

ORDINANCE NO. 20-1444

AN UNCODIFIED URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DOWNEY PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 8634 AND DOWNEY CITY CHARTER SECTIONS 511 AND 514 ENACTING A TEMPORARY MORATORIUM ON EVICTIONS OF COMMERCIAL TENANTS FOR NONPAYMENT OF RENT RESULTING FROM LOSS OF INCOME DUE TO THE COVID-19 PANDEMIC; ESTABLISHING A RENT REPAYMENT PERIOD; AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

WHEREAS, according to the World Health Organization (WHO), COVID-19 has spread globally to over 216 countries, infecting more than 7.8 million persons and killing more than 43,000 individuals worldwide, and has been characterized as a pandemic; and,

WHEREAS, on March 4, 2020, the Governor of the State of California declared a State of Emergency in response to the COVID-19 pandemic; and,

WHEREAS, on March 4, 2020, the Health Officer of Los Angeles County determined that there is an imminent and proximate threat to the public health from the introduction of COVID-19 in Los Angeles County, and declared a Local Health Emergency, and the Los Angeles County Board of Supervisors concurrently proclaimed the existence of a local emergency for the County of Los Angeles; and,

WHEREAS, the Governor's Executive Order N-25-20 empowers local jurisdictions to determine that protecting the public health and mitigating the impacts of COVID-19 includes taking steps to ensure the stability of businesses and commercial tenancies; and,

WHEREAS, on March 15, 2020, the Governor announced via press conference that he was: (1) calling for home isolation for adults over the age of sixty-five and individuals with chronic conditions; (2) directing the closure of bars, brewpubs, wineries, and nightclubs; and (3) calling for restaurants to limit occupancy to half their current allowance and practice social distancing; and,

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency due to the continuing spread and the effects of COVID-19; and on March 16, 2020, announced guidelines advising people to avoid gatherings of ten (10) or more persons for a period of fifteen (15) days; and

WHEREAS, on March 16, 2020 (and expanded on March 19, 2020), Los Angeles County Department of Public Health instituted the "Safer at Home" order to control the spread of COVID-19, which among other things, temporarily prohibits all events and public gatherings of 10 or more people, and the closure of non-essential businesses and areas;

WHEREAS, on March 18, 2020, the City Manager, acting as the Director of Emergency Services for the City of Downey, proclaimed the existence of a Local Emergency due to the spread and potential further spread of COVID-19, which the City Council for the City of Downey ratified at its regular meeting on March 24, 2020; and

WHEREAS, in April 2020, the Governor and the State Public Health Officer articulated a 4 Stage framework ("California Pandemic Resilience Roadmap") to reintroduce business sectors and activities in a phased manner to protect the public health and safety and lower COVID-19 transmissions and outbreaks in the community; and

WHEREAS, on May 13, 2020, the County of Los Angeles announced its “Reopening Safer at Work and in the Community Revised Order” moving the County of Los Angeles through “Stage 2” of “California’s Pandemic Resilience Roadmap”; and

WHEREAS, on May 29, 2020 the County of Los Angeles announced the State’s approval of the County’s plan to move business sectors and activities further into “Stage 2” of California’s “Pandemic Resilience Roadmap”; and

WHEREAS, the COVID-19-related social distancing measures imposed by federal, state, and municipal agencies and the slow reopening of businesses under the County’s plan will continue to result in a substantial loss of income for many businesses; and,

WHEREAS, independent of COVID-19, many cities in Los Angeles County, including the City of Downey, will continue to experience the economic impacts of business closures and additional business relocations that may be occasioned by commercial evictions, particularly those arising from businesses that have ceased operations in conformance with public health orders; and,

WHEREAS, on May 29, 2020, the Governor issued Executive Order N-66-20 extending the authority of cities to adopt local moratoria on evictions of tenants from single family residences or dwelling units, subject to certain conditions until July 28, 2020; however, the Executive Order is silent as to similar protections for tenants of commercial property who have suffered mandatory business closures or severe curtailment of business operations due to the State and County closure orders to contain the spread of COVID-19; and

WHEREAS, a temporary moratorium on COVID-19-related commercial evictions in the City of Downey would help renters remain stable if their business is impacted by the economic damage COVID-19 is causing; and,

WHEREAS, the temporary moratorium on COVID-19-related commercial evictions would provide for a repayment period that would allow commercial tenants to have a 2-month repayment period for each month a tenant has delayed the payment of rent due to a COVID-19-related financial impact after notice to the landlord; and,

WHEREAS, in accordance with California Government Code Section 8634 and Downey City Charter Sections 511 and 514 and based on the recitals set forth herein, the City Council finds that this Urgency Ordinance is necessary to immediately preserve and protect the public peace, health, safety and welfare and is enacted pursuant to the City’s police powers afforded by the California State Constitution and State law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DOWNEY DOES ORDAIN AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference as findings in support of the regulations contained in this Urgency Ordinance.

SECTION 2. The City Council of the City of Downey hereby enacts this Urgency Ordinance placing a temporary moratorium on evictions of commercial tenants due to nonpayment of rent as a result of COVID-19-related financial impacts as follows:

I. **Prohibition on Evictions of Commercial Tenants.**

During the term of this Urgency Ordinance, a commercial tenant shall not be evicted for nonpayment of rent when the tenant can demonstrate that he, she or they have suffered one or more financial impacts related to COVID-19 as set forth in Paragraph III.

II. **Definitions.**

The following words and phrases, whenever used in this Urgency Ordinance, shall be construed as defined in this section:

"Financial Impacts" shall mean a commercial tenant's loss of business income resulting from: (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (2) business closure, curtailment of business operations or other economic or employer impacts due to COVID-19; (3) layoff or furlough of employees of the business; (4) compliance with a recommendation from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (5) extraordinary out-of-pocket business or medical expenses; or (6) child care needs arising from school closures related to COVID-19.

"Related to COVID-19" shall mean financial impacts that were caused by the COVID-19 pandemic, including the President of the United States' Declaration of National Emergency, the Governor of the State of California's Declaration of State Emergency, the City of Downey's Proclamation of Local Emergency, and/or compliance with public health orders related to COVID-19 from local, county, state, or federal authorities.

III. **Notice to the Landlord.**

Commercial tenants who wish to avail themselves of the protections afforded by this Urgency Ordinance must first notify their landlords in writing that they cannot pay rent due to a financial impact related to COVID-19. Within one week of providing this written notice, tenants must provide verifiable documentation to their landlords corroborating that they have suffered a financial impact related to COVID-19.

IV. **Repayment of Unpaid Rent; No Waiver of Rent.**

A. For each month a commercial tenant has delayed the payment of rent due to a financial impact related to COVID-19, the tenant shall have two (2) months to repay the rent in arrears to the landlord (the "repayment period"). A landlord may not charge or collect a late fee for rent that is delayed due to a COVID-19-related financial impact. The repayment period shall begin upon expiration of this Urgency Ordinance.

B. This Paragraph IV shall apply to any commercial tenant who provided notice to the landlord as required under Paragraph III of this Urgency Ordinance or pursuant to Urgency Ordinance No. 20-1439.

C. Commercial tenants must make a good faith effort to repay rent in arrears to the landlord during the repayment period. If at any time during the repayment period the commercial tenant terminates the tenancy, the repayment period terminates and the total amount of unpaid rent shall be immediately due and payable to the landlord.

D. This Paragraph IV shall not apply if a landlord and tenant have agreed to a repayment schedule prior to the effective date of this Urgency Ordinance.

E. This Urgency Ordinance is not, and should not be interpreted as a moratorium on the payment of rent, or any forgiveness of the same. Tenants who avail themselves of the protections afforded by this Urgency Ordinance shall remain responsible for the payment of rent. Acceptance by the landlord of partial payment of rent tenant shall not constitute payment in full of rent or a waiver of a landlord's right to collect the balance of the rent due.

V. Enforcement.

This Urgency Ordinance imposes a temporary moratorium on evictions of commercial tenants in the City of Downey including nonpayment eviction notices issued and unlawful detainer actions filed on or after the effective date of this Urgency Ordinance.

A landlord's failure to comply with this Urgency Ordinance shall render any notice of termination of tenancy issued during the term of this moratorium void. For notices of termination issued during the term of this moratorium, this Urgency Ordinance may be asserted as an affirmative defense in an unlawful detainer action.

A landlord's failure to comply with this Urgency Ordinance does not constitute a criminal offense.

SECTION 3. The City Council finds and declares that this Urgency Ordinance is required for the immediate preservation and protection of the public peace, health, safety and welfare for the following reasons:

- a. Promotion of stability in commercial tenancies is important in the City of Downey, given the number of small businesses in the community, and the need to preserve the existing commercial core of businesses, as a foundation not only for the City to recover quickly from losses of sales tax revenues expected to occur as a result of immediate shutdowns and curtailment of business activities in compliance with local, state, and federal health orders, but also for the ability to meet the need to attract new commercial tenants in the Downtown Downey Specific Plan area and elsewhere; and to minimize the job losses that might occur from displacement, relocation, or bankruptcies of businesses resulting from commercial evictions.
- b. COVID-19 has become a National, State, and local emergency that will result in substantial loss of income and expense for many commercial renters whose business activities have been curtailed or stopped by natural consequences of compliance with federal, state and local mandates for "Safer at Home" orders and any other similar COVID-19 response measures enacted to slow the infection rate, preserve the ability of medical and emergency response providers to respond to the crises and ultimately save lives.
- c. Evicting commercial renters who are temporarily unable to pay rent due to a COVID-19-related loss of income or expense poses an immediate threat to life, property and the public peace, health or safety, in that, it would displace Downey's most vulnerable businesses, and likely increase homelessness and/or the risk of COVID-19 transmission. Therefore, it is imperative that the City implement strategies to keep people and businesses housed.

- d. The economic conditions impacting business and commercial renters which led to the adoption of Urgency Ordinance No. 20-1439, continue to exist and require the continuance of a temporary eviction moratorium and a repayment period for business owners to help mitigate the financial impacts of COVID-19 and ensure the stability of businesses and commercial tenancies in the City.

SECTION 4. This Urgency Ordinance is adopted pursuant to Government Code Section 8634 and Downey City Charter Sections 511 and 514, and shall become effective immediately upon its adoption by a four-fifths (4/5th) vote of the City Council.

SECTION 5. The temporary moratorium created by this Urgency Ordinance shall be in effect until **July 28, 2020**, unless extended by action of the City Council. If the term of the temporary moratorium is not extended, then it shall automatically expire at 11:59 p.m. on its last day without further action of the City Council; except that the repayment period set forth in Paragraph IV shall survive expiration of this Urgency Ordinance.

SECTION 6. The City Council finds and determines that the adoption of this Urgency Ordinance is exempt from the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15060(c)(2), in that the adoption of this Urgency Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment, and is further and independently exempt from the California Environmental Quality Act under State CEQA Guidelines Section 15061(b)(3), in that it can be seen with certainty there is no possibility the adoption of this Urgency Ordinance will have a significant effect on the environment.

SECTION 7. If any article, section, subsection, paragraph, sentence, clause or phrase of this Urgency Ordinance is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Urgency Ordinance. The City Council declares that it would have adopted this Urgency Ordinance, and each article, section, subsection, paragraph, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more articles, sections, subsections, paragraph, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.


SECTION 8. The City Clerk shall certify to the adoption of this Urgency Ordinance and cause the same to be published in the manner prescribed by law.

APPROVED AND ADOPTED this 23rd day of June, 2020.



BLANCA PACHECO, Mayor

ATTEST:



MARIA ALICIA DUARTE, CMC
City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss:
CITY OF DOWNEY)

I HEREBY CERTIFY that the foregoing Uncodified Urgency Ordinance No. 20-1444 was introduced and adopted at a Regular Meeting of the City Council of the City of Downey held on the 23rd day of June, 2020, by the following vote, to wit:

| | | |
|----------|------------------|---|
| AYES: | Council Members: | Ashton, Rodriguez, Saab, Frometa, Mayor Pacheco |
| NOES: | Council Member: | None. |
| ABSENT: | Council Member: | None. |
| ABSTAIN: | Council Member: | None. |

I FURTHER CERTIFY that a Summary of the foregoing Uncodified Urgency Ordinance No. 20-1444, was published in the Downey Patriot, a newspaper of general circulation in the City of Downey, on June 25, 2020, after adoption. It was also posted in the regular posting places in the City of Downey on the same dates.


MARIA ALICIA DUARTE, CMC
City Clerk