Eff.: 07-28-20 ORDINANCE NO. 20-3,942

AN UNCODIFIED URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK AMENDING AND RESTATING AN URGENCY EVICTION ORDINANCE AND ADDING REPAYMENT OF RENT PROVISIONS AND REPEALING ORDINANCE NO. 20-3,935 AND ORDINANCE NO. 20-3,934 AS AMENDED.

The Council of the City of Burbank finds:

1. On March 4, 2020, the State of California declared a State of Emergency to exist in California as a result of the threat of COVID-19.

2. The Los Angeles County Board of Supervisors and the Department of Public Health declared a local and public health emergency on March 4, 2020 in response to increased spread of COVID-19 across the country and additional cases in Los Angeles County.

3. The World Health Organization on March 11, 2020, declared the outbreak a pandemic.

4. As proclaimed by the Governor on March 12, 2020 despite sustained efforts, the virus remains a threat, and further efforts to control the spread of the virus to reduce and minimize the risk of infection are needed.

5. As further proclaimed, the State of California and local governments, in collaboration with the Federal government, continue sustained efforts to minimize the spread and mitigate the effects of COVID-19.

6. On March 16, 2020 the Governor issued Executive Order N. 28-20 wherein he found as follows:

A. The economic impacts of COVID-19 have been significant, and could threaten to undermine Californians' housing security and the stability of California businesses.

B. Many Californians are experiencing substantial losses of income as a result of business closures, the loss of hours or wages, or layoffs related to COVID-19, hindering their ability to keep up with their rents, mortgages, and utility bills.

C. Californians who are most vulnerable to COVID-19, those 65 years and older, and those with underlying health issues, are advised to self-quarantine, self-isolate, or otherwise remain in their homes to reduce the transmission of COVID-19.

D. Because homelessness can exacerbate vulnerability to COVID-19, California must take measures to preserve and increase housing security for Californians to protect public health.

E. Promoting stability amongst commercial tenancies is also conducive to public health, such as by allowing commercial establishments to decide whether and how

to remain open based on public health concerns rather than economic pressures, or to mitigate the economic impacts of COVID-19.

7. As part of this Executive Order the Governor ordered "Any 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 as described in subparagraphs (i) and (ii) below-including, but not limited to, any such provision of Civil Code sections 1940 et seq. or 1954.25 et seq.-is hereby suspended to the extent that it would preempt or otherwise restrict such exercise." This order was extended by another executive order through September 30, 2020.

8. On March 17, 2020, the City Council adopted a resolution confirming the existence of an emergency based on the COVID 19 and the City Council Adopted an Urgency Ordinance No. 20-3,934 entitled:

> AN UNCODIFIED URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK PROHIBITING THE EVICTION OF RESIDENTIAL AND COMMERCIAL TENANTS FOR NON-PAYMENT OF RENT CAUSED BY THE CORONA VIRUS (Urgency Eviction Ordinance)

This ordinance prohibited the eviction of residential and commercial tenants for non-payment of rent caused by COVID-19 and allowed deferral of rent payment for up to six months following the expiration of the local emergency declared by Burbank. This ordinance had a sunset date of April 30, 2020.

9. On March 19, 2020, Los Angeles County Public Health (County Public Health), which covers Burbank, issued a Safer at Home Order and the Governor issued a Statewide Stay at Home order on the same date. These orders literally closed all non-essential businesses. The County extended the Safer at Home Order to May 15, 2020, with some modifications.

10. On March 27, 2020, the Governor issued Executive Order N 37-20, which extended the time for residential tenants to respond to eviction proceedings based on non-payment of rent as the result of COVID-19 and while the order is in effect prohibits a writ being issued commanding a tenant to vacate their unit where the eviction was based on non-payment of rent as outlined in the order. The order provided "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." This Executive Order expired on May 31, 2020.

11. On April 14, 2020, the Los Angeles County Board of Supervisors amended their eviction moratorium to have it be applicable to incorporated cities, who did not have their own eviction moratorium. The County order covers residential and commercial tenants; has a repayment schedule different than Burbank's, as well as different rules on eligibility, interest, late fees and penalties for non-payment of rent.

12. On April 28, 2020, Governor Newsome unveiled his roadmap to recovery framework which outlines a reopening of the economy over weeks and months. Meaning the economic outlook for workers and businesses will not improve in the immediate near term.

13. On May 5, the City Council extended and amended Urgency Eviction Ordinance, No. 20-3,934 until May 31, 2020 by adopting Ordinance No. 20-3,936. This ordinance was retroactive to May 1, 2020 with modifications for commercial tenants. The ordinance does not apply to commercial property leased by a tenant that is a multi-national company, a publicly traded company, or a company this not eligible for the Small Business Administration's Paycheck Protection Program. Furthermore, the ordinance modified language stating that tenants must give a landlord notice of the inability to pay rent, and must retain verifiable documentation of the reason for the non-payment of rent. Said documentation would need to be provided to the landlord.

14. On May 13, 2020, County Public health modified and extended it's Safer at Home Order. The modification allowed an easing of some restrictions by allowing more businesses to reopen. Los Angeles County is in the early stages of re-opening and there is still widespread unemployment and economic upheaval.

15. The devastating economic impacts of the safer at home orders in effect since March 19, 2020, are still being felt. In June, the City of Los Angeles reported an unemployment rate of 20%. The State's official unemployment rate for May was 16.0% and the rate in June was 15.1%. The rate for the Los Angeles-Long Beach-Glendale metropolitan area during the same timeframe was 20.8% and 19.5%. The California Employment Development Department reports the City of Burbank's unemployment rate for June is 22.6%, even higher than the City of Los Angeles and the metropolitan region. Furthermore, some of the City's largest employment centers such as the studios and production related services have not reopened yet, adding to the economic downturn in Burbank.

16. The National Multifamily Housing Council (NMHC)'s Rent Payment Tracker found 95.9 percent of apartment households made a full or partial rent payment in June 2020; compared to 95.1% in May 2020 & 94.6% in April 2020. And in July 2020, from July 1 – 6, NMHC reported 77.4 % of apartment households made a full or partial rent payment. Local Burbank figures are in line with the national averages. While these figures are higher than anticipated, enhanced unemployment benefits will expire July 31, 2020. It is expected that the full impact on rent payment will be seen in August 2020 and later. Lastly, for businesses, we know that 80% of the businesses nationwide sought some type of financial assistance. In Burbank, that would mean 10,080 businesses asked for some type of financial aid since the beginning of the COVID Crisis. Based on this data, one can conclude Burbank residents and businesses are still suffering financial hardships from the pandemic's effects.

17. On June 9, the City Council extended Urgency Eviction Ordinance, No. 20-3,934 until June 30, 2020 by adopting Ordinance No. 20-3,938. This ordinance was retroactive to May 31, 2020. No additional modifications were made to the ordinance. On June 23, the City Council extended Urgency Eviction Ordinance, No. 20-3,938 until July 31, 2020 by adopting Ordinance No. 20-3,939. No additional modifications were made to the ordinance.

18. On July 2 and again on July 13, Los Angeles County issued revised orders and established restrictions for several sectors of the economy. On July 14, the Los Angeles County public health office reported the highest single-day count of COVID-19 cases and related hospitalizations with a confirmed 4,244 new cases and 2,103 hospitalizations.

19. The enhanced unemployment benefits are scheduled to end July 31, 2020. The Eviction and Rent Repayment Ordinances currently in place, along with the efforts outlined in the City's Economic Recovery Plan, will provide some relief and assistance to residents and local businesses. However, as the state and county continues to regress with closures, additional measures will be necessary to assist tenants and landlords as closures will continue to impact our community and state.

20. A Rent Repayment Ordinance, No. 20-3,935, was adopted on April 21, 2020. The ordinance requires the repayment of back rent due, and any late fees/penalties by November 30, 2020. At the time the repayment ordinance was adopted, however, the magnitude of the coronavirus pandemic was not known, and the continued extension of the eviction moratorium was not anticipated. The adoption of this proposed ordinance will extend the eviction moratorium until September 30, 2020.

21. Given the continued rise in COVID 19 cases in Los Angeles County and throughout the country and the lack of a vaccine, the pandemic will not resolve anytime soon. The reclosing of certain business sectors and the delay in the reopening of other sectors, also means the economic downturn will continue. With the extension of the eviction moratorium, tenants need time beyond November 30, 2020 to repay past due rent.

22. Additional time is required for tenants to repay rent, and for tenants and landlords to negotiate repayment schedules, if possible. Further, because the moratorium covers over six months, tenants are unable to afford accruing late fees, interest and/or penalties on unpaid rent. As such this proposed ordinance changes the time to repay past due rent to six (6) months after termination Burbank's eviction moratorium and tenants are not liable for late fees, interests or penalties for non-payment of rent.

The Council of the City of Burbank does ordain as follows:

1. No property owner or landlord (collectively Owner) shall evict a residential or commercial tenant in the City of Burbank if:

A. 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 opening hours or consumer demand), or substantial out-of-pocket medical expenses; and

B. The decrease in household or business income or the out-of-pocket medical expenses described in subparagraph 1. A was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented. A tenant unable to pay the rent must give the Owner notice of the reasons for non-payment based as outlined in subparagraph 1. A. Said notice shall be given no later than seven (7) days after the date that rent was due, and if seven days from rent being due has already passed, then within 3 days of adoption of this ordinance. The tenant must retain verifiable documentation of the reason for the non-payment of rent and this documentation must be provided to the Owner no later than thirty days from the rent due date.

C. The protections afforded to commercial tenants do not apply to commercial property leased by a tenant that is a multi-national company, a publicly traded company, or a company that is not eligible for the Small Business Administration's Paycheck Protection Program.

2. Nothing in this ordinance shall be construed to mean that the tenant will not still be obligated to pay lawfully charged rent. Tenants, who do not pay their rent due to COVID-19 as provided for herein or under the Governor's Executive Order N. 37-20 will have up to six months to repay any back due rent from the termination of the City of Burbank's eviction moratorium, as extended by amendments to this Urgency Ordinance or by a newly enacted moratorium (Six Month Grace Period).

3. Notwithstanding any provision in Ordinance No. 20-3,935, an Owner may not, during the term of the City of Burbank's eviction moratorium initially enacted on March 17, 2020 and continuing, or any further extension thereof, or newly enacted moratorium, charge or collect interest, late fees or other penalties that could accrue on unpaid rent delayed during the term of this eviction moratorium or for the Six Month Grace Period. If a tenant already has been charged any such fees, interest or penalties under Ordinance No. 20-3,935 and paid the same, no refund or credit is due from the Owner to the tenant for such payment. Any such fees, interest or penalties that may have accrued under Ordinance No. 20-3,935, may not be collected and are not recoverable from the tenant.

4. If the outstanding rent has not been paid within the Six Month Grace Period, beginning on the next day after the end of the Six Month Grace Period, the Owner may charge and collect interest, late fees or other penalties allowed in the lease for any rent payments still owing.

5. An Owner may not recover rent from their tenant that is delayed for reasons stated in this Urgency Ordinance, if the Owner has already obtained compensation for the rent through federal or state or local government relief funds or other programs that provide such compensation.

6. Tenants may use the protections afforded in this ordinance as an affirmative defense in an unlawful detainer action.

7. The City Council urges financial institutions holding home or commercial mortgages, including banks, credit unions, government-sponsored enterprises, and institutional investors, to implement an immediate moratorium on foreclosures and related evictions when the foreclosure or foreclosure-related eviction arises out of a substantial decrease in household or business income, or substantial out-of-pocket medical expenses, which were caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

8. This Ordinance is exempt from the California Environmental Quality Act (CEQA) since there is no possibility that this project will have any significant effect on the environment pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Title 14 of the California Code of Regulations).

9. If any provision of this Ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end each phrase, section, sentence, or word is declared to be severable.

10. Pursuant to the Charter of the City of Burbank Section 500 based on the findings contained herein, the oral staff report and testimony concerning this Ordinance, the Council declares this Ordinance is necessary as an emergency measure to preserve the public peace, health, safety and welfare. As such, this ordinance shall be introduced and passed at one and the same meeting and shall become effective immediately upon a 4/5ths vote of the Council.

11. This ordinance shall terminate on September 30, 2020 unless further extended by action of the City Council through adoption of an Urgency Ordinance extending this ordinance.

12. AN URGENCY EVICTION ORDINANCE NO. 20-3,934 adopted on March 17, 2020 and all its amendment, and an URGENCY ORDINANCE SPECIFYING THE DATE FOR REPAYMENT OF RENTS, ORDINANCE NO. 20-3,935, are hereby repealed. It is the intent of the City Council in adopting this Urgency Ordinance to amend and restate the repealed ordinances. Burbank Municipal Code Sections 1-1-102 and 1-1-103 shall apply to this Urgency ordinance.

13. This Ordinance shall be published in a newspaper of general circulation within fourteen (14) days following adoption.

PASSED AND ADOPTED this 28th day of July, 2020.

Sharon Springer
Mayor

Approved as to Form:
Office of the City Attorney

Attest:

Zizette Mullins, MMC, City Clerk

By:
Amy Albano, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Zizette Mullins, MMC, City Clerk of the City of Burbank, do hereby certify that the foregoing Ordinance No. 20-3,942 was duly and regularly passed and adopted by the Council of the City of Burbank at its regular meeting held on the 28th day of July, 2020, by the following vote:

AYES: Frutos, Gabel-Luddy, Murphy, Talamantes and Springer.

NOES: None.

ABSENT: None.

I further certify that said Ordinance was published as required by law in a newspaper of general circulation in the City of Burbank, California within 14 days following its July 28, 2020 adoption.

Zizette Mullins, MMC, City Clerk