

EXECUTIVE ORDER NO. 2020-01

**EMERGENCY EXECUTIVE ORDER OF THE CITY
MANAGER OF THE CITY OF SAN BERNARDINO,
CALIFORNIA, ENACTING A TEMPORARY
MORATORIUM AND EVICTIONS DUE TO NON-
PAYMENT OF RENT BY RESIDENTIAL AND
COMMERCIAL TENANTS IMPACTED BY THE NOVEL
CORONAVIRUS (COVID-19) DURING A PERIOD OF
LOCAL EMERGENCY**

WHEREAS, on March 13, 2020, in my capacity as Director of Emergency Services, I proclaimed the existence of a local emergency in the City of San Bernardino in connection with the global pandemic caused by the spread of a novel coronavirus, COVID-19 (“Proclamation 2020-01”); and

WHEREAS, on March 16, 2020, the Governor of the State of California issued Executive Order Executive Order N-28-20, authorizing local governments’ through their police power to impose substantive limitations on residential or commercial evictions for nonpayment of rent for tenants financially impacted by COVID-19 through May 31, 2020; and

WHEREAS, on March 17, 2020, the Health Officer of the County of San Bernardino issued an order countywide that: (1) with limited exceptions, prohibits all gatherings, i.e., any event or convening that brings together people in a single room or single space at the same time, except for gatherings of members of a household or living unit; (2) orders the closure of all bars, adult entertainment establishments, and other business establishments that serve alcohol but not food (3) orders the closure of movie theatres, gyms, and health clubs; (4) requires food and beverage establishments to follow CDPH guidance, including requirements that restaurants close to in-restaurant seated dining and open only to drive-through or other pick-up/delivery options; and

WHEREAS, on March 18, 2020, the City Council ratified Proclamation 2020-01 through the adoption of a resolution proclaiming the existence of a local emergency and expressly authorizing the City Manager/Director of Emergency Services to establish a temporary moratorium on evictions and enact other protections in accordance with Executive Order N-28-20 issued by the Governor on March 16. (“Resolution No. 2020-51”); and

WHEREAS, on March 19, 2020, the Governor of the State of California, issued Executive Order N-33-20, 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; and

WHEREAS, during the pendency of the local emergency and statewide state of emergency, the Director of Emergency Services is empowered “[t]o make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency . . .” under Section 2.46.090 A.(6) of the City’s Municipal Code; and

WHEREAS, as of the date of this Executive Order: many businesses have imposed work from home policies; meetings, events and social gatherings are cancelled and in some cases prohibited as people remain at home; customers are not patronizing restaurants, hotels, and retail establishments or hiring domestic help or travelling; and

WHEREAS, the above actions are severely impacting hourly workers, through employee terminations and the cutting back of hours; and

WHEREAS, as a result of the public health emergency and the precautions recommended by health authorities, many tenants in the City of San Bernardino have experienced or expect soon to experience sudden and unexpected income loss or an increase in out-of-pocket medical expenses; 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, most, if not all, local schools are closed to prevent further spread of COVID-19, and these closures cause children to have to remain at home, leading to many parents adjusting their work schedules to take time off work, whether paid or unpaid. Hourly wage earners are unlikely to be paid for time off. The inability to work due to school closures will economically strain those families who cannot afford to take off time from work to stay at home; and

WHEREAS, the situation is unprecedented and evolving rapidly, and further economic impacts are anticipated, which leaves tenants vulnerable to eviction; and

WHEREAS, 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, and lack of moving services and supplies as stores and businesses close; and

WHEREAS, 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; and

WHEREAS, people experiencing homelessness are especially vulnerable to the spread of COVID-19 due to an inability to practice social distancing and a lack of access to health care; and

WHEREAS, the Governor has ordered the State to take extraordinary measures to secure shelter for homeless populations during this emergency to limit exposure to and spreading of COVID-19; and

WHEREAS, widespread evictions of tenants vulnerable to eviction due to financial hardship occurring due to COVID-19 would exacerbate the challenge of sheltering the homeless during this emergency, and increase the risk of spread of COVID-19 and would cause people to be in violation the Governor's Executive order to stay home; and

WHEREAS, promoting stability amongst commercial tenancies is also 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; and

WHEREAS, the City desires to prohibit evictions due to nonpayment of rent for residential and commercial tenants where the failure to pay rent results from income loss resulting from the novel coronavirus (COVID-19); and

WHEREAS, 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 order related to the protection of life and property, to ensure renters can remain in their homes and prevent proliferation of homelessness and further spread of COVID-19; and

WHEREAS, this Order is temporary in nature and only intended to promote stability and fairness within the residential and commercial rental market 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; and

WHEREAS, this Order is adopted pursuant to the City's police powers and 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, the City Charter, and the Chapter 2.46 of the San Bernardino Municipal Code to protect the peace, health, and safety of the public; and

WHEREAS, this Order is necessary for the preservation of the public peace, health, and safety of residents living within the City and, under Government Code Section 8634, this Order is necessary to provide for the protection of life and property.

BE IT ORDERED BY THE CITY MANAGER OF THE CITY OF SAN BERNARDINO AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference. The recitals and findings in Proclamation 2020-01 and Resolution 2020-51 are also incorporated herein by this reference.

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

A. During the period of local emergency declared 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.

B. 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 Order if the tenant, within 30 days after the date that rent is due, notifies 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. For purposes of this Order, "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.

C. For purposes of this Order "financial impacts related to COVID-19" include, but are not limited to, tenant lost household income as a result of any of the following: (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (2) lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19; (3) compliance with a recommendation from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (4) extraordinary out-of-pocket medical expenses; or (5) child care needs arising from school closures related to COVID-19.

D. This Order applies to nonpayment eviction notices and unlawful detainer actions based on such notices, served or filed on or after the date on which the local emergency was proclaimed.

E. This Order grants a defense in the event that an unlawful detainer action is commenced in violation of this Order. Violation of this Order shall be punishable as set forth in Section 2.46.120 of the San Bernardino Municipal Code.

F. Nothing in this Order shall relieve the tenant of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency and the tenant must pay within six months of the expiration of the local emergency. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Order; nor may a landlord seek rent that is delayed or the reasons stated in this Order through the eviction process.

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

SECTION 3. Temporary Moratorium on Evictions for Non-Payment of Rent by Commercial Tenants Impacted by the COVID-19 Crisis.

A. Commercial landlords in the City are hereby prohibited from evicting commercial tenants for nonpayment of rent with respect to tenants whose businesses are impacted by federal, state, or local public health orders or are otherwise limited or closed (voluntarily or by mandate) to prevent or reduce the spread of COVID-19 and who demonstrate lost income and inability to pay rent as a result of such limitation or closure or other demonstrated financial impact related to COVID-19.

B. A landlord knows of a tenant's lost income and inability to pay rent within the meaning of this Order 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, with appropriate supporting documentation. If a tenant suffers only a partial loss of income, the tenant shall pay the pro-rated share of their rent that corresponds to the income they generated during the period of loss. For purposes of this Order, "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. All financial information provided to the landlord shall be kept in confidence and only used for evaluating the tenant's claim or enforcing this provision.

C. This Order grants a defense in the event that an unlawful detainer action is commenced in violation of this Order. Violation of this Order shall be punishable as set forth in Section 2.46.120 of the San Bernardino Municipal Code.


D. Nothing in this Order shall relieve the commercial tenant of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency and the tenant must pay within six months of the expiration of the local emergency. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Order; nor may a landlord seek rent that is delayed, or the reasons stated in this Order through the eviction process.

E. No other legal remedies available to landlord are affected by this Order.

SECTION 4. Severability. If any provision of this Proclamation or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Proclamation are declared to be severable.

SECTION 5. Effective Date and Termination. This Proclamation shall become effective immediately and shall continue until the earlier to occur of: (1) the conclusion of the local emergency; (2) May 31, 2020 or such other date as the Governor declares through an amendment to Executive Order N-28-20; (3) its termination is proclaimed by the Director of Emergency Services; or (4) it is duly terminated by the City Council. The Order may also be superseded by a duly enacted ordinance of the City Council expressly superseding this Order.

ORDERED by the City Manager/Director of Emergency Service this 20th day of March, 2020.



Teri Ledoux, City Manager and Director of
Emergency Services
City of San Bernardino