

# S500C  
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ORDINANCE NUMBER O- 21292 (NEW SERIES)

DATE OF FINAL PASSAGE JAN 26 2021

AN EMERGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO PURSUANT TO CHARTER SECTION 295 ENACTING A TEMPORARY MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT FOR COVERED COMMERCIAL TENANTS ARISING OUT OF A SUBSTANTIAL DECREASE IN INCOME OR SUBSTANTIAL OUT-OF-POCKET MEDICAL EXPENSES RESULTING FROM THE NOVEL CORONAVIRUS, COVID-19, OR GOVERNMENTAL RESPONSE TO COVID-19.

WHEREAS, a novel coronavirus, COVID-19, causes infectious disease and was first detected in other countries in December 2019; and

WHEREAS, COVID-19 symptoms include fever, cough, and shortness of breath, and those who have been afflicted have experienced anything from mild illness to death; and

WHEREAS, the Centers for Disease Control and Prevention considers COVID-19 to be a very serious public health threat and the World Health Organization declared the COVID-19 outbreak to be a global pandemic; and

WHEREAS, on February 19, 2020, the County Board of Supervisors ratified a declaration of local health emergency related to COVID-19; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency in California as a result of the threat of COVID-19; and

WHEREAS, on March 12, 2020, former Mayor Kevin Faulconer proclaimed the existence of a local emergency in the City of San Diego (City) as a result of COVID-19, which the Council of the City of San Diego (Council) ratified on March 17, 2020; and

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-20 suspending 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 and commercial evictions when the basis for eviction is nonpayment of rent arising out of a documented substantial decrease in household or business income or substantial out-of-pocket medical expenses caused by COVID-19 or by any local, state, or federal government response to COVID-19; and

WHEREAS, since March 2020, State and County public health officials have responded to the pandemic with a series of orders, including ordering all individuals living in the City of San Diego stay home or at their place of residence, except to obtain essential services; and

WHEREAS, the effects of the COVID-19 pandemic on the global economy and supply chains are impacting many local businesses due to overseas factories operating at reduced capacity and a drastic reduction in tourism; and

WHEREAS, COVID-19 is causing, and is expected to continue to cause, serious negative impacts on the local economy and serious financial impacts to local residents and businesses, including substantial loss of income due to the loss of compensable work hours or wages, loss of business, layoffs, and business closures; and

WHEREAS, the Governor, the San Diego County Public Health Officer, and the Mayor have issued a variety of orders and directives to respond to the emergency, including closing or significantly curtailing certain business operations, prohibiting gatherings among members of separate households, and cancelling conferences, sporting events, and other large group activities; and

WHEREAS, the cancellation of conferences and other large events will likely cause a significant loss of business opportunities locally, including an estimated \$220,000,000 in forecasted regional impacts losses attributed to cancelled events at the San Diego Convention Center; and

WHEREAS, the October 2020 report from the San Diego Association of Governments estimated the San Diego region experienced a \$12.4 billion reduction in regional gross domestic product and \$4.8 billion in wage losses across nearly all sectors in the first six months of the pandemic; and

WHEREAS, with the surge in COVID-19 cases during the winter months and reimplementations of stay-at-home orders, these economic trends have not significantly improved since October 2020; and

WHEREAS, the San Diego Regional Economic Development Corporation reported a 6.6% unemployment rate in December 2020 with continuing job losses in the San Diego region's poorest areas; and

WHEREAS, business closures and reduced business hours, in addition to public health orders to limit public gatherings and require social distance, will have a financial impact on local businesses, and displacement of commercial tenants caused by eviction would worsen the present crisis by causing financial instability for business owners and employees and by reducing the available jobs for City residents once the crisis is abated; and

WHEREAS, loss of income as a result of COVID-19 may prevent City residents and businesses from fulfilling their financial obligations; and

WHEREAS, this Ordinance enacts a temporary moratorium on small business commercial evictions to promote economic stability within the City's commercial rental market during the COVID-19 pandemic and to preserve the public peace, health, safety, and welfare; and

WHEREAS, it is in the public interest to take steps to ensure local and small businesses are not evicted during this public health emergency; and

WHEREAS, on March 26, 2020, the Council adopted Resolutions R-312898 and R-312899, establishing a Small Business Relief Fund, to help businesses impacted by COVID-19 retain employees and sustain continuity of operations; and

WHEREAS, the City is pursuing additional funds to support continued operation of the Small Business Relief Fund; and

WHEREAS, the Council finds that adopting this emergency Ordinance is necessary and appropriate to address the threats to the public health, safety, and welfare of its citizens related to the significant economic impacts of the COVID-19 pandemic, to protect small businesses from being evicted due to nonpayment of rent caused by a substantial lost income, substantial out-of-pocket medical expenses, or by complying with public health orders and recommendations related to COVID-19; and

WHEREAS, it is in the public interest to provide protections for small local businesses most vulnerable to impacts of COVID-19 to address the continued and serious negative impacts of the COVID-19 emergency on the local economy and promote a stable business market to which business owners and employees can return once the COVID-19 emergency is abated; and

WHEREAS, San Diego Charter, Article III, section 11 vests all legislative authority for the City in the Council; and

WHEREAS, California Government Code section 8634 allows the Council, as the governing body, to make orders and regulations necessary to provide for the protection of life and property; and

WHEREAS, the Council finds that there is an emergency necessitating immediate adoption of this Ordinance pursuant to San Diego Charter section 295; and

WHEREAS, under San Diego Charter section 280(a)(3), this Ordinance is not subject to veto by the Mayor because it is an emergency Ordinance; and

WHEREAS, under San Diego Charter section 295(e), a supermajority vote of the Council is required for passage of this Ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That a temporary moratorium on evictions for nonpayment of rent by covered commercial tenants in the City of San Diego who are directly impacted by the novel coronavirus disease, known as COVID-19, is imposed as follows:

(a) Except for any lawful eviction actions pending on the effective date of this Ordinance, no landlord shall evict, or endeavor to evict, a covered commercial tenant for not timely paying rent that initially became due during the time period beginning on March 12, 2020 through the pendency of this Ordinance, where the covered commercial tenant's failure to pay is due to financial impacts related to COVID-19 and the covered commercial tenant provided written notice to the landlord on or within seven days after the rental payment due date that they are unable to pay rent in full.

(b) Within seven days of providing notice under subsection (a), the landlord may request the covered commercial tenant provide documentation or objectively verifiable information that the covered commercial tenant is unable to pay rent due to financial impacts related to

COVID-19. The covered commercial tenant shall have seven days from the date of the landlord's request to provide the requested documentation. If the covered commercial tenant does not timely provide evidence of financial impacts related to COVID-19, the landlord may pursue any enforcement action in accordance with state and local laws.

(c) As used in the Ordinance, "covered commercial tenant" means a business that: (i) leases real property within the City of San Diego; (ii) has an active business tax certificate as of the effective date of this Ordinance or is exempt from that requirement pursuant to Chapter 3, Article 1, Division 1 of the San Diego Municipal Code; (iii) employed no more than 100 full-time equivalent employees as of February 28, 2020; and (iv) has combined gross receipts on its most recent tax return equal to or less than \$3 million.

(d) As used in this Ordinance, "financial impacts" means a substantial decrease in income due to business closure, loss of compensable hours of work, or substantial out-of-pocket medical expenses. A financial impact is "related to COVID-19" if it is caused by the COVID-19 pandemic, including caring for an immediate family member with a positive COVID-19 diagnosis, or if it is caused by any governmental response to the COVID-19 pandemic, complying with any public health orders, school or childcare closures, or recommended guidance related to COVID-19 from local, state, or federal authorities.

(e) As used in this Ordinance, "written" has the same definition as in San Diego Municipal Code section 11.0210, and includes email or text communications to a landlord or landlord's representative or agent with whom the covered commercial tenant has previously corresponded by email or text.

(f) As used in this Ordinance, "endeavor to evict" shall include a landlord taking or attempting to take any of the following actions based on the covered commercial tenant's

nonpayment of rent: charge or collect any late fees for rent that is delayed for the reasons set forth in this Ordinance, threatening to or actually serving a notice, filing, or prosecuting any action to obtain possession of the property rented by that covered commercial tenant or otherwise endeavoring to evict that covered commercial tenant for nonpayment of rent, including resorting to notice pursuant to California Code of Civil Procedure sections 1161, 1161.1, or 1162, filing or prosecuting any unlawful detainer action based on a three-day pay or quit notice, or pursuing a no-fault eviction.

(g) Covered commercial tenants who were afforded eviction protection under this Ordinance shall have up to six months from expiration of this Ordinance to pay their landlords all unpaid rent. If a covered commercial tenant opts to move while the Ordinance is effective, all owed rent is due upon move out unless the lease dictates otherwise. At the end of this six month period, a landlord may evict a covered commercial tenant who has not paid all outstanding rent and resort to all remedies available to the landlord under the lease and the law. The Council may extend the repayment period by subsequent resolution if conditions at that time warrant an extension. During the repayment period, the protections against eviction in this Ordinance shall apply.

(h) Nothing in this Ordinance relieves the covered commercial tenant of the obligation to pay rent or restricts the landlord's ability to recover rent due.

(i) Nothing in this Ordinance is intended to prevent or discourage landlords and covered commercial tenants from developing repayment agreements or modifying their leases to address hardships related to COVID-19.

(j) A covered commercial tenant with financial impacts related to COVID-19 may use the protections afforded in this Ordinance as an affirmative defense in an unlawful detainer action.

Section 2. That this Ordinance shall be effective February 1, 2021 and shall remain in effect until June 30, 2021, or for 60 days after the end of the local state of emergency as declared by the Mayor, whichever occurs sooner.

Section 3. That the Mayor or designee is authorized, to the extent legally permissible, to negotiate appropriate rent relief with the City's commercial tenants experiencing financial impacts related to COVID-19 and to execute any lease amendments that may be necessary depending on the relief negotiated without seeking further Council approval.

Section 4. That the Mayor may adopt rules and regulations reasonably necessary to implement this Ordinance and guidelines related to appropriate rent relief for City tenants. In the event the State of California issues law or guidance defining these terms, that law or guidance shall control over the City Manager's adopted rules and regulations.

Section 5. That this Ordinance is intended to supplement, not to duplicate or contradict, applicable state and federal law and shall be construed in light of that intent.

Section 6. That the provisions of Article 1, Division 2 of the San Diego Municipal Code, including those relating to construction and interpretation, and enforcement of administrative remedies, shall apply to this Ordinance.

Section 7. That the provisions of this Ordinance, being necessary for the welfare of the City of San Diego and its residents, shall be liberally construed to effectuate its purpose, which is to protect covered commercial tenants from being evicted for missing rent payments due to the COVID-19 pandemic.

Section 8. That the City reserves the right to enforce the administrative remedies in Article 1, Division 2 of the San Diego Municipal Code and to pursue any other remedies legally



available against individuals knowingly or intentionally violating the provisions of this Ordinance or falsifying information to qualify for the relief granted in this Ordinance.

Section 9. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 10. That this Ordinance is declared to be an emergency measure required for the immediate preservation of the public peace, safety, health, and welfare pursuant to San Diego Charter section 295, and shall take effect immediately from the day of adoption by the affirmative vote of at least six members of the City Council.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Heather M. Ferbert  
Heather M. Ferbert  
Chief Deputy City Attorney

HMF:soc  
01/19/2021  
01/26/2021 Rev. Copy  
Or.Dept: Mayor's Office  
Doc. No.: 2561951\_3

Passed by the Council of The City of San Diego on JAN 26 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JAN 26 2021.

AUTHENTICATED BY:

TODD GLORIA  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Steph Read, Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on JAN 26 2021, said ordinance being of the kind and character authorized for passage on its introduction by Section 275 of the Charter.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Steph Read, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21292