

ORDINANCE NO. 2565

AN URGENCY ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER RELATING TO A TEMPORARY MORATORIUM ON EVICTING TENANTS, AND DECLARING THE ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

WHEREAS, on February 26, 2020, the Orange County Board of Supervisors and Department of Public Health declared a public health emergency in Orange County due to COVID-19. On March 4, 2020, the Governor declared a State of Emergency in California due to the threat of Coronavirus Disease 2019 (“COVID-19”); and

WHEREAS, on March 18, 2020, the Westminster Interim City Manager, acting as the Director of Emergency Services for the City of Westminster (“City”), declared a local emergency due to COVID-19. That decision was subsequently ratified by the City Council at its March 19, 2020 City Council meeting. Due to directives from federal, state, and local health officials, residents have been advised to avoid public gatherings and stay at home to prevent the spread of this disease; and

WHEREAS, on March 16, 2020, the Governor issued Executive Order N-28-20. The order suspends any state law that would preempt or otherwise restrict the City’s exercise of its police power to impose substantive limitations on evictions based on nonpayment of rent resulting from the impacts of COVID-19; and

WHEREAS, the City of Westminster has been impacted by the health crisis of this global pandemic. Sporting events, concerts, plays, and conferences have been cancelled. School closures have occurred and may continue. Employees have been advised to work at home. As a result, restaurant and retail business has significantly declined and workers have been impacted by lost wages and layoffs. Parents have had to miss work to care for home-bound school-age children. As the virus spreads, workers may have to stay home and businesses may have to restrict their activities or close for extended periods; and

WHEREAS, many tenants have experienced sudden income loss, and further income impacts are anticipated. The loss of wages caused by the effects of COVID-19 may impact tenants’ ability to pay rent when due, leaving tenants vulnerable to eviction; and

WHEREAS, providing tenants with a short-term protection from eviction due to the inability to pay rent will help avoid increasing the homeless population and stabilize the rental housing and commercial real estate markets by reducing displacement; and

WHEREAS, during this state of emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement of tenants. Prohibiting residential and commercial evictions

on a temporary basis is necessary until the spread of the virus can be minimized and the emergency restrictions lifted; and

WHEREAS, nothing in this ordinance waives a tenant's obligations to pay back rent owed once this ordinance is no longer effective; and

WHEREAS, the City Council has the authority to adopt this ordinance under Government Code Section 8630, and also its authority under California Constitution Art XI, section 7, and pursuant to the Governor's Order N-28-20; and

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

SECTION 1. Moratorium on evictions due to nonpayment of rent during the COVID-19 emergency.

- A. Term. This Section 1 remains in effect until the expiration of the Governor's Executive Order N-28-20, including any extensions (the "Term").
- B. Scope. This ordinance applies to all residential and commercial tenants within the City. This moratorium shall not be applicable to any nonpayment of rent due prior to the Governor's March 4, 2020 declaration of an emergency.
- C. Evictions. No landlord shall seek to evict a residential or commercial tenant if both of the following are true:
 - (1) Decreased Income, or Increased Medical Expenses. The basis for the eviction is nonpayment of rent, or a foreclosure, arising out of a substantial decrease in household or business income (including, but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or a substantial decrease in business income caused by a reduction in operating hours or consumer demand), or substantial out-of-pocket medical expenses;
 - (2) Cause is COVID-19. The decrease in household or business income or the out-of-pocket medical expenses described in subsection (1), above, was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and the income loss and the increased expenses are documented.

Subsection C(1) and C(2) are hereinafter collectively referred to as the "COVID-19-Related Financial Impacts."

D. Steps to Qualify. In order to qualify for the eviction protections in this ordinance, the tenant must do all of the following:

- (1) Notify the landlord in writing before the day the rent is due of the substantial COVID-19-Related Financial Impacts, and
- (2) Within 30 days after the rent is due, provide reasonable documentation “in writing” establishing such substantial COVID-19-Related Financial Impacts.
- (3) Timely Partial Payment. On or before the day rent is due, the tenant must pay no less than the full amount of rent currently due, less the amount of COVID-19-Related Financial Impacts the tenant has reasonably proven.

[For Example: if a tenant’s monthly rental payment is \$2,500, and the tenant is able to provide evidence demonstrating they have incurred \$1,000 in COVID-19-Related Financial Impacts, the tenant must still pay \$1,500 to the landlord on or before the due date in order to avail themselves of the protections in this ordinance. The remaining unpaid rent would then be paid in accordance with Paragraph G below.]

(4) When Landlord Shall Not Evict. The landlord shall not serve a notice pursuant to CCP 1161(2), file or prosecute an unlawful detainer action based on a notice to pay rent or quit, or otherwise seek to evict for nonpayment of rent during the during the Term of this Ordinance if either:

(a) rent is overdue for a period of 30 days or less, the tenant has notified the landlord as required in subsection D(1) above, and the tenant has made the required partial payment as required by subsection D(3); or

(b) rent is overdue for a period of 31 days or more and the tenant complied with all of the requirements in subsection D(1)-(3), above.

(5) Definitions:

(a) Commercial Tenant is defined to mean a business or commercial enterprise renting or leasing a structure used primarily for business purposes.

(b) Residential Tenant is defined as any person who is a tenant of a residential dwelling, including single family and

multi- family homes, mobile homes or other structures lawfully used as a residential dwelling under this City's municipal code.

(c) "In Writing." The term "in writing" is defined to include any handwritten, typed, emailed or other text communication to a landlord, or to the landlord's authorized representative.

(6) Repayment of Rent Required. Nothing in this ordinance shall relieve the tenant of liability for any unpaid rent. The landlord may seek the unpaid rent after the expiration of the Term, and the tenant must pay it as soon as possible, but in no event later than 120 days from the expiration of the Term. A landlord may not charge or collect penalties or a late fee for rent that is delayed for the reasons stated in this Ordinance; nor may a landlord, during the period the local emergency is in effect, seek rent that is delayed for the reasons stated in this Ordinance through the eviction process.

SECTION 2. Emergency Declaration/Effective Date. The city council declares this ordinance to be an emergency measure, to take effect immediately upon adoption pursuant to California Government Code section 36934. The facts constituting the emergency are as follows: The directives from health officials to contain the spread of COVID-19 has resulted in loss of business, furloughs, loss of wages, and lack of work for employees. To protect the public health, safety, and welfare, the city must act to prevent eviction of tenants who are unable to pay rent due to wage losses caused by the effects of COVID-19. An emergency measure is necessary to protect tenants from eviction for a temporary period.

SECTION 3. Future Governor's Order. If the Governor issues an executive order which prohibits residential and commercial evictions throughout the state relating due to COVID-19 related impacts, then that order shall control, and this ordinance shall no longer be in effect. Otherwise, this ordinance shall remain in full effect, and landlords shall meet the requirements of both this Ordinance and the Governor's order.

SECTION 4. Severability. If any portion of this ordinance is found to be unenforceable, each such provision shall be severed, and all remaining portions of this ordinance shall be enforced to the maximum extent legally permissible.

SECTION 5. Certification. The City Clerk shall certify to the passage and adoption of this ordinance as required by law.

PASSED, APPROVED AND ADOPTED this 27th day of March 2020 by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

TRI TA, MAYOR

ATTEST:

CHRISTINE CORDON, CITY CLERK

APPROVED AS TO FORM:

RICHARD D. JONES, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF WESTMINSTER)

I, CHRISTINE CORDON, City Clerk of Westminster, do hereby certify that the foregoing ordinance was introduced and adopted at a regular meeting on the 27th day of March 2020, and was published/posted pursuant to law.

Christine Cordon
City Clerk