

ORDINANCE NO. 861-C.S.

**AN URGENCY ORDINANCE EXTENDING A TEMPORARY MORATORIUM ON
COMMERCIAL TENANT EVICTIONS FOR NON-PAYMENT OF RENT FOR TENANTS
IMPACTED BY THE COVID-19 PANDEMIC IN THE CITY OF PACIFICA**

THE CITY COUNCIL OF THE CITY OF PACIFICA HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Authority. This interim urgency ordinance ("Ordinance") is adopted pursuant to the provisions set forth in Government Code Sections 36934 and 36937(b) and pursuant to other applicable law.

SECTION 2. Findings.

The City Council hereby finds as follows:

1. International, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2," and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19").
2. On March 3, 2020, both the Director of Emergency Services of the County of San Mateo and the San Mateo County Health Officer (the "Health Officer") declared a local health emergency throughout San Mateo County related to the novel coronavirus ("COVID-19"), and the emergency proclamations were ratified by the San Mateo County Board of Supervisors on March 10, 2020.
3. On March 4, 2020, Governor Gavin Newsom issued a Proclamation of State of Emergency related to COVID-19 for the State of California.
4. On March 11, 2020, due to the significant spread of the virus and the increased numbers of confirmed cases worldwide, the World Health Organization declared the existence of a global pandemic due to COVID-19, and on March 13, 2020, the United States federal government declared a national state of emergency.
5. On March 16, 2020, the Health Officer issued a Countywide shelter in place order that, among other things, directs all individuals currently living within San Mateo County, including those living in Pacifica, to shelter in their place of residence, and authorizes individuals to leave their residences only for engaging in certain essential activities, performing essential governmental functions, or operating limited categories of businesses deemed essential.
6. Also on March 16, 2020, the Pacifica City Manager, acting in his capacity as Director of Emergency Services, proclaimed the existence of a local emergency pursuant to Pacifica Municipal Code section 4-2.05(a), and this proclamation was ratified by the Pacifica City Council on March 18, 2020.
7. Governor Newsom on March 16, 2020 issued Executive Order N-28-20, which grants cities and counties broad authority to enact temporary moratoria on residential and commercial evictions based on a non-payment of rent caused by the COVID-19

pandemic or the federal, state, and/or local response to the COVID-19 until May 31, 2020.

8. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, which imposed a statewide shelter-in-place order requiring individuals to remain in their places of residence except as needed to maintain continuity of operations of critical infrastructure, access necessities such as food, prescriptions, and healthcare, or engage in other authorized activities.
9. On March 23, 2020, the San Mateo County Board of Supervisors adopted an Emergency Regulation establishing a temporary, countywide moratorium on eviction for non-payment of rent by residential tenants directly impacted by the COVID-19 pandemic.
10. On March 31, 2020, the Health Officer issued a revised shelter in place order, which, among other things: (1) extends shelter in place directives to remain in place until at least May 3, 2020; (2) narrowed the scope of businesses allowed to continue operating during the emergency period, and (3) requires that essential businesses that continue to operate scale down operations to their essential components, and ensure that physical distancing measures of at least 6 feet between individuals are observed.
11. On April 6, 2020, the Judicial Council adopted rules regarding unlawful detainer proceedings throughout California, which: (1) proscribe courts from issuing summons upon a landlord's initiation of an unlawful detainer action, unless necessary to protect public health and safety; (2) prevent courts from issuing default judgments in unlawful detainer actions; (3) continue unlawful detainer trials set to occur in April for at least 60 days; and (4) provides that the foregoing protections stay in place until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or the Judicial Council provides otherwise.
12. On April 7, 2020, the San Mateo County Board of Supervisors adopted an urgency ordinance temporarily protecting commercial real estate tenants located in unincorporated areas of the County from evictions during the local emergency.
13. On April 13, 2020, the City Council of the City of Pacifica adopted Ordinance No. 856-C.S., an Urgency Ordinance Establishing a Temporary Moratorium on Commercial Tenant Evictions for Non-Payment of Rent for Tenants Impacted by the COVID-19 Pandemic in the City of Pacifica, which included a sunset date of May 31, 2020, consistent with Governor's Executive Order N-28-20.
14. On April 28, 2020, the Governor detailed its Resilience Roadmap framework to guide the easing of COVID-19 restrictions throughout California, which includes opportunities for regional variations.
15. On April 29, 2020, the Health Officer issued a revised shelter in place order, which, among other things: (1) extends shelter in place directives to remain in place until at least May 31, 2020, and (2) authorizes certain non-essential businesses and activities taking place outdoors.
16. On May 15, 2020, the Health Officer issued a revised shelter in place order in order to bring the County into alignment with the State's Resilience Roadmap, which continues to restrict most activity and business functions to essential needs but allows certain outdoor activities and outdoor businesses.

17. On May 26, 2020, the San Mateo County Board of Supervisors extended to June 30th the County's commercial eviction moratorium ordinance, which only applies to unincorporated areas.
18. On May 28, 2020, the Health Officer issued a revised shelter in place order, which continues most of the restrictions provided in the May 15, 2020 Order, but authorizes certain additional activities and businesses, such as child care.
19. On May 29, 2020, the Governor issued Executive Order N-66-20, which among other things, extended the deadline in Executive Order N-28-20 from May 31 to July 28, and authorized local governments to continue regulating commercial and residential evictions through July 28.
20. In light of the Governor's extension of the aforementioned deadlines, on June 10, 2020, the City Council of the City of Pacifica adopted Ordinance No. 857-C.S., an Urgency Ordinance Establishing a Temporary Moratorium on Commercial Tenant Evictions for Non-Payment of Rent for Tenants Impacted by the COVID-19 Pandemic in the City of Pacifica, which included a sunset date of July 28, 2020, consistent with Governor's Executive Order N-66-20.
21. On June 4, 2020, the Health Officer issued a revised shelter in place order, which continues most of the restrictions provided in the May 15, 2020 and May 28, 2020 Orders, but authorizes certain additional limited activities such as outdoor dining.
22. On June 16, 2020, the State of California approved the County of San Mateo's request for a variance allowing the County to align with the State's Resilience Roadmap for California.
22. On June 17, 2020, the Health Officer issued a public health order that aligns the County to the State of California's Shelter Order and Resilience Roadmap, which emphasizes individual behavior, and specifies practices businesses must follow as they resume operations, including limiting gatherings to no more than 50 people, outlining social distancing and face covering requirements, allowing social bubbles, and requiring businesses to implement a social distancing protocol.
23. On June 30, 2020, the Governor issued Executive Order N-71-20, which extended the deadlines set forth in Executive Order N-66-20 from July 28 to September 30, 2020, and authorizes local governments to continue regulating commercial residential evictions through the new September 30, 2020 deadline.
25. On July 13, 2020, all counties statewide were mandated to shut down indoor activities such as museums, zoos, dining and theaters, and bars, both inside and outside, were required to close; and
26. The California Department of Health developed a watch list of counties being monitored for worsening COVID-19 trends, and if a county is on the watch list, the State will further roll back reopening;
27. On August 2, 2020, the County of San Mateo was added to the watch list, resulting in the curtailing of both indoor and outdoor operations of businesses including shopping malls, hair salons and barbershops, and personal care services.
28. On August 10, 2020, the City Council of the City of Pacifica adopted Ordinance No. 858-C.S., an Urgency Ordinance Establishing a Temporary Moratorium on Commercial

Tenant Evictions for Non-Payment of Rent for Tenants Impacted by the COVID-19 Pandemic in the City of Pacifica, which provided a sunset date of the earlier of (1) 180 days from the date of the adoption of the ordinance [February 6, 2021], or (2) a deadline specified by Executive Order No. N-71-20, or any successor Executive Order thereto extending the deadline authorizing local governments to regulate commercial evictions.

29. On August 13, 2020, the Judicial Council rescinded its rules prohibiting the issuances of a summons or the entering of a default in evictions actions, leaving the management of unlawful detainer actions to the discretion of Superior Courts.
30. On August 28, 2020, the Governor announced the “Blueprint for a Safer Economy”, which introduced a four tier, color-coded framework, authorizing activities to occur on a county-by-county basis, depending on metrics such as case positivity rates.
31. On August 31, 2020, the Governor signed Assembly Bill 3088 into law, which provided eviction protections for residential tenants, but did not address commercial evictions.
32. On September 23, 2020, the Governor issued Executive Order N-80-20, which authorizes local governments to continue regulating commercial evictions through March 31, 2021.
33. On December 3, 2020, the Governor announced a regional shelter in place framework, dependent on regional intensive care unit capacity, and provides that in the event ICU capacity recedes below 15 percent in a region, the region must cease operations of certain businesses and scale down activities.
34. On December 10, 2020, San Mateo County was officially designated as a Tier 1 Purple County, which means that COVID-19 is “widespread” and many indoor business operations must cease operations.
35. On December 17, 2020, San Mateo County was subject to a mandatory regional shelter in place order, resulting in the closing of personal care businesses, indoor and outdoor dining, and scaling down of retail capacity to 20 percent of capacity.
36. Despite public health directives and other necessary precautions to slow the spread of COVID-19, the number of identified COVID-19 cases continues to grow.
37. As of January 14, 2021, there are 30,650 cases identified in San Mateo County, and 294 deaths.
38. Pursuant to Article XI, Section 7 of the California Constitution, the City of Pacifica (“City”) may make and enforce all regulations and ordinances using its police powers, and pursuant to the Governor’s Executive Order N-28-20, and successor orders thereto, the City has the authority to regulate commercial evictions during the emergency period.
39. As result of the local emergency and the prohibitions on large gatherings resulting from the Health Officer’s orders, as well as the issuance of shelter in place directives, there have been abrupt and severe negative impacts on the local economy and abrupt and severe negative financial impacts to Pacifica businesses, including, but not limited to, reductions in income due to lower customer demand, forced closures, reductions in available workforce, and increased expenses.
40. These abrupt and severe negative impacts stemming from COVID-19 have directly affected, and will continue to affect, the ability of Pacifica businesses to make rent

payments, leaving them vulnerable to evictions, which will irreparably harm many local small businesses, the communities that they serve, and the residents they employ, and will jeopardize the public peace, health, safety, comfort, convenience, prosperity, and welfare.

41. A number of Pacifica businesses are deemed essential, and it is in the public interest to have them continue to operate during the local emergency and after health order directives are lifted, otherwise Pacifica residents will be unable to obtain critical and necessary goods and services.
42. To the extent that Pacifica businesses are not currently operating or are operating at significantly lower capacities due to the shelter in place directives, it is in the public interest to ensure that all such businesses abide by Health Officer directives and cease operations or scale operations down, and that they resume operations as soon as the directives are lifted because the ongoing existence of such businesses are essential to the protection of the public peace and the health, safety, life, property, and general welfare of Pacifica residents.
43. The prospect of evictions on commercial tenants, as well as the initiation of commercial evictions during the period of the local emergency, will exacerbate the public health emergency by, for example, incentivizing businesses to operate at normal capacity even though it has been determined that doing so would be unsafe, and thus, would undermine health directives that are designed to curtail the spread of COVID-19.
44. The public health emergency relating to COVID-19 is rapidly evolving.
45. As a result of the evolving health crisis, businesses are being asked to quickly adapt to the circumstances, contributing to severe economic impacts that threaten their ability to operate.
46. It is in the public interest to take immediate steps to mitigate the economic impacts of COVID-19 by ensuring that Pacifica businesses, which are essential to the health and vibrancy of our local communities, survive this current pandemic.
47. The City Council finds and determines that extension of the prior temporary moratorium on commercial tenant evictions for non-payment of rent due to impacts related to the COVID-19 pandemic is necessary because:
 - (a) commercial evictions occurring during the local emergency would defeat the intent and purpose of public health directives designed to slow the spread of the virus by, for example, making it more likely that impacted business owners are compelled to operate in a manner contrary to the health orders and guidance;
 - (b) without a commercial eviction moratorium in place, commercial real estate property owners will have an immediate incentive to serve notices to terminate tenancies for failure to pay rent, thereby displacing many commercial business tenants in Pacifica;
 - (c) the prospect of not generating sufficient income to cover rental expenses during the local emergency incentivizes commercial businesses to not observe safety precautions, such as operating at a significantly reduced capacity, or ceasing indoor and outdoor operations when required to by the State; and

(d) evictions of commercial tenants that are deemed essential during the emergency period but are not generating sufficient income to pay rent as a result of COVID-19 impacts would substantially impair the public health and welfare of the community by preventing Pacifica residents from obtaining essential supplies and/ or services.

48. The City Council additionally finds and determines that businesses annual gross receipts of 2.5 million dollars and under have less likelihood of possessing reserves that would enable them to continue paying rent while experiencing decreased income stemming from COVID-19 related impacts.
49. In light of the above findings, there exists a current and immediate threat to the public peace, health, safety, and welfare of Pacifica residents requiring immediate implementation of a moratorium on evictions for certain commercial tenants in the City of Pacifica.
50. This temporary urgency Ordinance is necessary for the immediate preservation of the public peace, health, safety, and welfare of City residents.

SECTION 3. Declaration of Urgency.

Based on the foregoing findings, all of which are deemed true and correct, pursuant to Government Code section 36937 (b), the City Council hereby declares that this Ordinance is urgently needed for the immediate preservation of the public peace, health, safety, or welfare. This Ordinance shall take effect immediately upon adoption.

SECTION 4. Definitions.

For purposes of this Ordinance, the following definitions shall apply:

- (a) "Commercial Real Property" shall mean any real property that is used for business, income-producing purposes, or any purpose other than for residential use.
- (b) "Owner" shall mean any natural person, partnership, corporate, or fictitious entity, acting as a lessor or sublessor, whether as a principal or through an agent, who receives or is entitled to receive Rent in exchange for the use or occupancy of any Commercial Real Property, and includes a predecessor in interest.
- (c) "Rent" shall mean the financial obligation or monetary payment a Commercial Tenant owes an Owner for the occupancy or use of Commercial Real Property, whether by written or oral agreement.
- (d) "Tenancy" shall mean the lawful occupancy of Commercial Real Property by a Commercial Tenant and includes a lease or sublease.
- (e) "Commercial Tenant" shall mean the lawful occupant of Commercial Real Property, whether by lease or sublease, that operates a business with annual Gross Receipts of not more than Two Million Five Hundred Thousand Dollars (\$2,500,000) for the 2019 calendar year, or 2020 calendar year in the event that the business commenced operations in 2020. This \$2,500,000 figure shall be prorated in the case of a Commercial Tenant that was not operating for the entire 2019 calendar year, or 2020 calendar year in the event that the business commenced operations in 2020. (Solely by way of example, a business that operated for only six months of 2019 with Gross Receipts that exceeded \$1,250,000 does not qualify as a Commercial Tenant.) This annual

\$2,500,000 annual Gross Receipt figure shall be prorated for a Commercial Tenant that did not operate the entire calendar year in 2019, or commenced operations in 2020, but before the adoption of this Ordinance. (Again, solely by way of example, in order to qualify as a Commercial Tenant, a business that began operating in October 2020 and operated for only three months before adoption of this Ordinance will not qualify as a Commercial Tenant if they have Gross Receipts that exceed \$625,000 in those three months).

- (f) "Gross Receipts" shall have the same meaning as set forth in Section 6012 of the Revenue & Taxation Code.

SECTION 5. Term.

The term of this temporary moratorium shall commence from the date of adoption of this Extension Ordinance and shall expire upon the earlier of the deadline specified by Executive Order No. N-80-20, or any successor Executive Order thereto extending the deadline authorizing local governments to regulate commercial evictions, or 180 days from the date of adoption of this Extension Ordinance, unless this Ordinance is first repealed by the City Council.

SECTION 6. Imposition of Temporary Moratorium on Commercial Evictions for Non-Payment of Rent Due to COVID-19 Related Impacts.

A. During the Term of this Ordinance, an Owner of Commercial Real Property shall not recover possession of the Commercial Real Property from a Commercial Tenant for failure to pay Rent, provided that the Commercial Tenant demonstrates that the failure to pay full Rent when due is directly related to a decrease in net business income that results from the COVID-19 pandemic or any federal, state or local government response to the COVID-19 pandemic.

B. The provisions of Section 6(A) shall apply only if a Commercial Tenant demonstrates through documentation that the Commercial Tenant is unable to pay the full amount of Rent when due because of a decrease in net business income directly resulting from the COVID-19 pandemic or from compliance with related public health orders or guidance from federal, state, or local authorities, including, without limitation, a decrease in net business income caused by illness; an inability to work; a reduction in, or elimination of operating hours, in available workforce, or consumer demand; increases in the Commercial Tenant's health care expenses, including employee health care expenses for which the Commercial Tenant is responsible, the Commercial Tenant's own health care expenses, or the health care expenses of the Commercial Tenant's family members; increases in the cost of supplies, services, or other overhead expenses necessary to carry out the Commercial Tenant's business; or temporary closure of the Commercial Tenant's business. Any medical or financial information provided to the Owner shall be held in confidence, and only used for evaluating the Tenant's claim.

C. During the Term of this Ordinance, prior to taking any action to recover possession of Commercial Real Property from a Commercial Tenant for non-payment of Rent, the Owner must first provide the affected Commercial Tenant(s) with written notice of this Ordinance, which shall include, at a minimum:

(1) the amount of Rent to which the Owner is legally entitled pursuant to any written or oral agreement and under the provisions of State or local law;

(2) a statement that the Rent is due unless the Commercial Tenant promptly establishes in writing to the Owner that the Commercial Tenant's inability to pay is due to a reason set forth in Section 6(B) of this Ordinance; and

(3) a statement that the notice and documentation from the Commercial Tenant to the Owner called pursuant to Section 6(C) of this Ordinance must be provided to the Owner as soon as reasonably practicable thereafter. For purposes of this Section, "in writing" may include e-mail or text communications to an Owner or the Owner's representative with whom the Commercial Tenant has previously corresponded by e-mail or text or who has otherwise authorized such e-mail or text communications.

D. For purposes of this Ordinance, notice provided by a Commercial Tenant to the Commercial Real Property's Owner within fourteen (14) days of the Commercial Tenant's receipt of the written notice required pursuant to Section 6(C) shall be presumed to have been provided within a reasonable timeframe, provided that notices provided on a timeframe of greater than fourteen (14) days may be deemed reasonable, depending on the totality of the circumstances.

E. An Owner's failure to comply with this Ordinance shall render void any notice of termination of Tenancy or other attempt to recover possession of Commercial Real Property from a Commercial Tenant, where the termination would be in violation of this Section 6. Any eviction notices based on non-payment of Rent served prior the effective date of this Ordinance but not yet expired are automatically deemed served the day following the expiration or termination of this Ordinance.

F. Nothing in this Ordinance shall relieve a Commercial Tenant of the obligation to pay Rent, nor excuse a Commercial Tenant from paying the portion of Rent the Commercial Tenant is able to pay when due.

G. An action taken by an Owner to evict a Commercial Tenant or otherwise attempt to recover possession of Commercial Real Property from a Commercial Tenant for non-payment of Rent shall not be considered a violation of this Ordinance where the action was taken before the Commercial Tenant provided the Owner notice of the Commercial Tenant's inability to pay full Rent when due and provided documentation to the Owner in accordance with this Section 6, provided that the Owner ceases further endeavors to evict or otherwise recover possession of the Commercial Real Property upon receiving the notice and documentation from the Commercial Tenant required in this Section.

H. Upon expiration or termination of this Ordinance, a Commercial Tenant who demonstrated an inability to pay full Rent when due because of a loss of net business income as a direct result of the COVID-19 pandemic, as required under this Ordinance, shall have up to 90 days after the expiration or termination of this Ordinance to pay all past-due Rent, unless Commercial Tenant and Owner have mutually agreed to alternative payment schedules. The Commercial Tenant shall tender the full amount of all past-due Rent within 60 days after the expiration or termination of this Ordinance if able to do so; however, if the Commercial Tenant remains unable to tender the full amount of all past-due Rent for the reasons set forth in this Section 6, the Commercial Tenant may provide the Owner another written notice and additional documentation to support that claim and thereby extend the payment date of all past-due Rent an additional 30 days.

I. The City Manager shall have the authority to review and grant relief to an Owner who experiences undue or excessive hardship as a result of this Ordinance. An aggrieved Owner shall file a written request for relief explaining the nature of the hardship. Such request shall be accompanied by documentation supporting the claimed hardship, such as the property owner's interest in the property, price paid or option price, assessed value, tax on the property, mortgage indebtedness, income and expense statements for income-producing property, and any other documentation that would support a showing of hardship under this Section 6(I). The

City Manager shall review submitted documentation and grant such relief to the Owner as is necessary to mitigate undue or excessive hardship as a result of this Ordinance. Decisions of the City Manager shall be appealable the City Council in the manner prescribed in Section 1-4.01 of the Pacifica Municipal Code.

SECTION 7. Remedies.

A. This Ordinance, while in effect, provides an affirmative defense to any eviction or other attempt to recover possession of Commercial Real Property from a Commercial Tenant commenced in violation of this Ordinance.

B. In the event of a knowing violation of this Ordinance, an aggrieved Commercial Tenant may institute a civil proceeding for injunctive relief, money damages and any other relief the Court deems appropriate. The prevailing party in such civil proceeding(s) shall be entitled to reasonable attorney's fees and costs pursuant to court order.

C. The remedies available under this Section shall be in addition to any existing remedies which may be available to the Commercial Tenant under local, state, or federal law.

SECTION 8. Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 9. Effective Date. This Ordinance is an urgency Ordinance enacted under California Government Code sections 36934 and 36937(b). This urgency Ordinance is immediately effective upon adoption by a four-fifths (4/5) vote of the City Council.

SECTION 10. Environmental Determination. The City Council finds that the adoption and implementation of this Ordinance are exempt from the provisions of the California Environmental Quality Act under section 15061(b)(3) in that the City Council finds there is no possibility that the implementation of this Ordinance may have significant effects on the environment.

SECTION 11. Publication. The City Clerk is directed to cause this Ordinance to be published in the manner required by law.

This Ordinance was introduced and duly adopted by the City Council of the City of Pacifica at the regular meeting held this 25th day of January, 2021 by a four-fifths vote of the City Council as follows:

AYES: Beckmeyer, Bier, Bigstyck, O'Neill, Vaterlaus.

NOES: n/a

ABSENT: n/a

ABSTAIN: n/a

CITY OF PACIFICA



Sue Beckmeyer, Mayor

ATTEST:



Sarah Coffey
City Clerk

APPROVED AS TO FORM:



Michelle Marchetta Kenyon
City Attorney