

URGENCY ORDINANCE NO. 1693

AN UNCODIFIED URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN FERNANDO, CALIFORNIA ENACTING A TEMPORARY MORATORIUM ON EVICTIONS DUE TO THE NONPAYMENT OF RENT FOR RESIDENTIAL AND NON-ESSENTIAL COMMERCIAL TENANTS WHERE THE FAILURE TO PAY RENT RESULTS FROM INCOME LOSS RESULTING FROM THE NOVEL CORONAVIRUS (COVID-19)

WHEREAS, in late December 2019, several cases of unusual pneumonia began to emerge in the Hubei province of China. On January 7, 2020, a novel coronavirus now known as COVID-19 was identified as the likely source of the illness; and

WHEREAS, on January 30, 2020, the World Health Organization (“WHO”) declared COVID-19 a Public Health Emergency of International Concern. On January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency; and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State prepare for a broader spread of COVID-19; and

WHEREAS, on March 11, 2020, WHO publicly characterized COVID-19 as a pandemic; and

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-20 which suspends “[a]ny 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 or commercial evictions ... including, but not limited to, any such provision of Civil Code sections 1940 et seq.” to the extent such provisions would otherwise restrict such exercise; and

WHEREAS, on March 16, 2020, the County of Los Angeles ordered the closure of all gyms, bars, and ordered all restaurants to close their sit-in areas and offer take-out or delivery services only; and

WHEREAS, on March 19, 2020, the County of Los Angeles issued a Mandatory Stay at Home Order, ordering the closure of all non-essential businesses until April 19, 2020; and

WHEREAS, as of March 29, 2020, the Los Angeles Department of Public Health (the “County”) has identified 2136 cases of COVID-19 in Los Angeles County and resulting in 37 deaths; and

WHEREAS, on March 27, 2020, Governor Newsom issued Executive Order N-37-20 (“Executive Order N-37-20”) which prevents evictions for a period of 60 days of “a tenant from a residence or dwelling unit for nonpayment of rent” who satisfies requirements set forth in said order; and

WHEREAS, the COVID-19 pandemic has resulted in the closure of many businesses, which is expected to lead to hourly cutbacks and has already resulted in employee terminations; and

WHEREAS, this Urgency Ordinance enacts a temporary moratorium intended to promote stability and fairness within the residential and commercial rental market in the City of San Fernando (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, displacement through eviction destabilizes the living situation of tenants and impacts the health of the City’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; 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

WHEREAS, during the COVID-19 pandemic outbreak, Affected Commercial Tenants who have lost income due to the 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, Government Code Sections 36934 and 36937(b) authorize the City to adopt an Urgency Ordinance for the immediate preservation of the public peace, health and safety, provided that such Urgency Ordinance is passed by a four-fifths vote of the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN FERNANDO, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are true and correct and incorporated herein by reference.

SECTION 2. Title. This Urgency Ordinance shall be known as the “COVID-19 Eviction Protection Ordinance.”

SECTION 3. Urgency Findings. The purpose of this Urgency Ordinance is to promote housing stability during the COVID-19 pandemic and to prevent avoidable homelessness. This Urgency Ordinance is necessary for the immediate preservation of the public peace, health, and safety because the COVID-19 pandemic has the potential of destabilizing the residential and commercial rental market for all of the reasons described herein. This Urgency Ordinance is intended to enable tenants in the City, whose employment and income have been affected by the COVID-19 pandemic, to be temporarily exempt from eviction for non-payment of rent and to reduce the risk that these events will lead to, such as anxiety, stress, and potential homelessness for the affected City residents and their communities, thereby serving the public peace, health, safety, and public welfare. The temporary moratorium on evictions for non-payment imposed by this Urgency Ordinance is created pursuant to the City's general police powers to protect the health, safety, and welfare of its residents and exists in addition to any rights and obligations under state and federal law.

SECTION 4. Definitions

- A. “Affected Commercial Tenant” means a Commercial Tenant who satisfies one or more of the criteria in paragraph A of Section 8, of this Urgency Ordinance below.
- B. “Health Department” means the County of Los Angeles Department of Public Health.
- C. “Landlord” means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any “residence” or “dwelling unit” within the meaning of Executive Order N-37-20 or any Commercial Rental Unit as defined herein.
- D. “Mobilehome” means a structure transportable in one or more sections, designed and equipped to contain not more than one dwelling unit, to be used with or without a foundation system.
- E. "Mobilehome Park" means any area or tract of land where two or more mobilehome lots are rented or leased, or held out for rent or lease, to accommodate mobilehomes used for human habitation for permanent, as opposed to transient, occupancy.
- F. “Mobilehome Owner” means a person who owns a Mobilehome and rents or leases the Mobilehome Park lot on which the Mobilehome is located.
- G. “Mobilehome Resident” means a person who rents a mobilehome from a Mobilehome Owner.
- H. “Commercial Rental Unit” means a building, structure or part of a structure that is used for a legally permitted and duly licensed business or other non-residential service or activity (e.g., commercial, industrial, professional office, entertainment, recreational and/or retail uses etc.)
- I. “Commercial Tenant” means any person or business entity that leases and occupies a Commercial Rental Unit.
- J. “Residential Tenant” means a “tenant” within the meaning of Executive Order N-37-20. Except as otherwise declared by a court of competent jurisdiction, for purposes of this Urgency Ordinance, the City shall interpret the term “tenant” as set forth under Executive Order N-37-20 to be inclusive of the following: (i) any lawful residential tenant or subtenant; residential lessee or sublessee or any person entitled by written agreement or by sufferance to use or occupy a “residence” or “dwelling unit” within the meaning of Executive Order N-37-20; and (ii) any Mobilehome Resident or Mobilehome Owner.

SECTION 5. Protections for Residential Tenants.

- A. For the duration of the moratorium established under Executive Order N-37-20 or

any extension thereto, the City hereby affirms, adopts and incorporates into this Urgency Ordinance, the protections of Executive Order N-37-20 as to all Residential Tenants in the City of San Fernando, subject to the additional conditions and protections established under paragraphs B and C of this section, below.

- B. Nothing in this Urgency Ordinance shall relieve a Residential Tenant of liability for any unpaid rent following the expiration of the moratorium established under Executive Order N-37-20. The foregoing notwithstanding and except as otherwise agreed to in writing by the Residential Tenant and the Landlord, the Residential Tenant shall be given a period of **one hundred and eighty (180)** calendar days from the expiration date of Executive Order N-37-20, or any extension thereto, to pay all rent sums that became due, but were not paid by the Residential Tenant during the moratorium period established under Executive Order N-37-20 or any extension thereto. During this 180-day period for the repayment of unpaid back-rent, a Residential Tenant shall continue to be afforded the protections set forth under Executive Order N-37-20 specifically to the payment of rent sums that became due during the moratorium period but which were unpaid. A Landlord shall not assess and the Residential Tenant shall not be liable for the payment of any late fees or penalties for the delay in payment of rent sums that became due but which were unpaid by the Residential Tenant during the period of the moratorium established under Executive Order N-37-20 or any extension thereto.
- C. Deposits. A Landlord, to the fullest extent authorized by law, may apply and retain any sums maintained by the Landlord in the form of a security deposit as an offset to any unpaid rental sums owed by a Residential Tenant if:
1. Following the 180-day repayment period described in paragraph B of this Section, above, the tenancy is terminated as a result of the Residential Tenant's failure to pay any or all back rent accrued during the period of the moratorium; or
 2. The Residential Tenant voluntarily vacates the residence or dwelling prior to the expiration of the 180-day repayment period described in paragraph C of this Section, above, without having paid in full all unpaid rental sums owed to the Landlord from the period of the moratorium.

SECTION 6. Protections for Commercial Tenants .

- A. For the period commencing on the effective date of this Urgency Ordinance and ending upon the expiration date of Executive Order N-37-20 or any extension thereto, a Landlord may not terminate the tenancy of a Commercial Tenant who qualifies as an Affected Commercial Tenant for non-payment of rent. During the term of the moratorium specific to Commercial Tenants established under this Urgency Ordinance, a Landlord shall not serve a notice pursuant to California Code of Civil Procedure sections 1161 or 1162, file or prosecute an unlawful detainer action based on a three-day pay or quit notice, or otherwise endeavor to evict an Affected Commercial Tenant for nonpayment of rent.

SECTION 7. Overriding Grounds for Eviction.

- A. The provisions of Section 8 of this Urgency Ordinance notwithstanding, a Landlord, subject to compliance with the requirements of this Urgency Ordinance may terminate the tenancy of a Commercial Tenant who otherwise qualifies as an Affected Commercial Tenant if a Landlord can show any of the following circumstances apply:
1. Nuisance Behavior. The Affected Commercial Tenant after written notice to cease, continues to be so disorderly or to cause such a nuisance as to destroy the peace, quiet, comfort, or safety of the Landlord or other Commercial Tenants of the building or structure containing the Commercial Rental Unit. Such nuisance or disorderly conduct includes violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Commercial Rental Unit, and may be further defined in the regulations adopted by the City, including but not limited to regulations established by ordinance or resolution.
 2. Refusing Access to the Unit. The Affected Commercial Tenant, after written notice to cease and a reasonable time to cure, continues to refuse the Landlord reasonable access to the Commercial Rental Unit.
 3. Unapproved Holdover Subtenant. The Affected Commercial Tenant holding over at the end of the term of the oral or written rental agreement is a subtenant who was not approved by the Landlord.

Order to Vacate. The Landlord seeks in good faith to recover possession of the Commercial Rental Unit in order to comply with a court or governmental agency's order to vacate, order to comply, order to abate, or any other City enforcement action or order that necessitates the vacating of the building in which the Commercial Rental Unit is located as a result of a violation of the San Fernando Municipal Code or any other provision of law, and provides a notice of the right to reoccupy.

SECTION 8. Commercial Tenants: Affirmative Defense to Eviction; Penalties and Remedies.

- A. Affirmative Defense. Each Landlord that seeks to terminate a tenancy of an Affected Commercial Tenant must comply with this Urgency Ordinance. Non-compliance with any applicable component of this Urgency Ordinance shall constitute an affirmative defense for an Affected Commercial Tenant against any unlawful detainer action under California Code of Civil Procedure Section 1161, as amended. To assert this defense and to establish Affected Commercial Tenant status, a Commercial Tenant shall have first notified the Landlord in writing before rent is due, or within a reasonable period of time afterwards not to exceed seven (7) calendar days, that the Commercial Tenant satisfies all of the following criteria:
3. The Commercial Tenant operates a lawful and duly licensed and permitted business establishment or business operation located in the City of San Fernando that employed twenty-five (25) or fewer employees as of March 16, 2020; and
 4. The Commercial Tenant was not otherwise delinquent on the payment of rent as of March 27, 2020; and

5. The Commercial Tenant:

- (i) Was unable to operate due to State or Health Department orders mandating the closure of the business due to the COVID-19 pandemic; or
- (ii) Experienced a substantial loss of income resulting from the COVID-19 pandemic, including as a result of restrictions on business operations mandated by the State or Health Department orders issued in response to the COVID-19 pandemic; or
- (iii) Was adversely impacted due to the owner(s) or employee(s): (a) being sick with COVID-19 or otherwise quarantined with a suspected COVID-19 infection; or (b) having to care for a family member who was sick with COVID-19 or otherwise quarantined with a suspected COVID-19 infection; or (iii) having to care for a minor child due to the closure of a school as a result of the COVID-19 pandemic.

For purposes of the criteria, above, in determining whether a Commercial Tenant employed 25 or fewer employees as of March 16, 2020, the number of employees employed by a Commercial Tenant shall be the total number of employees employed by the person or business entity that is the Commercial Tenant at all locations where the person or business entity has offices, branches or facilities or otherwise does business, whether or not any such locations are located within the City of San Fernando. With respect to a Commercial Tenant that is a person or business entity that owns a restaurant business as a franchisee to a third-party franchisor entity, the total number of employees employed by the person or business entity shall be the total number of employees employed directly by the Commercial Tenant's franchise at all franchise operations owned by the Commercial Tenant, whether inside or outside of the City of San Fernando.

D. Along with the notification referenced under paragraph A of this section, above, the Affected Commercial Tenant must also include true and correct copies of verifiable documentation that reasonably corroborate any or all of the permitted reasons for the non-payment of rent under paragraph A of this section, above. The following documentation shall create a rebuttable presumption that the Affected Commercial Tenant has satisfied one or more of the permitted reasons for non-payment of rent set forth under paragraph A of this section, above, but are not necessarily the exclusive form of documentation corroborating such reasons:

1. A copy of any governmental order issued in response to the COVID-19 pandemic which indicates that the Commercial Tenant's business must close or which otherwise place restrictions on the businesses normal operations;
2. Subject the Commercial Tenant securing all necessary consent, a doctor's note confirming sickness or suspected sickness with COVID-19; or
3. Tax records or other records evidencing a reduction in business activity due to the COVID-19 pandemic.

E. Nothing in this Urgency Ordinance shall relieve an Affected Commercial Tenant of liability for any unpaid rent following the expiration of the moratorium established under this Urgency Ordinance. The foregoing notwithstanding and except as otherwise agreed to in writing by the Affected Commercial Tenant and the Landlord, the Affected Commercial Tenant shall be given a period of one hundred and eighty (180) calendar days from the expiration date of Executive Order N-37-20, or any extension thereto, to pay all rent sums that became due, but were not paid by the Affected Commercial Tenant during the moratorium period established under this Urgency Ordinance or any extension thereto. During this 180-day period for the repayment of unpaid back-rent, an Affected Commercial Tenant shall continue to be afforded the protections set forth under this Urgency specific to the payment of rent sums that became due during the moratorium period but which were unpaid. A Landlord shall not assess and the Affected Commercial Tenant shall not be liable for the payment of any late fees or penalties for the delay in payment of rent sums that became due but which were unpaid by the Affected Commercial Tenant during the period of the moratorium established under this Urgency Ordinance or any extension thereto.

F. Deposits. A Landlord, to the fullest extent authorized by law, may apply and retain any sums maintained by the Landlord in the form of a security deposit as an offset to any unpaid rental sums owed by an Affected Commercial Tenant if:

1. Following the 180-day repayment period described in paragraph C of this Section, above, the tenancy is terminated as a result of the Affected Commercial Tenant's failure to pay any or all back rent accrued during the period of the moratorium; or
2. The Affected Commercial Tenant voluntarily vacates the Commercial Rental Unit prior to the expiration of the 180-day repayment period described in paragraph C of this Section, above, without having paid in full all unpaid rental sums owed to the Landlord from the period of the moratorium.

G. Civil Remedies

1. Any Landlord that fail(s) to comply with this Urgency Ordinance may be subject to civil proceedings for displacement of Affected Commercial Tenant(s) initiated by the City or the Affected Commercial Tenant for actual and exemplary damages.
2. Whoever is found to have violated this Urgency Ordinance shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees.
3. Treble damages shall be awarded for a Landlord's willful failure to comply with the obligations established under this Urgency Ordinance.
4. Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a Tenant or non-Tenant third party for the damage done to said Landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.

SECTION 9. Environmental. This Urgency Ordinance is exempt from the requirements

of the California Environmental Quality Act (“CEQA”) pursuant to State CEQA Guidelines, as it is not a “project” and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (Cal. Code Regs., tit.14, § 15378, subd. (a).) Further, this Urgency Ordinance is exempt from CEQA as there is no possibility that it or its implementation would have a significant negative effect on the environment. (Cal. Code Regs., tit.14, § 15061, subd. (b)(3).)

SECTION 10. Inconsistent Provisions. Any provision of the San Fernando Municipal Code or appendices thereto inconsistent with the provisions of this Urgency Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this Urgency Ordinance.

SECTION 11. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Urgency Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Urgency Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

SECTION 12. Construction. The City Council intends this Urgency Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Urgency Ordinance shall be construed in light of that intent. To the extent the provisions of the San Fernando Municipal Code as amended by this Urgency Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this Urgency Ordinance, those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION 13. Publication and Effective Date. This Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council by Government Code Sections 36934 and 36937 and shall be in full force and effect upon its adoption by a four-fifths (4/5) vote of the City Council. The City Clerk shall cause this Urgency Ordinance to be published once in a newspaper of general circulation within fifteen (15) days after its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of San Fernando at the regular meeting of this 8th day of April, 2020.

Joel Fajardo, Mayor

ATTEST:

Elena G. Chávez, City Clerk

APPROVED AS TO FORM:

Richard Padilla, Assistant City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF SAN FERNANDO)

I, ELENA G. CHÁVEZ, City Clerk of the City of San Fernando, do hereby certify that the foregoing Ordinance was adopted a regular meeting of the City Council held on the 8th day of April, 2020 and was carried by the following roll call vote:

AYES: Fajardo, Ballin, Gonzales, Mendoza – 4

NOES: None

ABSENT: Pacheco – 1

ABSTAIN: None

Elena G. Chávez, City Clerk