

STAFF REPORT

DATE: June 22, 2021

TO: City Council

FROM: Ashley Feeney, Assistant City Manager
Sarah Worley, Business Engagement Manager

SUBJECT: Urgency Ordinance Emergency Commercial Eviction Regulation
Amendments

Recommendation

Amend the urgency ordinance which enacted emergency regulations related to evictions to remove prohibition of commercial property evictions in compliance with State law.

The proposed urgency ordinance amendment would end the commercial eviction prohibition on June 30, 2021 while the residential eviction prohibition would remain in place during the course of the emergency declaration until otherwise amended. The City Council could consider policy options related to this action discussed in the Policy Considerations and Options section of this staff report.

Fiscal Impact

The cost to prepare, administer, implement, and enforce the amended urgency ordinance will be paid out of the existing departmental budgets.

Council Goal

Ensure a Safe, Healthy, Equitable Community.

Commission Input

The commercial eviction moratorium was adopted under COVID-19 guidelines and the City Council has direct authority to amend.

Background and Analysis

Since the Governor declared a state of emergency on March 4, 2020 and the City Council proclaimed the existence of a local emergency on March 17, 2020, the City's commercial tenants have faced significant uncertainty regarding the operation of their businesses. The County's first major restriction on businesses began on March 18, 2020, when the County Health Officer issued a countywide shelter in place order. Many businesses were required to significantly scale back or cease operations.

The City of Davis adopted a temporary moratorium on eviction for non-payment of rent by residential and commercial tenants impacted by the COVID-19 pandemic on March 24, 2020 (Ordinance 2575). The City took this action to prevent residential and commercial evictions to assist Davis tenants experiencing sudden unexpected income loss, or substantial business

operation restrictions due to public health protocols, caused by the prolonged COVID-19 pandemic.

The temporary moratorium on eviction for non-payment of rent by residential and commercial tenants impacted by the COVID-19 pandemic was intended to: avoid unnecessary housing displacement, protect the City's affordable housing stock, prevent housed individuals from falling into homelessness, reduce business closures and support opportunity for business economic recovery after the pandemic. Provisions of the urgency ordinance include:

- Prohibiting eviction for non-payment of rent if the tenant demonstrates they are unable to pay rent due to financial impacts related to COVID-19;
- Requiring residential or commercial tenants to pay the portion of the rent they are able to pay, and are still liable for payment of the unpaid rent within six months of the expiration of the local emergency.

The materials associated with this item presented at the March 24, 2020 meeting can be found at:

- 1) Staff report:

<http://documents.cityofdavis.org/Media/Default/Documents/PDF/CityCouncil/CouncilMeetings/Agendas/2020/2020-03-24/05-Eviction-Moratorium-Urgency-Ordinance.pdf>

- 2) Supplemental Staff Responding to Comments:

<http://documents.cityofdavis.org/Media/Default/Documents/PDF/CityCouncil/CouncilMeetings/Agendas/2020/2020-03-24/05-Supplemental-Eviction-Moratorium-Urgency-Ordinance.pdf>

Recent State Actions

Two recent State orders issued June 11, 2021 warrant the need to amend the City's emergency eviction moratorium ordinance to comply with state law. State Order N-07-21 repealed the State's "Stay at Home" order, repealed the Blueprint for Recovery risk-based business activity framework and allowed full reopening of the State's economy on June 15, 2021. Order N-08-21 effective September 30, 2021, repeals local authority to prohibit commercial evictions. This local authority was allowed via prior Executive Order N-28-20 (paragraph 2) which temporarily suspended "[a]ny 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" of certain tenants affected by the COVID-19 pandemic.

Though business restrictions have now been lifted, the pandemic is not over and lack of income is an issue for many residents still at risk of losing their housing and without sufficient funds to relocate. The economy has reopened allowing for businesses to be fully operational without capacity restrictions. Residents that have been previously under or unemployed now have the ability for a greater pool of jobs to pursue but some are still suffering from losses and debts associated with the pandemic. For this reason, staff

recommends amending the eviction moratorium ordinance to delete only the references to commercial evictions in compliance with State law; and to retain regulations prohibiting residential evictions until the end of the City's State of Emergency (see Attachment 1). The moratorium on commercial evictions would expire on June 30, 2021 with the amended Urgency Ordinance being effective on July 1, 2020.

Both the City and State of California still remain under declared "State of Emergency" orders. Other State Executive Orders not repealed by N-07-21, and N-08-21 referenced above that apply to local government also remain in effect at this time. The City anticipates there will be many additional State actions, clarifications, and corrections going forward, and will continue monitoring these changes to determine if City actions are warranted.

While the State has not adopted a commercial eviction moratorium of its own, the Legislature has passed several bills establishing a statewide residential eviction moratorium.

Under the State Moratorium contained in Assembly Bills 81 and 3008 and Senate Bill 91, residential tenants throughout California cannot be evicted for nonpayment of rent coming due between March 1, 2020 and June 30, 2021, if they demonstrate COVID-19 related financial distress by complying with a series of procedures. In addition, for rent coming due between September 1, 2020 and June 30, 2021, tenants must pay at least 25% of the total rent (in installments or a lump sum) on or before June 30, 2021. If tenants comply with these requirements, their unpaid rental debt will be converted into consumer debt and landlords cannot evict tenants for nonpayment.

For the most part, the State Moratorium did not preempt the Ordinance and other local eviction bans adopted by cities before August 19, 2020, which were designed to protect COVID-19 impacted residential tenants from eviction. Instead, it limits cities' short-term discretion to modify existing bans. The State Moratorium provides that cities may not make "[a]ny extension, expansion, renewal, reenactment," to an existing local ban on residential evictions, after August 19, 2020. If a city does amend an existing ban after August 19, 2020, the amended ban cannot go into effect until July 1, 2021. Many provisions of the State Moratorium, including the eviction protections and "freeze" on certain amendments to local eviction ordinances, are currently due to expire after June 30, 2021. It is unclear whether the Legislature will further extend any of these provisions.

Federal Moratorium – Sets Nationwide "Baseline" for Residential Eviction Protections

On September 4, 2020, the Centers for Disease Control and Prevention ("CDC") issued an emergency order which prevented landlords across the country from evicting qualifying residential tenants for nonpayment of rent. The Federal Moratorium did not preclude states and localities from imposing additional requirements that "provide greater public-health protection and are more restrictive than the requirements of this Order." Although there is some uncertainty, it seems likely that the Federal Moratorium will not apply in the City since the State Moratorium and the Ordinance provide a greater level of public-health protection. The Federal Moratoria would likely apply to the City's residential tenants, however, if the State Moratorium and the Ordinance's regulations of residential evictions are repealed or expire while the Federal Moratorium remains in effect. Notably, the Federal Moratorium is

currently scheduled to expire on June 30, 2021, and it remains unclear whether the CDC will further extend the moratorium.

State Commercial Eviction Moratorium

Notably, the State has not passed a commercial eviction moratorium. The Assembly recently considered AB 255, which would require landlords and commercial tenants to negotiate in good faith to form a repayment plan before landlords could initiate an eviction proceeding. On June 2, 2021, AB 255 failed and though the Assembly agreed to reconsider the Bill, the author requested that the Assembly classify the Bill as “inactive.” Staff will continue to monitor the Legislature’s activity for any bills related to commercial tenant protections.

Policy Considerations and Options

There are a couple of policy options that Council may wish to consider in deliberating on this item:

Effective Date

City Council has the option to extend the effective date should there be a compelling reason to do so.

By extending the effective date of the Ordinance, it would continue to place a burden on property owners by not allowing evictions while the economy has reopened. There are cases where a tenant may not choose to open or is otherwise defunct but evictions would continue to be prohibited, limiting a property owners options to move the existing tenant out for a replacement tenant business. In the proposed ordinance, the effective date would be July 1, 2021, meaning that a property owner could pursue an eviction if late payments are not received by that date or if not paid in accordance with the proposed repayment schedule discussed in the next section. As mentioned above, the State repeals local authority to prohibit commercial evictions effective September 30, 2021. If the City Council desires to place a different effective date on the proposed ordinance amendment, it could be no later than September 30, 2021.

Repayment Schedule

The existing Ordinance recognizes that a tenant is not relieved of the liability for unpaid rent, which the landlord may seek after expiration of the local emergency and the tenant must pay within six months of expiration of the local emergency. The existing Ordinance requires commercial tenants to pay the portion of the rent they are able to pay, and are still liable for payment of the unpaid rent within six months of the expiration of the local emergency. The language is proposed for amendment as the existing Ordinance lacks clarity on reasonable repayment schedule expectations. The proposed amendment would provide clarity for all parties, allowing property owners to proceed with a commercial eviction if the commercial tenant does not perform in accordance with the repayment schedule. The revised language also specifies that the unpaid rent associated with the repayment plan provision only applies to unpaid rent due for the period between March 24, 2020 and June 30, 2021, the period in which the commercial eviction prohibition was in effect.

The language in the proposed amendment associated with the repayment schedule is as follows:

“Nothing in this Ordinance shall relieve the commercial tenant of liability for the unpaid rent that became due during the period from March 24, 2020 to June 30, 2021, which the landlord may seek beginning on July 1, 2021 and the tenant must pay on or before January 1, 2022. The exact terms of the repayment plan are to be agreed upon by the landlord and tenant. If no agreement was reached between a landlord and commercial tenant before July 1, 2021, the total of all the delayed payments shall be repaid in six (6) equal payments to be paid in thirty (30) day intervals beginning on July 1, 2021. If a commercial tenant fails to make a delayed payment on its due date, the landlord must give five (5) days’ notice, in writing, of the amount due. Until the notice period has elapsed, the landlord of a commercial tenant shall not serve a notice pursuant to Code of Civil Procedure section 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for nonpayment of rent. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance.”

The proposed repayment option language could protect a viable commercial tenant from a property owner that is not willing to work with them on a reasonable repayment plan, hence prescribing the proposed language as reasonable relative to repayment. Having performance provisions and a specific payment schedule could protect a reasonable property owner from a nonperforming or nonresponsive tenant by providing a right to proceed with eviction of a commercial tenant if they do not cure a notice within the cure period. In many cases, a good viable commercial tenant and reasonable property owner are likely to work out their own agreement without terms being prescribed. Should City Council adopt this proposed language, it would allow a property owner that has a non-responsive tenant or a tenant that does not make the first payment (or defaults on subsequent payments), to proceed with a commercial tenant eviction once the cure period expires. Staff feels the proposed repayment language provides clarity for property owners with a reasonable repayment schedule while preserving eviction protection for a performing business tenant.

Attachments

1. Redline Version - Urgency Ordinance Of The City Of Davis Amending Urgency Ordinance No. 2575 Related To Commercial Evictions And Declaring The Urgency Thereof
2. Clean Version - Urgency Ordinance Of The City Of Davis Amending Urgency Ordinance No. 2575 Related To Commercial Evictions And Declaring The Urgency Thereof

ORDINANCE NO. _____

**URGENCY ORDINANCE OF THE CITY OF DAVIS AMENDING
URGENCY ORDINANCE NO. 2575 RELATED TO COMMERCIAL
EVICTIONS AND DECLARING THE URGENCY THEREOF**

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 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 16, 2020, the Governor of the State of California issued Executive Order N-28-20, which suspended “[a]ny 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” of certain tenants affected by the COVID-19 pandemic; and

WHEREAS, on March 17, 2020, the City Council proclaimed the existence of a local emergency in response to the COVID-19 pandemic; and

WHEREAS, on March 18, 2020, the Yolo County Public Health Officer issued a countywide health order for residents to shelter in place from March 19, 2020, to April 7, 2020, unless extended by the Public Health Officer; and

WHEREAS, the Centers for Disease Control and Prevention, the California Department of Health, and the Yolo County Health Officer 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, as a result of the public health emergency and the precautions recommended by health authorities, many residential and commercial tenants in Davis have experienced sudden and unexpected income loss; and

WHEREAS, the Governor of the State of California has stated that individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19 and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks; and

WHEREAS, further economic impacts are anticipated, leaving residential tenants vulnerable to eviction; and

WHEREAS, 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 housing displacement, to protect the City's affordable housing stock, and to prevent housed individuals from falling into homelessness; and

WHEREAS, earlier in the pandemic it was recognized State and Yolo County public health protocols to shelter in place and business operation restrictions resulted in many potential customers of commercial tenants in Davis unable to patronize the tenants' businesses; and eviction of commercial tenants would result in the loss of local, family owned businesses, the loss of jobs for employees, and negative impacts to surrounding businesses, potentially leading to urban decay; and

WHEREAS, with documented drops in COVID-19 infection rates combined with the availability and dissemination of COVID-19 vaccinations, the State of California adopted a Blueprint for Recovery establishing different tiers allowing increased business operations dependent on achievement of targeted reductions in infection rates and targeted increases in availability of vaccinations and vaccination rates to guide reopening of the California economy; and

WHEREAS, State of California Executive Order No. N-07-21 issued June 11, 2021 repealed the State's "Stay at Home" order and fully reopened the State's economy effective June 15, 2021 by eliminating all state-imposed Blueprint for Recovery business activity restrictions, including removal of all physical distancing and capacity limits, and establishing relaxed mask guidance, and

WHEREAS, State of California Executive Order No. N-08-21 effective September 30, 2021 repeals actions broadening specific local authority during the pandemic including commercial eviction protections allowed by Executive Order N-28-20 (paragraph 2) which suspended "[a]ny 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" of certain tenants affected by the COVID-19 pandemic; and

WHEREAS, with businesses allowed to be fully opened and State of California repealing local authority to prohibit commercial evictions as of September 30, 2021, amendments to the City's Eviction Moratorium are necessary to reflect the change in State law, and

WHEREAS, the pandemic is not over, the State of California is still in a "State of Emergency," a "local emergency" still exists within City of Davis, and lack of income remains an issue for many residents still at risk of losing their housing, which warrants continuing provisions restricting prohibition of residential evictions for the duration of the City COVID-19 State of Emergency.

WHEREAS, in the interest of public peace, health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary for the City Council to exercise its authority to issue these amended regulations eliminating prohibition of commercial evictions and retaining

prohibition of residential evictions, necessary for the protection of the public peace, health or safety.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS HEREBY ORDAINS AS FOLLOWS:

Section 1. Findings. The City Council finds that each fact set forth in the preceding recitals is true and correct and incorporated by reference.

Section 2. Eviction Moratorium. Urgency Ordinance No. 2575, a temporary moratorium on eviction of residential and commercial tenants impacted by the COVID-19 pandemic, is hereby amended as follows:

1. Eviction of Residential Tenants.

- A. During the period of local emergency declared in response to COVID-19, no landlord shall endeavor to evict a residential tenant in any of the following situations: (1) for failure to submit documentation or nonpayment of rent if the tenant demonstrates that the tenant is unable to submit documentation or pay rent due to impacts related to COVID-19; (2) for violation of lease terms where compliance with the lease terms is not possible due to impacts related to COVID-19; or (3) for a no-fault eviction unless immediately necessary because of the existence of a hazardous condition affecting tenants or neighbors. For the purposes of this section, a hazardous condition shall not include the presence of individuals who have been infected by or exposed to COVID-19.
- B. A landlord who knows that a residential tenant cannot comply with lease terms, submit documentation, or pay some or all of the rent temporarily for the reasons set forth above shall not serve a notice pursuant to Code of Civil Procedure section 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for failure to comply with lease terms, failure to submit documentation, or nonpayment of rent. A landlord knows of a residential tenant's inability to comply with lease terms, submit documentation, or pay rent within the meaning of this Ordinance if the tenant notifies the landlord in writing of the tenant's inability to comply with lease terms, submit documentation, or pay full rent due to impacts related to COVID-19 on or before 10 days following the date on which the lease terms are violated or the documentation or rent is due. A residential tenant who is unable to pay full rent due to impacts related to COVID-19 must also provide documentation to support that claim within 30 days after the date that rent is due.

2. Eviction of Commercial Tenants.

~~A. During the period of local emergency declared in response to COVID-19, n~~No landlord shall endeavor to evict a commercial tenant for nonpayment of rent that

~~became due during the period from March 24, 2020 to June 30, 2021 if (1) the tenant complied with all provisions of this Ordinance that applied to the tenant during the period between from March 24, 2020 to June 30, 2021 demonstrates that the tenant was unable to pay rent due to impacts related to COVID-19, and (2) the tenant is complying with the tenant's rent repayment obligations under this Ordinance.~~

~~A. A landlord who knows that a commercial tenant cannot pay some or all of the rent temporarily for the reasons set forth above shall not serve a notice pursuant to Code of Civil Procedure section 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for nonpayment of rent. A landlord knows of a commercial tenant's inability to pay rent within the meaning of this Ordinance if the tenant notifies the landlord in writing of the tenant's inability to pay full rent due to impacts related to COVID-19 on or before 10 days following the date the rent is due. A commercial tenant who is unable to pay full rent due to impacts related to COVID-19 must also provide documentation to support that claim within 30 days after the date that rent is due.~~

3. Tenant's Liability for Rent.

~~A.~~ During the period of local emergency declared in response to COVID-19, a residential or commercial tenant shall pay the portion of the rent that the tenant is able to pay.

~~B.~~ Nothing in this Ordinance shall relieve the residential ~~or commercial~~ tenant of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency and the tenant must pay within six months of the expiration of the local emergency. The exact terms of the repayment plan are to be agreed upon by the landlord and tenant. If no agreement is reached between ~~the a~~ landlord and residential tenant, the total of all the delayed payments shall be repaid in six (6) equal payments to be paid in thirty (30) day intervals beginning the day after the expiration of this ordinance. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance.

~~C.~~ Nothing in this Ordinance shall relieve the commercial tenant of liability for the unpaid rent that became due during the period from March 24, 2020 to June 30, 2021, which the landlord may seek beginning on July 1, 2021 and the tenant must pay on or before January 1, 2022. The exact terms of the repayment plan are to be agreed upon by the landlord and tenant. If no agreement was reached between a landlord and commercial tenant before July 1, 2021, the total of all the delayed payments shall be repaid in six (6) equal payments to be paid in thirty (30) day intervals beginning on July 1, 2021. If a commercial tenant fails to make a delayed payment on its due date, the landlord must give five (5) days' notice, in writing, of the amount due. Until the notice period has elapsed, the landlord of a commercial tenant shall not serve a notice pursuant to Code of Civil Procedure section 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for nonpayment

of rent. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance.

4. Impacts related to COVID-19. For purposes of this Ordinance, “impacts related to COVID-19” include, but are not limited to, the following:
 - A. A residential tenant’s inability to comply with lease terms or submit documentation related to the tenancy as a result of administrative delays or other impacts of COVID-19; or
 - B. A substantial decrease in a residential~~-or-commercial~~ tenant’s household or business income as a result of any of the following: (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (2) lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19; (3) compliance with an order or directive from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (4) extraordinary out-of-pocket medical expenses; or (5) child care needs arising from school closures related to COVID-19.
5. No-fault Eviction. For purposes of this Ordinance, “no-fault eviction” refers to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant, including but not limited to eviction notices served pursuant to Code of Civil Procedure sections 1161(1) or 1161(5).
6. Notification in Writing. For purposes of this Ordinance, “in writing” includes email or text communications to a landlord or the landlord’s representative with whom the tenant has previously corresponded by email or text. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant’s claim.
7. Implementation of Temporary Moratorium. This Ordinance applies to nonpayment eviction notices, no-fault eviction notices, and unlawful detainer actions based on such notices, served or filed on or after the date on which the local emergency was proclaimed.

Section 3. Urgency. The City Council finds that the COVID-19 pandemic has increased the risk of housing displacement, loss of income, and homelessness for many people in the City of Davis and surrounding areas, as more fully described in the recitals of this Ordinance. Additionally, rent is generally due on the first of every month and tenants and landlords would benefit from the delayed payments specified in Section 3, Paragraph 3 lining up with the payment of regular rent. City Council also finds that many organizations begin a new fiscal year on July 1st and lining up the effective date of this Ordinance with the beginning of the fiscal year will allow for better recordkeeping. The City Council further finds that, unless this Ordinance is effective and its regulations are put in place on July 1, 2021, the public health, safety and welfare will be at risk.

Therefore, the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937(b) and that it take effect on July, 1, 2021, and its urgency is hereby declared.

Section 4. Violations. Violations of this Ordinance shall be punishable as set forth in Chapter 1 of the Davis Municipal Code. In addition, this Ordinance grants a defense in the event that an unlawful detainer action is commenced in violation of this Ordinance.

Section 5. Duration. This Ordinance shall remain in effect for the duration of the local emergency.

Section 6. Uncodified. This Ordinance shall not be codified.

Section 7. Severability. If any provision of this Ordinance is held invalid by a court of competent jurisdiction, such provision shall be considered a separate, distinct and independent provision and such holding shall not affect the validity and enforceability of the other provisions of this Ordinance.

Section 8. Effective Date. Based upon the findings in Section 3 of this Ordinance, this Ordinance shall take effect on July 1st, 2021 upon its adoption by a minimum 4/5 vote of the City Council.

Section 9. Certification. The City Clerk shall certify to the adoption of this Ordinance, and the City Clerk shall cause this Ordinance or a summary thereof to be published as required by law.

PASSED AND ADOPTED this 22nd day of June, 2021, by the following vote:

AYES: COUNCILMEMBERS _____

NOES: COUNCILMEMBERS _____

Gloria Partida
MAYOR

ATTEST:

Zoe S. Mirabile, CMC
CITY CLERK

ORDINANCE NO. _____

**URGENCY ORDINANCE OF THE CITY OF DAVIS AMENDING
URGENCY ORDINANCE NO. 2575 RELATED TO COMMERCIAL
EVICTIONS AND DECLARING THE URGENCY THEREOF**

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 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 16, 2020, the Governor of the State of California issued Executive Order N-28-20, which suspended “[a]ny 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” of certain tenants affected by the COVID-19 pandemic; and

WHEREAS, on March 17, 2020, the City Council proclaimed the existence of a local emergency in response to the COVID-19 pandemic; and

WHEREAS, on March 18, 2020, the Yolo County Public Health Officer issued a countywide health order for residents to shelter in place from March 19, 2020, to April 7, 2020, unless extended by the Public Health Officer; and

WHEREAS, the Centers for Disease Control and Prevention, the California Department of Health, and the Yolo County Health Officer 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, as a result of the public health emergency and the precautions recommended by health authorities, many residential and commercial tenants in Davis have experienced sudden and unexpected income loss; and

WHEREAS, the Governor of the State of California has stated that individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19 and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks; and

WHEREAS, further economic impacts are anticipated, leaving residential tenants vulnerable to eviction; and

WHEREAS, 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 housing displacement, to protect the City's affordable housing stock, and to prevent housed individuals from falling into homelessness; and

WHEREAS, earlier in the pandemic it was recognized State and Yolo County public health protocols to shelter in place and business operation restrictions resulted in many potential customers of commercial tenants in Davis unable to patronize the tenants' businesses; and eviction of commercial tenants would result in the loss of local, family owned businesses, the loss of jobs for employees, and negative impacts to surrounding businesses, potentially leading to urban decay; and

WHEREAS, with documented drops in COVID-19 infection rates combined with the availability and dissemination of COVID-19 vaccinations, the State of California adopted a Blueprint for Recovery establishing different tiers allowing increased business operations dependent on achievement of targeted reductions in infection rates and targeted increases in availability of vaccinations and vaccination rates to guide reopening of the California economy; and

WHEREAS, State of California Executive Order No. N-07-21 issued June 11, 2021 repealed the State's "Stay at Home" order and fully reopened the State's economy effective June 15, 2021 by eliminating all state-imposed Blueprint for Recovery business activity restrictions, including removal of all physical distancing and capacity limits, and establishing relaxed mask guidance, and

WHEREAS, State of California Executive Order No. N-08-21 effective September 30, 2021 repeals actions broadening specific local authority during the pandemic including commercial eviction protections allowed by Executive Order N-28-20 (paragraph 2) which suspended "[a]ny 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" of certain tenants affected by the COVID-19 pandemic; and

WHEREAS, with businesses allowed to be fully opened and State of California repealing local authority to prohibit commercial evictions as of September 30, 2021, amendments to the City's Eviction Moratorium are necessary to reflect the change in State law, and

WHEREAS, the pandemic is not over, the State of California is still in a "State of Emergency," a "local emergency" still exists within City of Davis, and lack of income remains an issue for many residents still at risk of losing their housing, which warrants continuing provisions restricting prohibition of residential evictions for the duration of the City COVID-19 State of Emergency.

WHEREAS, in the interest of public peace, health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary for the City Council to exercise its authority to issue these amended regulations eliminating prohibition of commercial evictions and retaining

prohibition of residential evictions, necessary for the protection of the public peace, health or safety.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS HEREBY ORDAINS AS FOLLOWS:

Section 1. Findings. The City Council finds that each fact set forth in the preceding recitals is true and correct and incorporated by reference.

Section 2. Eviction Moratorium. Urgency Ordinance No. 2575, a temporary moratorium on eviction of residential and commercial tenants impacted by the COVID-19 pandemic, is hereby amended as follows:

1. Eviction of Residential Tenants.

- A. During the period of local emergency declared in response to COVID-19, no landlord shall endeavor to evict a residential tenant in any of the following situations: (1) for failure to submit documentation or nonpayment of rent if the tenant demonstrates that the tenant is unable to submit documentation or pay rent due to impacts related to COVID-19; (2) for violation of lease terms where compliance with the lease terms is not possible due to impacts related to COVID-19; or (3) for a no-fault eviction unless immediately necessary because of the existence of a hazardous condition affecting tenants or neighbors. For the purposes of this section, a hazardous condition shall not include the presence of individuals who have been infected by or exposed to COVID-19.
- B. A landlord who knows that a residential tenant cannot comply with lease terms, submit documentation, or pay some or all of the rent temporarily for the reasons set forth above shall not serve a notice pursuant to Code of Civil Procedure section 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for failure to comply with lease terms, failure to submit documentation, or nonpayment of rent. A landlord knows of a residential tenant's inability to comply with lease terms, submit documentation, or pay rent within the meaning of this Ordinance if the tenant notifies the landlord in writing of the tenant's inability to comply with lease terms, submit documentation, or pay full rent due to impacts related to COVID-19 on or before 10 days following the date on which the lease terms are violated or the documentation or rent is due. A residential tenant who is unable to pay full rent due to impacts related to COVID-19 must also provide documentation to support that claim within 30 days after the date that rent is due.

2. Eviction of Commercial Tenants.

No landlord shall endeavor to evict a commercial tenant for nonpayment of rent that became due during the period from March 24, 2020 to June 30, 2021 if (1) the tenant

complied with all provisions of this Ordinance that applied to the tenant during the period between from March 24, 2020 to June 30, 2021 and (2) the tenant is complying with the tenant's rent repayment obligations under this Ordinance.

3. Tenant's Liability for Rent.

- A. During the period of local emergency declared in response to COVID-19, a residential or commercial tenant shall pay the portion of the rent that the tenant is able to pay.
- B. Nothing in this Ordinance shall relieve the residential tenant of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency and the tenant must pay within six months of the expiration of the local emergency. The exact terms of the repayment plan are to be agreed upon by the landlord and tenant. If no agreement is reached between a landlord and residential tenant, the total of all the delayed payments shall be repaid in six (6) equal payments to be paid in thirty (30) day intervals beginning the day after the expiration of this ordinance. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance.
- C. Nothing in this Ordinance shall relieve the commercial tenant of liability for the unpaid rent that became due during the period from March 24, 2020 to June 30, 2021, which the landlord may seek beginning on July 1, 2021 and the tenant must pay on or before January 1, 2022. The exact terms of the repayment plan are to be agreed upon by the landlord and tenant. If no agreement was reached between a landlord and commercial tenant before July 1, 2021, the total of all the delayed payments shall be repaid in six (6) equal payments to be paid in thirty (30) day intervals beginning on July 1, 2021. If a commercial tenant fails to make a delayed payment on its due date, the landlord must give five (5) days' notice, in writing, of the amount due. Until the notice period has elapsed, the landlord of a commercial tenant shall not serve a notice pursuant to Code of Civil Procedure section 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for nonpayment of rent. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance.

4. Impacts related to COVID-19. For purposes of this Ordinance, "impacts related to COVID-19" include, but are not limited to, the following:

- A. A residential tenant's inability to comply with lease terms or submit documentation related to the tenancy as a result of administrative delays or other impacts of COVID-19; or
- B. A substantial decrease in a residential tenant's household or business income as a result of any of the following: (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (2) lay-off, loss of

hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19; (3) compliance with an order or directive from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (4) extraordinary out-of-pocket medical expenses; or (5) child care needs arising from school closures related to COVID-19.

5. No-fault Eviction. For purposes of this Ordinance, “no-fault eviction” refers to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant, including but not limited to eviction notices served pursuant to Code of Civil Procedure sections 1161(1) or 1161(5).
6. Notification in Writing. For purposes of this Ordinance, “in writing” includes email or text communications to a landlord or the landlord’s representative with whom the tenant has previously corresponded by email or text. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant’s claim.
7. Implementation of Temporary Moratorium. This Ordinance applies to nonpayment eviction notices, no-fault eviction notices, and unlawful detainer actions based on such notices, served or filed on or after the date on which the local emergency was proclaimed.

Section 3. Urgency. The City Council finds that the COVID-19 pandemic has increased the risk of housing displacement, loss of income, and homelessness for many people in the City of Davis and surrounding areas, as more fully described in the recitals of this Ordinance. Additionally, rent is generally due on the first of every month and tenants and landlords would benefit from the delayed payments specified in Section 3, Paragraph 3 lining up with the payment of regular rent. City Council also finds that many organizations begin a new fiscal year on July 1st and lining up the effective date of this Ordinance with the beginning of the fiscal year will allow for better recordkeeping. The City Council further finds that, unless this Ordinance is effective and its regulations are put in place on July 1, 2021, the public health, safety and welfare will be at risk. Therefore, the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937(b) and that it take effect on July, 1, 2021, and its urgency is hereby declared.

Section 4. Violations. Violations of this Ordinance shall be punishable as set forth in Chapter 1 of the Davis Municipal Code. In addition, this Ordinance grants a defense in the event that an unlawful detainer action is commenced in violation of this Ordinance.

Section 5. Duration. This Ordinance shall remain in effect for the duration of the local emergency.

Section 6. Uncodified. This Ordinance shall not be codified.

Section 7. Severability. If any provision of this Ordinance is held invalid by a court of competent jurisdiction, such provision shall be considered a separate, distinct and independent provision and

such holding shall not affect the validity and enforceability of the other provisions of this Ordinance.

Section 8. Effective Date. Based upon the findings in Section 3 of this Ordinance, this Ordinance shall take effect on July 1st, 2021 upon its adoption by a minimum 4/5 vote of the City Council.

Section 9. Certification. The City Clerk shall certify to the adoption of this Ordinance, and the City Clerk shall cause this Ordinance or a summary thereof to be published as required by law.

PASSED AND ADOPTED this 22nd day of June, 2021, by the following vote:

AYES: COUNCILMEMBERS _____

NOES: COUNCILMEMBERS _____

Gloria Partida
MAYOR

ATTEST:

Zoe S. Mirabile, CMC
CITY CLERK