

URGENCY ORDINANCE NO. 908-U

AN ORDINANCE OF THE CITY OF BELL GARDENS, CALIFORNIA UNCODIFIED URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELL GARDENS, CALIFORNIA, ENACTING THE CITY'S COMMERCIAL TENANT EVICTION MORATORIUM DUE TO THE NONPAYMENT OF RENT FOR 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 Department of Public Health 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, Governor Newsom issued Executive Order N-33-20 to affirm the directives of the March 19, 2020 Memorandum on identification of Essential Critical Infrastructure Workers during COVID-19 Response; and

WHEREAS, on March 19, 2020, the County of Los Angeles Department of Public Health issued a Mandatory Safer at Home Order, ordering the closure of all non-essential businesses until April 19, 2020, then issued a Revised Order on March 21, 2020 to align with the Governor of California's March 19th order; 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 sixty (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 has led to hourly cutbacks and has already resulted in employee terminations; and

WHEREAS, on April 9, 2020, the City of Bell Gardens (the "City") adopted Urgency Ordinance No. 904-U enacting a temporary moratorium for all commercial tenant evictions in order to promote stability and fairness within the commercial rental market in the City during the COVID-19 pandemic outbreak; and

WHEREAS, on May 11, 2020, the City repealed Urgency Ordinance No. 904-U and adopted Urgency Ordinance No. 907-U, re-enacting a temporary moratorium for all commercial tenant evictions and establishing its applicability to "Small Businesses" as defined by the Small Business Administration¹, the intent being to protect the small business community as opposed to large corporations with substantial financial resources in order to promote stability and fairness within the commercial rental market in the City during the COVID-19 pandemic outbreak; and

WHEREAS, on June 30, 2020, Governor Newsom issued Executive Order N-71-20 ("Executive Order N-71-20") which extended the protections set forth in Executive Order N-37-20, extended via Executive Order N-66-20, through September 30, 2020; and

WHEREAS, as of July 23, 2020, the State of California has identified 166,848 cases of COVID-19 in Los Angeles County and resulting in 4,262 deaths; and

WHEREAS, promoting stability among commercial tenancies is 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 extend the moratorium from July 31, 2020 to October 31, 2020 unless further extended by action of the City Council through the adoption of an Urgency Ordinance extending this ordinance, to allow small businesses additional time to recover from the State and County Health Officer closure order; 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 BELL GARDENS DOES HEREBY ORDAIN AS FOLLOWS:

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

SECTION 2. Urgency Ordinance No. 907-U, in its entirety, is hereby repealed, replaced and superseded by this Urgency Ordinance No. 908-U and shall be of no further force or effect

SECTION 3. Title. This Urgency Ordinance shall be known as the “COVID-19 Commercial Tenant Eviction Moratorium Ordinance.”

SECTION 4. Urgency Findings. The purpose of this Urgency Ordinance is to promote stability among commercial tenancies which is 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. 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 commercial rental market for all of the reasons described herein. 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 5. Definitions

- A. “Affected Tenant” means any non-residential (i.e., commercial, industrial, office) “Small Business” tenant as defined by the Small Business Administration who satisfies one or more of the criteria in Section 8, of this Urgency Ordinance, below.
- B. “Landlord” means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Rental Unit.
- C. “Notice of Termination” shall mean the notice informing a commercial business of the termination of its tenancy in accordance with California Civil Code Section 1946.1 and California Code of Civil Procedure Section 1161, as amended.
- D. “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.).
- E. “Tenant” means any non-residential (i.e., commercial, industrial, office) tenant, subtenant, lessee, sublessee, associated with a small business as defined by the Small Business Administration, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupy a Non-Residential Rental Unit of a small business.

SECTION 6. Application. This Urgency Ordinance applies to Affected Tenants in any non-residential Rental Unit and Landlords of Affected Tenant.

SECTION 7. Moratorium on Eviction and Termination of Tenancies for Affected Tenants.

- A. This ordinance shall terminate on October 31, 2020, unless further extended by action of the City Council through the adoption of an Urgency Ordinance extending this ordinance. During the term of the moratorium 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 Tenant for nonpayment of rent.
- B. The moratorium established under this Urgency Ordinance is intended to have greater scope and longer duration than the moratorium established under Executive Order N-37-20, which was extended via Executive Order N-66-20 and N-71-20.

SECTION 8. Just Cause Termination.

- 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 Tenant who otherwise qualifies as an Affected Tenant if a Landlord can show any of the following circumstances apply thereby rendering the termination a “Just Cause Termination”:
 - 1. Nuisance Behavior. The Affected 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 Tenants of the commercial complex containing the 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 commercial complex containing the 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 Tenant, after written notice to cease and a reasonable time to cure, continues to refuse the Landlord reasonable access to the Rental Unit, so long as the Landlord is not abusing the right of access under California Civil Code Section 1954, as amended.
 - 3. Unapproved Holdover Subtenant. The Affected 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.
 - 4. Order to Vacate. The Landlord seeks in good faith to recover possession of the 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 Rental Unit is located as a result of a violation of the Bell Gardens Municipal Code or any other provision of law, and provides a notice of the right to reoccupy. The Landlord shall have provided relocation assistance as may be required by applicable state law.

SECTION 9. Affirmative Defense to Eviction; Penalties and Remedies

- A. Affirmative Defense. Each Landlord that seeks to terminate a tenancy of an Affected 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 Tenant against any unlawful detainer action under California Code of Civil Procedure Section 1161, as amended. To assert this defense and to establish Affected Tenant status, a Tenant shall have first notified the Landlord in writing before rent is due, or within a reasonable period of time afterwards not to exceed thirty (30) calendar days, that the Tenant needs to delay all or some payment of rent attributable to an inability to pay the full amount due to financial impacts of lost business income resulting from the novel coronavirus (COVID-19) pandemic, including but not limited to the following:
1. Being sick with COVID-19, or caring for a household or family member who is sick with COVID-19;
 2. Income reduction resulting from business closure, curtailment of business operations or other economic or employer impacts of COVID-19;
 3. Layoff of furlough of employees of the business;
 4. Compliance with a recommendation from a government health authority to stay at home, self-quarantine, or avoid congregating with others during the State emergency;
 5. Extraordinary out-of-pocket business or medical expenses; or
 6. Childcare needs arising from school closures related to COVID-19.
- B. Along with the notification referenced under paragraph A of this section, above, the Affected 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.
- C. Obligation of Affected Tenant to pay unpaid rent. Nothing in this Urgency Ordinance shall relieve an Affected 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 Tenant and the Landlord, the Affected Tenant shall be given a period of ninety (90) calendar days to pay all unpaid back-rent. During the 90-day period, the protections against eviction found in this Urgency Ordinance shall apply for such Affected Tenants and provided the Affected Tenant pays all rent due by this deadline.

- D. During this 90-day period for the repayment of unpaid back-rent, an Affected Tenant shall continue to be afforded the protections set forth under the Urgency Ordinance 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 Affected 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 Tenant during the period of the moratorium established under the Urgency Ordinance or any extension thereto.

E. Civil Remedies

1. Any Landlord that fail(s) to comply with this Urgency Ordinance may be subject to civil proceedings for displacement of Affected Tenant(s) initiated by the City or the Affected 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 10. 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 11. Inconsistent Provisions. Any provision of the Bell Gardens 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 12. 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 13. 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 Bell Gardens 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 14. 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 or posted once within fifteen (15) days after its adoption.

PASSED, APPROVED, AND ADOPTED this 27th day of July, 2020.

THE CITY OF BELL GARDENS

Alejandra Cortez, Mayor

APPROVED AS TO FORM:

ATTEST:

Rick Olivarez
City Attorney

Jane Halstead
City Clerk

