

ORDINANCE NO. 2043

AN URGENCY ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING THE CITY'S TEMPORARY MORATORIUM ON EVICTIONS FOR NON-RESIDENTIAL TENANCIES RESULTING FROM NONPAYMENT OF RENT WHEN SUCH NONPAYMENT WAS CAUSED BY THE COVID-19 PANDEMIC, AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

City Attorney's Summary

This is an urgency ordinance of the City of Palm Springs, California, amends the protections provided under a temporary moratorium on evictions for non-residential tenancies due to nonpayment of rent from tenants where the failure to pay rent results from income loss resulting from the novel Coronavirus (COVID-19) and setting forth the facts constituting the urgency.

WHEREAS, 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"); and

WHEREAS, on March 8, 2020, the Riverside County Health Officer declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to COVID-19; and

WHEREAS, on March 4, 2020, the Governor of the State of California 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 broader spread of COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, on March 16, the Governor of the State of California issued an Executive Order temporarily reducing any limits on local governments' ability to impose their own "substantive limitations on residential or commercial evictions" through May 31, 2020, which Executive Order was subsequently extended to September 30, 2020; and

WHEREAS, on March 13, 2020, the City Manager, as the City's Emergency Services Director, proclaimed the existence of a local emergency to ensure the availability of mutual aid and an effective the City's response to the novel coronavirus ("COVID-19"); and

WHEREAS, the federal Centers for Disease Control and Prevention, the California Department of Health, and the Riverside County Department of Public Health have all issued recommendations including but not limited to social distancing, staying home if sick, canceling or postponing large group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus; and

WHEREAS, on March 17, 2020, the City Manager, as the City's Emergency Services Director, issued a shelter in place order, ordering that individuals living in the City of Palm Springs to shelter at their place of residence, excluding activities necessary to provide or receive certain essential services or engage in certain essential activities and work for essential business and government service; and

WHEREAS, the Governor and State Public Health Officer have issued shelter in place orders, and previously closed all "non-essential" operations, causing severe economic hardship on non-residential tenants; and

WHEREAS, as a result of the public health emergency and the precautions recommended by health authorities, many non-residential tenants in Palm Springs have experienced sudden, severe and unexpected revenue loss; and

WHEREAS, the situation is unprecedented and evolving rapidly. Further economic impacts are anticipated, leaving non-residential tenants vulnerable to eviction; and

WHEREAS, this Ordinance is only intended to be temporary in nature, to promote stability and fairness within the non-residential real estate markets in the City during the COVID-19 pandemic outbreak, and to prevent avoidable widespread business disruption, job loss, which is likely to result in homelessness, thereby serving the public peace, health, safety, and public welfare and to enable tenants in the City whose revenue and ability to work is affected due to COVID-19 to remain in their places of business; and

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary to exercise authority to adopt this ordinance related to the protection of life and property, to ensure that tenants of non-residential properties can remain in their places of business and prevent proliferation of homelessness and further spread of COVID-19. Displacement through eviction creates undue hardship for tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing and employment and lack of moving services and supplies as stores and businesses close. During the COVID-19 pandemic outbreak, affected tenants who have lost revenue due to impact on the economy or their employment may be at risk of homelessness if they are unable to work and therefore evicted for non-payment of rent for their homes. Businesses and other tenants of non-residential properties will be similarly harmed, with significant consequences for the public health, safety, and welfare; and

WHEREAS, people experiencing homelessness are especially vulnerable to the spread of COVID-19 due to an inability to practice social distancing and a lack of access to health care. The Governor has ordered the State to take extraordinary measures to secure shelter for homeless populations during this emergency to limit exposure to and spreading of COVID-19. Widespread evictions of tenants vulnerable to eviction due to financial hardship occurring due to COVID-19 would exacerbate the challenge of sheltering the homeless during this emergency, and increase the risk of spread of COVID-19; and

WHEREAS, the City desires to continue to prohibit evictions due to non-payment of rent for tenants of all types of non-residential properties where the failure to pay rent results from COVID-19 related reasons; and

WHEREAS, on April 2, 2020, the City Council adopted Ordinance No. 2022, an urgency ordinance enacting a temporary moratorium on evictions resulting from non-payment of rent when such non-payment was caused by COVID-19 reasons, which ordinance provided that it would expire on June 4, 2020, unless extended; and

WHEREAS, on May 26, 2020, the City Council extended Ordinance No. 2022 to June 30, 2020, unless extended or terminated by either the City Council or the City Manager/Director of Emergency Services; and

WHEREAS, on June 30, 2020, the City Council extended the protections of Ordinance No. 2022 through July 31, 2020, unless extended or terminated by either the City Council or the City Manager/Director of Emergency Services; and

WHEREAS, on June 30, 2020, Governor Newsom issued Executive Order N-71-20, which extended the authorization for local governments to halt evictions of renters impacted by the COVID-19 pandemic through September 30, 2020; and

WHEREAS, on July 23, 2020, the City Council extended the protection period of Ordinance No. 2022 through September 30, 2020; and

WHEREAS, on September 1, 2020 Governor Newsom signed AB 3088. Among other things, this law supersedes portions of the City's temporary moratorium on residential evictions for non-payment of rent and adopts a moratorium through January 31, 2021 so long as tenants comply with the Act's requirements. As a result, the City is restating its urgency ordinance for the purpose of terminating the protection period for residential tenancies, effective September 30, 2020; and

WHEREAS, AB 3088 does not affect non-residential tenancies, and therefore the City is authorized to modify the City's temporary eviction moratorium as it relates to non-residential tenancies; and

WHEREAS, at the September 24, 2020 City Council meeting, the City Council provided direction to not extend the City's residential eviction moratorium past its previously established expiration date of September 30, 2020; and

WHEREAS, on September 24, 2020, the City Council directed staff to not extend the commercial moratorium, but with the understanding that the City may re-consider the moratorium, depending on how the COVID-19 pandemic affected local businesses, including both commercial landlords and tenants; and

WHEREAS, on March 4, 2021, Governor Gavin Newsom signed Executive Order N-03-21, which extends the authorization for local governments through June 30, 2021 to halt evictions for commercial renters who are impacted by the COVID-19 pandemic

WHEREAS, at the March 25, 2021 City Council meeting, the City Council discussed the potential for extending and/or modifying the commercial eviction moratorium, and directed the Director of Emergency Services to extend the protections regarding commercial eviction moratorium for thirty (30) days, which emergency order was promulgated by the Director of Emergency Services on March 29, 2021 (the "Commercial Eviction Emergency Order"); and

WHEREAS, the Recitals contained in Ordinance No. 2022, as well as the extensions of such are hereby incorporated by reference herein; and

WHEREAS, as a result of the additional Stay at Home Orders issued by the State following the September 24, 2020 City Council meeting, the City Council finds that extending the commercial eviction moratorium, as amended by this Urgency Ordinance, is reasonably related to the protection of life and property as affected by such emergency, in that extending such moratorium will prevent eviction actions that are likely to negatively impact tenant businesses as well as the judicial system; and

WHEREAS, the City has authority to adopt this Ordinance under the City's police power and the powers afforded to the city in time of national, state, county and local emergency during an unprecedented health pandemic, such powers being afforded by the State Constitution, State law and Sections 312 and 315 of the Palm Springs Charter to protect the peace, health, and safety of the public. The Palm Springs City Council finds that this ordinance is necessary for the preservation of the public peace, health, and safety of residents living within the City and finds urgency to approve this ordinance immediately based on the facts described herein, and detailed in the staff report. Under Government Code Section 8634, this ordinance is necessary to provide for the protection of life and property.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES ORDAIN AS FOLLOWS:

SECTION 1. Temporary Moratorium on Evictions for Non-Residential Tenancies for Non-Payment of Rent by Tenants Impacted by the COVID-19 Crisis.

A. Notwithstanding anything to the contrary in Palm Springs Municipal Code or State law, during the protection period, no landlord shall endeavor to evict a tenant for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19.

B. A landlord who knows that a tenant cannot pay some or all of the rent temporarily for the reasons set forth above shall not serve a notice pursuant to CCP 1161(2), file or prosecute an unlawful detainer action based on a pay or quit notice, or otherwise seek to evict for nonpayment of rent. A landlord knows of a tenant's inability to pay rent within the meaning of this Ordinance if the tenant, prior to the date that is seven (7) days following the date that the rent is due, notifies the landlord in writing of the reason for the tenant's inability to pay full rent due to financial impacts related to COVID-19. If the landlord requests documentation supporting the tenant's claim within ten (10) days following the landlord's receipt of the tenant's written reason, then the tenant shall provide documentation to support the tenant's claim within thirty (30) days following tenant's receipt of the landlord's request. Any medical or financial information provided to the landlord shall be held in confidence, and used only for evaluating the tenant's claim. In order for any landlord to be afforded any protection of this Ordinance, that landlord must give notice, in writing, to the applicable tenant, which notice shall include a summary of the requirement of this Section, that tenants must notify landlords within 7 days following the rent due date. Such written notice from the landlord must be provided prior to May 1, 2021.

C. Definitions. For purposes of this Ordinance, the following terms shall have the following meanings:

(i) "Chain" shall mean a type of commercial activity or establishment that has eleven or more other establishments in operation, or with local land use or permit entitlements already approved, located anywhere in the world. In addition to the eleven or more other establishments, maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark. For purposes of this definition, a franchisee of a chain operation shall be considered a "chain" operation.

(ii) "Current lease/rent payment obligations" shall mean the lease or rental obligations that are in place as of the date of the adoption of this Urgency Ordinance, April 8, 2021, as such obligations may be adjusted pursuant to a written lease/rental agreement between the landlord and tenant.

(iii) "Endeavor to evict" includes, but is not limited to, serving an eviction notice (aka 3-day notice to pay or quit), filing or prosecuting an unlawful detainer action based on a 3-day notice to pay or quit notice, or otherwise attempting to evict the tenant for nonpayment of rent.

(iv) "Financial impacts related to COVID-19" shall mean the a tenant's documented loss of income or an increase in expenses, due to the tenant's closure of, operating restrictions placed upon, or other loss of patronage of the tenant's business, directly resulting from:

(a) the federally-declared emergency, state-declared emergency, locally declared emergency, or any stay at home order issued pursuant to any of the foregoing; or

(b) any other emergency order or declaration related to COVID-19.

(v) "In writing" includes any written form of communication that has been used between the parties, including, without limitation, mail, email or text communications, to a party or that party's representative with whom the sender has previously corresponded by email or text.

(vi) "Protection period" means the period commencing as of March 1, 2020 and continuing until June 30, 2021, unless terminated or extended by the City Council or Emergency Services Director.

(vii) "Tenant" means any tenant of real property located within the City of Palm Springs, which real property is leased or rented for non-residential use, including commercial or industrial purposes. In addition to the foregoing, any tenant must meet the qualifications of subsection D of this Ordinance in order to be afforded the protections of this Ordinance.

D. Qualifications of Tenants. In order to be afforded the protections of this Ordinance, a tenant must meet all of the following qualifications:

(i) The tenant must have been legally required to close or reduce its operations, based on the fact that the tenant was within an industry that was ordered to close or limit its operations by any federal, state or local COVID-19 health order.

(ii) The tenant must stay current on the tenant's current lease/rent payment obligations, commencing with the April 2021 lease/rent payment.

(iii) The tenant must re-pay the tenant's unpaid back-rent (if any). Such repayment must be made in monthly installments of at least ten percent (10%) of the total back rent, as such amount exists as of the date of the adoption of this Ordinance.

(iv) The tenant must not be a "chain" establishment.

E. Violation of this Ordinance shall be punishable as set forth in Sections 1.01.140 and 2.20.100 of the Palm Springs Municipal Code. In addition, this Ordinance grants a defense in the event that an unlawful detainer action is commenced in violation of this Ordinance. In addition, in the event of a violation of this Ordinance, an aggrieved tenant may institute a civil proceeding for injunctive relief, money damage, and whatever other relief the court deems appropriate. In the case of an award for damages, said award shall only be awarded if the trier of fact finds that the landlord acted in knowing violation of, or in reckless disregard of, this Ordinance. The prevailing party shall be entitled to reasonable attorneys' fees and costs pursuant to order of the court. The remedies available in this subsection shall be in addition to any other existing remedies that may be available to the tenant under local, state or federal law.

F. Nothing in this Ordinance shall relieve the tenant of liability for the unpaid rent. A landlord may not charge or collect any interest or any late fee for rent that is delayed for the reasons stated in this Ordinance and that would otherwise have been charged during the protection period.

G. No other legal remedies available to landlord are affected by this Ordinance. This Ordinance does not prevent a landlord from evicting a tenant who failed to pay rent when due prior to March 1, 2020 or for any other lease violation.

H. The protections afforded by this Ordinance do not apply to any of the following circumstances:

(i) Residential tenancies, including, for purposes of this Ordinance, transient and tourist hotel occupancies as defined in subdivision (b) of Section 1940 of the California Civil Code, housing

accommodations in any nonprofit hospital, religious facility, extended care facility, licensed care facility for the elderly, or adult residential facility, or dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school.

(ii) Evictions from, or orders to vacate, any premises as ordered by any state, federal or local government agency for reasons of public health or safety, severe public nuisance, or necessitated by the COVID-19 emergency.

(iii) Any landlord/tenant relationship that is governed by a written agreement that is entered into between the landlord and tenant on or after the date that Riverside County most recently moved to the "red tier", March 17, 2021.

I. This Ordinance shall remain in effect through June 30, 2021, unless extended by the City Council or the Emergency Services Director. Notwithstanding the foregoing, and in order to prevent inconsistencies, the Director of Emergency Services may suspend the effectiveness of this ordinance in the event that the President of the United States, Congress, Governor of the State of California, or California State Legislature adopts an order or legislation to the extent that such order or legislation pre-empts this ordinance.

J. Financial assistance paid by a government agency to a rental property owner designed to mitigate the impacts of non-payment of rent due to financial impacts related to COVID-19, including any financial assistance provided by the City of Palm Springs, shall be credited against the rental payment(s) owed for the landlord's rental unit(s). Similarly, financial assistance paid by a government agency to a tenant specifically to assist with rental assistance made necessary by the financial impacts related to COVID-19 shall be used by such tenant, to the maximum extent feasible.

SECTION 2. Rescission of March 29, 2021 Commercial Eviction Emergency Order.

The March 29, 2021 Commercial Eviction Moratorium Emergency Order is superseded by this Urgency Ordinance and is therefore hereby rescinded, effective immediately upon adoption of this Urgency Ordinance; provided, however, that any rights or protections that were afforded to any person during the effectiveness of such Commercial Eviction Moratorium Emergency Order shall not be affected by this rescission.

SECTION 3. Severability.

If any section, subsection, sentence, clause, phrase or word of this Ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the remaining provisions of this Ordinance.

SECTION 4. Environmental Review.

The City Council finds that adoption and implementation of this ordinance is not a "project" for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) sections 15061(b)(3), and 15378(b)(5). The effect of the proposed amendment will be to maintain the status quo. No new development will result from the proposed action. No impact to the physical environment will result. The City Council also alternatively finds that the adoption and implementation of this ordinance is exempt from the provisions of CEQA as an administrative activity by the City of Palm Springs, in furtherance of its police power, that will not result in any direct or indirect physical change in the environment, per sections 15061(b)(3), and 15378(b)(5) of the CEQA Guidelines, as well as CEQA Guidelines section 15064(e) (economic regulations).

SECTION 5. Urgency Declaration; Effective Date.

The City Council finds and declares that the adoption and implementation of this ordinance is necessary for the immediate preservation and protection of the public peace, health and safety as detailed above and as the City and public would suffer potentially irreversible displacement of tenants resulting from evictions for failure to pay rent during the COVID-19 crisis. During this local emergency, and in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary tenant displacement, and to prevent employees and business owners affected by COVID-19 from falling into homelessness due to eviction. Loss of income as a result of COVID-19 may inhibit City residents and businesses from fulfilling their financial obligations, including payment of rent. Under Government Code Section 8634 and Palm Springs Municipal Code Chapter 2.20, this Ordinance is necessary to provide for the protection of life and property for the reasons set out herein. The Council therefore finds and determines that the immediate preservation of the public peace, health and safety, and protection of life and property, require that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption by four-fifths of the City Council.

PASSED, APPROVED, AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL
THIS 8TH DAY OF APRIL, 2021.



CHRISTY HOLSTEGE
MAYOR

ATTEST:



ANTHONY J. MEJIA, MMC
CITY CLERK

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, ANTHONY J. MEJIA, City Clerk of the City of Palm Springs, California, do hereby certify that Urgency Ordinance No. 2043 is a full, true, and correct copy, and was adopted at a regular meeting of the City Council held on April 8, 2021, by the following vote:

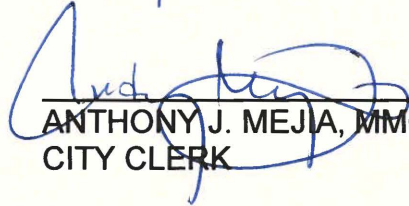
AYES: Councilmembers Garner, Kors, Woods, Mayor Pro Tem Middleton, and Mayor Holstege

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Palm Springs, California, this 27th day of April, 2021.



ANTHONY J. MEJIA, MMC
CITY CLERK