NO. 003-2020

ORDER OF THE CHULA VISTA DIRECTOR OF EMERGENCY SERVICES

WHEREAS, there exists a worldwide COVID-19 pandemic as declared by the World Health Organization on January 30, 2020. On January 31, 2020, the United States Secretary of Health and Human Services also declared a Public Health Emergency of the COVID-19 virus; and

WHEREAS, various states of emergency were declared by the United States (March 13, 2020), State of California (March 4, 2020), County of San Diego (February 19, 2020) because of the threat to the safety of the public (to persons and property including both physical and economic harm) as result of the COVID-19 virus; and

WHEREAS, on March 13, 2020, due to the escalating number of COVID-19 virus cases nationwide, with many cases in the State of California, the City of Chula Vista Director of Emergency Services issued a Proclamation declaring a Local Emergency, as authorized by Government Code section 8630 and Chula Vista Municipal Code section 2.14.080(a), which was subsequently adopted and ratified by the Chula Vista City Council on March 17, 2020; and

WHEREAS, the COVID-19 virus continues to represent a danger the public (to persons and property including both physical and economic harm) and requires continued action by the City of Chula Vista, including its Director of Emergency Services, as authorized by Chula Vista Municipal Code Section 2.14.080 [Director-Powers and Duties]; and

WHEREAS, the City Council enacted Emergency Ordinance No. 3483-A to prevent residential and commercial tenants from being evicted due to substantial income loss as a result of the COVID-19 virus (which is an on-going threat to the safety and wellbeing of the community, including their ability to have residential housing and commercial space) and to authorize the Director of Emergency Services to enact Regulations further implementing such Ordinance; and

WHEREAS, Governor Newsom authorized cities to enact eviction moratoriums at the local level pursuant to Executive Order N-28-20, and subsequently provided further eviction protections through Executive Order N-37-20, which the attached Regulations seek to implement.

NOW THEREFORE, pursuant to Chula Vista Municipal Code section 2.14.080 [Director-Powers and Duties] and Emergency Ordinance No. 3483A, and based upon the threat to public safety posed by the COVID-19 pandemic, the Director of Emergency Services for the City of Chula Vista does hereby order as follows:

1. The Regulations attached to this Order as Attachment A are hereby approved and adopted.

2. This Order and the approved and adopted Regulations are effective beginning April 1, 2020.

3. A violation of this Order shall be punishable as set forth in Municipal Code section 2.14.140 [Unlawful Acts During An Emergency].

SO ORDERED,

BY:

Gary Halbert
City Manager and
Director of Emergency Services

Attachment A

City of Chula Vista

EVICTION MORATORIUM REGULATIONS

[Implementing Ordinance No. 3483A]

Effective April 1, 2020

INTRODUCTION

On March 17, 2020, as authorized by Governor Newsom's Executive Order N-28-20, the City of Chula Vista ("City") enacted a limited term Eviction Moratorium Ordinance [Ordinance No. 3483A] ("Ordinance"). Unless extended, the Ordinance is scheduled to remain in effect through May 31, 2020 ("Moratorium Period").

In summary, the Ordinance prohibits the eviction of residential and commercial tenants, and mortgage borrowers, as a result of the inability to pay rent or loan payments, as the case may be, where such inability is due to a substantial loss of income as a result of the COVID-19 pandemic. Proper notice and documentation are required. The prohibition of eviction proceedings does not forgive or cancel the rent or loan payment due. Such amount must still be paid within six months after the end of the Moratorium Period. Lawful evictions for reasons other than a substantial loss of income as a result of the COVID-19 pandemic are not prohibited by the Ordinance. Reference should be made to the Ordinance itself for its full and complete terms.

Subsequent to the City's enactment of the Ordinance, the Governor has issued Executive Order N-37-20, imposing the State's own eviction moratorium ("State Moratorium").

The City Eviction Moratorium Regulations ("Regulations"), set forth below, provide rules and guidance on how to implement the terms of the Ordinance, as they are applicable to residential and commercial tenants. They are also intended to be consistent with the terms of the State Moratorium. To the extent of any inconsistency between the Regulations and the Ordinance, or the State Moratorium, the terms of the Ordinance or State Moratorium, respectively, shall govern. As necessary or appropriate, these Regulations may be amended or supplemented, from time to time, by the City Manager/Director of Emergency Services.

REGULATIONS

1. Residential or Commercial Tenants Defined. Residential tenants shall include those persons with the right to use and occupy an apartment, duplex, condominium, restricted affordable housing, a single-family home, a room within single family homes, or space within a mobilehome park for a mobilehome in accordance with a rental agreement or

lease. Commercial tenants shall include those persons or entities with the right to use and occupy property for business related uses.

2. "Substantial Loss" of Income Defined. The amount of income lost under the Ordinance must be a "substantial loss" of income. A residential tenant makes a prima facie showing a "substantial loss" of income if they suffer an income loss of 30% or more when compared to the average of the tenant's household income for a 60-day period prior to the date the resident's income first was reduced ("Prior Income" or "Prior Household Income") in connection with the notice to the landlord that the tenant cannot pay rent due to the COVID-19 virus. A commercial tenant makes a prima facie showing of a "substantial loss" of income if they suffer a gross income loss of 30% or more when compared to the average of tenant's gross income for a 60-day period prior to the date the commercial tenant's income first was reduced in connection with the notice to the landlord that the tenant cannot pay rent due to the COVID-19 virus.

   A substantial increase in medical or childcare expenses may also be a qualifying basis for eviction protection under the Ordinance. In such cases, to make prima facie showing of qualification for eviction protection, the increased medical and childcare expenses as a result of COVID-19 must either (a) in the aggregate, independent of any income loss, be equal to 30% or more of the tenant's Prior Household Income; or (b) in the aggregate, in combination with a qualifying income loss, be equal to 30% of the tenant's Prior Household Income in connection with the notice to the landlord that the tenant cannot pay rent due to the COVID-19 virus.

3. Qualifying COVID-19 Losses of Income or Increased Expenses. The qualifying loss of income and/or increase in expenses, must be from at least one of the following reasons:

   a. The tenant is unable to work because they are sick with the COVID-19 virus or caring for a household or family member who is sick with the COVID-19 virus;
   b. The tenant has suffered lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19;
   c. The tenant was unable to work due to compliance with an **order** from a government health authority to stay home, self-quarantine, or avoid congregation with others during a state of emergency;
   d. The tenant has suffered out-of-pocket medical expenses related to the COVID-19 virus;
   e. The tenant has new or additional out-of-pocket childcare costs, or a loss of income related to the need to stay home from a job to provide childcare, arising from school closures related to COVID-19; or

f. A commercial tenant has suffered a loss of gross income because of the tenant's closure of, operating restrictions placed upon, or other loss of patronage of the tenant's business directly resulting from the state-declared emergency, locally-declared emergency, or county stay-at-home order or any other emergency declarations or orders related to COVID-19.

4. Noticing of Landlord. A tenant should endeavor to provide written notice to their landlord that the tenant cannot pay some or all of the rent because of the COVID-19 virus as soon as possible, on or before the rent due date, but must provide notice by no later than seven (7) days after the rent due date. The written notice should include the amount of rent requested to be deferred ("Deferred Rent") and the requested amount of the rent deferral should be updated monthly, as needed, to reflect all deferral requests during the Moratorium Period. Written notification may include email or text communications to a landlord or the landlord's representative or agent with whom there has been previous correspondence by email or text. Within seven (7) days after the notice to the landlord, the tenant must also provide landlord with documented proof of their inability to pay rent (as provided for in Section 1(B) of the Ordinance and described in Section 5 of these Regulations, below). Both tenant and landlord are encouraged to keep copies of all notices, documents and communications for their records.

5. Proof Required. The proof presented of a qualifying loss of income must be of the type that is independently verifiable, not simply an unsupported claim made by a tenant. For a residential tenant, the required proof may consist of, but is not limited to, the following:
   a. Paystubs
   b. Payroll checks
   c. Termination notices or temporary furlough notices
   d. Letter from employer(s) or supervisors explaining that the employee was let go from their employment, has had their work hours reduce, or other changed financial circumstances
   e. Bank statements
   f. Medical bills
   g. Childcare bills and official notice regarding school closure

   For a commercial tenant, the required proof may consist of, but is not limited to, the following:

   a. Business receipts
   b. Business records held in the ordinary course of business
   c. Bank statements

All information (including financial and medical information) provided to landlord under this Ordinance and these Regulations must be kept strictly confidential by the landlord, and must only be used for evaluating the tenant's claim of financial impact as a result of COVID-19.

A tenant should endeavor to provide qualifying proof to the landlord as soon as possible, concurrent with tenant's notice to the landlord that they cannot pay all or part of the rent due, but in no event no later than seven (7) days after said notice is provided.

6. Regular Reporting of Income. Tenants claiming protection under the Ordinance shall also provide to their landlord income updates monthly to show that they continue to suffer a substantial loss of income. Tenant income updates shall include, but not be limited to, any increases in income, including receipt of unemployment benefits and other similar government payments. All information (including medical and financial) provided to landlord under this Ordinance and these Regulations must be kept strictly confidential by the landlord and must only be used for evaluating the tenant's claim of financial impact as a result of the COVID-19 virus.

7. Eviction Protection/Affirmative Defense: If a tenant complies with the requirements of the Ordinance and these Regulations, provides the required written notification, and demonstrates a substantial loss of income related to the COVID-19 virus based upon objectively verifiable documentation, a landlord is prohibited from serving a notice pursuant to California Code of Civil Procedure sections 1161 and 1162, filing or prosecuting an unlawful detainer action based on a three-day pay or quit notice, or otherwise taking steps to evict the tenant for nonpayment of rent.

   A tenant who is facing eviction during the Moratorium Period may assert their compliance with this Ordinance as an affirmative defense to any eviction action.

   Eviction protection under this Ordinance and these Regulations does not apply to preexisting back rent already owed prior to the moratorium (failure to pay) or for other "Just Causes." For purposes of these Regulations, "Just Causes" include material or habitual violation of the lease, damage to the property, disorderly behavior/disturbing the peace, unapproved subtenant, activity which creates a health and/or safety hazard, criminal activity, or similar misconduct.

8. Payment Plans: Governor Newsom's Executive Order 37-20 states:

"Nothing in this Order shall prevent a tenant who is able to pay all or some of the rent due from paying that rent in a timely manner or relieve a tenant of liability for unpaid rent."

In light of the above, tenant and landlord are encouraged to work on a payment plan to ensure that the Deferred Rent is paid on a timely basis, particularly because all Deferred Rent remains due and are, and will remain, an obligation of the tenant to pay. Tenants are encouraged to pay as much rent due as possible to avoid the financial burden of having one or more large rent payments for all Deferred Rent. As a starting point, the tenant and landlord should consider the following:

a. A tenant should try to pay at least 40% of their income towards rent during the Moratorium Period.

b. Deferred Rent due should be repaid in six (6) equal installments to be paid in monthly intervals beginning thirty (30) days after the date the rent becomes due and to be paid in full within six (6) months after the expiration of the Moratorium Period "Deferred Rent Repayment Period"); no late fees, costs or other penalties shall be assessed or due from the tenant based on the delay in paying rent. A tenant and landlord may agree to have the deferred rent repaid sooner—which is encouraged. For example, if the amount deferred rent is to be repaid in 90 days, there should be three (3) equal monthly installments.

c. The tenant and landlord should enter into a written payment plan which documents all the amounts due and a repayment schedule. Sample payment plans and agreements are found at the following website: https://www.chulavistaca.gov/departments/development-services/housing/eviction-moratorium

A tenant must pay, in full, any rents not paid during the Moratorium Period, within six months after the end of the Moratorium Period. If a tenant opts to move out of tenancy location while the Ordinance is effective or during the Deferred Rent Repayment Period , all owed rents are due upon move out unless the lease dictates otherwise.

9. Deferred Rent Remains Due. All rents due remain due and an obligation of the tenant to pay. The Ordinance shall not be construed to cause any rent due to be cancelled or forgiven.