Code of Civil Procedure section 725a et. seq.; the statutory cause of action for unlawful detainer, Code of Civil Procedure section 1162, et. seq., and any other statutory cause of action that could be used to evict or otherwise eject a residential or commercial tenant or occupant of residential real property after foreclosure is suspended only as applied to any tenancy, or residential real property, and any occupation thereof, in which the eviction is based on the following:

(i) The basis for the eviction is a foreclosure, arising out of a substantial decrease in household or business income (including, but not limited to, a substantial decrease in household income cause by the layoffs or a reduction in the compensable hours of work, or a substantial decrease in business income caused by a reduction of opening hours or consumer demand), or substantial out-of-pocket expenses; and

(ii) The decrease in household or business income or the out-of-pocket expenses described above, was caused by the COVID-19 pandemic, or by local, state, or federal government response to COVID-19, and is documented.

(b) Section 2 shall become inoperative effective June 30, 2020, unless extended by Executive Order issued by the Governor of the State of California.

(c) Section 2 is punishable under California Penal Code 396 and by applicable penalties for violation of this Ordinance under the National City Municipal Code.

Section 3. The Ordinance shall be retroactive to March 17, 2020 in accordance with the City Council's ratification of the Declaration of the Existence of a Local Emergency and in accordance the California Governor Executive Order N-28-20 and shall remain in effect through June 30, 2020, unless extended by Executive Order issued by the Governor of the State of California.

Section 4. That the City Manager may adopt rules and regulations reasonably necessary to implement this Ordinance, including adopting definitions of substantial out-of-pocket medical expenses and substantial loss of income, but in no event shall the definition of substantial loss of income exceed a 30 percent reduction in income. In the event the State of California issues law or guidance on implementing an eviction moratorium or defining these terms, that law or guidance shall control over the City Manager's adopted rules and regulations.

Section 5. That this Ordinance is intended to supplement, not to duplicate or contradict, applicable state and federal law and shall be construed in light of that intent.

Section 6. That the provisions of the National City Municipal Code including those relating to construction and interpretation, and enforcement of administrative remedies, shall apply to this Ordinance.

Section 7. That the City reserves the right to enforce the administrative remedies and to pursue any other remedies legally available against individuals knowingly or intentionally violating the provisions of this Ordinance or falsifying information to qualify for the relief granted in this Ordinance.

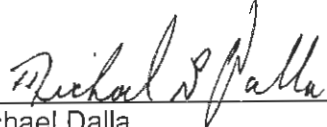
Section 8. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the City Council and the public prior to the day of its passage.

Section 9. That this Ordinance is declared to be an emergency measure required for the immediate preservation of the public peace, safety, health, and welfare pursuant to, and shall take effect immediately from the day of adoption by the affirmative vote of at least four members of the City Council.


PASSED and ADOPTED this 7th day of April, 2020.


Alejandra Sotelo-Solis, Mayor

ATTEST:


Michael Dalla,
City Clerk

APPROVED AS TO FORM:


Angil P. Morris-Jones,
City Attorney

Passed and adopted by the Council of the City of National City, California, on April 7, 2020, by the following vote, to-wit:

Ayes: Councilmembers Cano, Morrison, Quintero, Rios, Sotelo-Solis.

Nays: None.

Absent: None.

Abstain: None.

AUTHENTICATED BY:

ALEJANDRA SOTELO-SOLIS
Mayor of the City of National City, California

MICHAEL R. DALLA
City Clerk of the City of National City, California

By: _____
Deputy

I HEREBY CERTIFY that the foregoing Ordinance was adopted on April 7, 2020, under the provisions of Section 65858 of the California Government Code and became effective immediately upon said adoption.

I FURTHER CERTIFY THAT said Ordinance was read in full prior to its final passage or that the reading of said Ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said Ordinance.

I FURTHER CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. 2020-2479 of the City Council of the City of National City, passed and adopted by the Council of said City on April 7, 2020.



Michael R. Dalla
City Clerk of the City of National City, California

By: _____
Deputy