ORDINANCE 20-14

AN UNCODIFIED ORDINANCE OF THE CITY OF WEST SACRAMENTO ENACTING A TEMPORARY MORATORIUM ON EVICTING CERTAIN COMMERCIAL TENANTS IMPACTED BY COVID-19 AND DECLARING THE ORDINANCE TO BE AN URGENCY MEASURE TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

The City Council of the City of West Sacramento does ordain as follows:

Section 1. Purpose and Authority. The purpose of this Ordinance is to protect life and property by enacting a temporary moratorium on the eviction of certain commercial tenants. As such, the City Council finds and declares as follows:

A. On March 4, 2020, the Governor Declared a State of Emergency in California due to the threat of the global pandemic Coronavirus Disease 2019 ("COVID-19"). On March 10, 2020, the Board of Supervisors of Yolo County ratified and extended the County's Director of Emergency Services' March 6, 2020, declaration and proclamation of a local health emergency. On March 16, 2020, the West Sacramento Director of Emergency Operations issued a Declaration of Local Emergency related to CCVID-19. On March 18, 2020, the Yolo County Public Health Officer issued a countywide health order directing individuals in Yolo County to shelter in place in response to the COVID-19 outbreak.

B. On March 16, 2020 the Governor passed Executive Order N-28-20 which, in part, granted the City expanded authority to limit commercial evictions where the basis for the eviction is nonpayment of rent arising out of a substantial decrease in business income and the decrease in business income was caused by the COVID-19 pandemic, or by local, state, or federal government responses to COVID-19.

C. The portion of Executive Order N-28-20 related to the City's power to limit certain commercial evictions was extended by subsequent gubernatorial Executive Orders. On September 23, 2020, the Governor's Executive Order N-80-20 extended this portion of N-28-20 until March 31, 2021.

D. Health experts advise the best way to prevent the spread of COVID-19 is to stay home and, when absolutely necessary to leave home, "socially distance" by avoiding groups, social gatherings, and social interactions.

E. To implement health experts' advice to socially distance, the Governor and State, County, and City officials adopted policies and regulations that mandated certain businesses, based on their use type, to shut down their place of business altogether, limit their hours of operation, limit their capacity for customers, or invest in additional precautionary measures. The same policies and regulations advised community members not to go into the public or visit businesses, unless absolutely necessary.

F. While some businesses are able to operate normally without their customers visiting their place of business, other businesses have been severely impacted by COVID-19 due to limited operations and increased expenditures on precautionary measures. Events, concerts, plays, and conferences have been cancelled. School and day care closures have occurred and may continue. Health clubs, restaurants, bars, personal care services, retailers, and many other businesses that rely on customers' attendance at their place of business have been limited in their ability to operate normally.
G. As a result, these businesses' earnings have significantly declined to an unpredictable extent. Local sales data comparing second quarter sales from 2019 and 2020 for the City of West Sacramento shows a 23% decline in food product sales and 17% decline in general retail sales. The same data identifies measurable declines in specific subsectors – restaurants (26-42%), apparel sales (35-60%), garden sales (59-78%), home furnishings (45-47%), art and novelties (53-67%), jewelry sales (70-75%) personal services (34-44%), and sporting goods (44-74%).

H. A survey of small businesses concluded that about half of small businesses report sales have declined by 50% or more compared to what they were before the COVID-19 policies and regulations went into effect. About one in five small business owners report that they will have to close down if current economic conditions do not improve.

I. Some businesses in the region have already been forced to close. Informed predictions on third and fourth quarter earnings state there will likely be a further decrease in economic activity from increasing unemployment. As such, third and fourth quarter earnings will likely further decrease as compared to the same time last year leading to a second round of closures.

J. As a result of the decline in earnings and the anticipated further decline, certain businesses' ability to pay their employees' wages, their baseline business expenses, and other obligations has been severely jeopardized – forcing business owners to choose between laying off workers and paying their obligations. This leaves many businesses in the City vulnerable to commercial eviction.

K. Government Code sections 36937(b) and 8634 permit the City Council to adopt emergency regulations necessary to provide for the protection for life and property and the public peace, health, and safety.

L. On March 18, 2020, the City Council adopted an ordinance establishing a temporary moratorium on residential and commercial evictions due to COVID-19. As currently drafted, that moratorium will expire on September 30, 2020. The City's protections from eviction to residential tenants have largely been superseded by Assembly Bill 3088. For the reasons stated in these findings, the City Council has determined that there is a need to continue to provide protections from evictions for failure to pay rent to certain commercial tenants in the City.

M. Providing certain commercial tenants with a continued short-term protection from eviction for inability to pay rent will protect life and public peace, health, and safety because the protection will permit business owners to pay employee wages, saving employees from unemployment, hardship, and potential homelessness. It will also protect life because it will avoid business owners from being required to find alternative commercial space to move their business, activity which would require multiple social interactions with, for instance, moving staff, building staff, and commercial real estate agents, each of whom presents a potential exposure to COVID-19.

N. Providing certain commercial tenants with a continued short-term protection from eviction for inability to pay rent will protect property and public safety. When a business operates at a site, staff and customers monitor and address on-site conditions. Mass evictions of these businesses will lead to a significant increase in vacant properties in the City.
Landlord and City resources will be inadequate to sufficiently mitigate blight and discourage squatters, leading to an increase in real property damage. Further, sudden eviction will require business owners to rush to store their business property, thereby presenting property damage in unplanned moving or potential exposure to COVID-19 when working with moving staff, or else abandon it on site, thereby creating an attractive nuisance and further business earnings losses.

O. The City Council finds that mass commercial eviction of the businesses most affected by COVID-19 is a risk to the public peace, health and safety and a short-term protection from eviction for inability to pay rent is necessary to provide for the protection of life and property.

Section 2. Moratorium on certain commercial evictions due to nonpayment of rent during the COVID-19 emergency.

1. Until the expiration of this Ordinance, no landlord shall endeavor to evict a commercial tenant impacted by COVID-19 for nonpayment of rent if the tenant delivers to the landlord a declaration of financial distress due to COVID-19, verifiable documentation demonstrating financial distress due to COVID-19, and at least 25% of the amount of rent due before the day that their rent is due, or within a reasonable time afterwards, not to exceed seven (7) days.

2. To take advantage of the protections afforded under this Ordinance, a commercial tenant impacted by COVID-19 must do the following before the day his or her rent is due, or within a reasonable time afterwards, not to exceed seven (7) days:

   a. Submit to their landlord a signed declaration of financial distress due to COVID-19;

   b. Provide the landlord with verifiable documentation demonstrating financial distress due to COVID-19; and

   c. Pay the landlord at least 25% of the amount of rent due.

   d. A commercial tenant impacted by COVID-19 is required to comply with this section for each month that he or she is unable to pay rent and wishes to take advantage of the protections afforded under this Ordinance.

3. For the purposes of this Ordinance, the following terms and definitions apply, unless the usage and context clearly indicates otherwise:

   a. "Commercial tenant impacted by COVID-19" means a renter of commercial real property or a commercial rental unit that experiences financial distress due to COVID-19 and operates as one or more of the business use types listed in Appendix A, as defined by Section 17.50 of the West Sacramento Municipal Code.

   b. "Declaration of financial distress due to COVID-19" means the following written statement signed under penalty of perjury:
I am currently unable to pay my commercial rent or other financial obligations under the lease in full because of one or more of the following:

2. Increased out-of-pocket expenses directly related to performing work during the COVID-19 pandemic.
3. Other circumstances related to the COVID-19 pandemic that have reduced my business's income or increased my business's expenses.

Any public assistance, including insurance and pandemic assistance, that I have received since the start of the COVID-19 pandemic does not fully make up for my business's loss of income and/or increased expenses.

Signed under penalty of perjury:

Dated:

c. "Financial distress due to COVID-19" means loss of income caused by the COVID-19 pandemic, increased out-of-pocket expenses directly related to performing work during the COVID-19 pandemic, and other circumstances related to the COVID-19 pandemic that may have reduced a business's income or increased the business's expenses.

d. "Landlord" includes the owner of, or agent for, commercial real property or a commercial rental unit.

e. "Verifiable documentation demonstrating financial distress due to COVID-19" means, but is not limited to, bank statements, financial records, or documentation showing a loss of revenue or need to temporarily shut down due to COVID-19.

4. If a commercial tenant impacted by COVID-19 complies with the requirements of section 2 of this Ordinance, a landlord shall not serve a notice pursuant to California Code of Civil Procedure sections 1161 and 1162, file or prosecute an unlawful detainer action based on a three-day pay or quit notice, or otherwise endeavor to evict the tenant for nonpayment of rent.

5. Nothing in this Ordinance relieves the tenant of liability for the unpaid rent after expiration of this Ordinance.

Section 3. Effective Date and Term.

1. This Ordinance takes effect on October 1, 2020.

2. Unless earlier terminated by action of the City Council, this Ordinance remains in effect until the first to occur of:
a. The termination of the City's local emergency;

b. Yolo County having been listed at the Tier 4 level under the statewide metric "Blueprint for a Safer Economy" for at least three consecutive weeks; or


Section 5. Termination of Ordinance 20-5.

As of the effective date of this Ordinance, City Ordinance 20-5 shall terminate and be of no force or effect.

Section 4. Urgency Declaration.

The City Council declares this Ordinance to be an urgency measure that is needed for the immediate preservation of the public peace, health and safety, pursuant to the authority granted to general law cities under Government Code Section 36937(b) and Government Code Section 8634. The facts constituting the urgency are as follows: The directives from health officials to contain the spread of COVID-19 has resulted in restricted business operations or business hours, loss of business, furloughs, loss of wages, and lack of work. To protect the public health, safety, and welfare, the City must act immediately to prevent eviction of certain commercial tenants who are unable to pay rent due to loss of business caused by the effects of COVID-19. An urgency measure is necessary to protect certain commercial tenants from eviction for a temporary period.

Section 5. Publication.

Within fifteen (15) days after its passage, it shall be published at least once in a newspaper of general circulation published and circulated within the City of West Sacramento.

PASSED AND ADOPTED by the City Council of the City of West Sacramento this 28th day of September, 2020, by the following vote:

AYES: Guerrero, Ledesma, Orozco, Sandeen, Cabaldon.
NOES: None.
ABSENT: None.
ABSTAIN: None.

[Signature]
Christopher L. Cabaldon, Mayor

[Signature]
Yashin Abbas, City Clerk

[Signature]
Jeffrey Mitchell, City Attorney

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APPENDIX A

The following business use types and definitions are copied here from Section 17.50 of the West Sacramento Municipal Code.

Day Care Centers. Establishments providing non-medical care for persons on a less than 24-hour basis other than family day care. This classification includes nursery schools, preschools, and day care facilities for children or adults, and any other day care facility licensed by the State of California.

Instructional Services. Establishments that offer specialized programs in personal growth and development such as music, martial arts, vocal, fitness and dancing instruction.

Animal Care, Sales, and Services. Retail sales and services related to the boarding, grooming, and care of household pets including:

Animal Sales and Grooming. Retail sales of animals and/or services, including grooming, for animals on a commercial basis. Typical uses include dog bathing and clipping salons, pet grooming shops, and pet stores and shops. This classification excludes dog walking and similar pet care services not carried out at a fixed location and excludes pet supply stores that do not sell animals or provide on-site animal services.

Boarding/Kennels. A commercial, non-profit, or governmental facility for keeping, boarding, training, breeding or maintaining dogs, cats, or other household pets not owned by the kennel owner or operator. Typical uses include pet clinics, pet day care, and animal shelters, but exclude pet shops and animal hospitals that provide 24-hour accommodation of animals receiving medical or grooming service.

Veterinary Services. Veterinary services for small animals. This classification allows 24-hour accommodation of animals receiving medical services but does not include kennels.

Indoor Sports and Recreation. Establishments providing predominantly participant sports, indoor amusement and entertainment services conducted within an enclosed building, including coin-operated electronic amusement centers. Typical uses include bowling alleys, billiard parlors, card rooms, health clubs, ice- and roller-skating rinks, indoor racquetball courts, athletic clubs, and physical fitness centers.

Eating and Drinking Establishments. Businesses primarily engaged in serving prepared food and/or beverages for consumption on or off the premises.

Bars/Night Clubs/Lounges. Businesses serving beverages for consumption on the premises as a primary use, including on-sale service of alcohol including beer, wine, and mixed drinks. This use includes tasting rooms and micro-breweries where alcoholic beverages are sold and consumed on site and any beverage production or distilling, and food service is subordinate to the sale of alcoholic beverages.

Restaurant. Establishments where food and beverages are served to patrons on-site or off-site, including full-service, limited-service, and take-out/delivery businesses. This classification includes brewpubs manufacturing 5,000 barrels per year or less, cafes, coffee shops, delicatessens, fast-food businesses, and bakeries that have tables for on-site
consumption of products. It excludes catering services and commercial kitchens that do not sell food or beverages for on-site consumption.

**Nurseries and Garden Centers.** Any establishment(s) primarily engaged in retailing nursery and garden products, such as trees, shrubs, plants, seeds, bulbs, and sod that are predominantly grown elsewhere. These establishments may sell a limited amount of a product they grow themselves. This classification includes commercial and wholesale greenhouses and nurseries offering plants for sale.

**Personal Services.**

**General Personal Services.** An establishment providing non-medical services to individuals as a primary use, of personal convenience, as opposed to products that are sold to individual consumers, or from/by companies. Personal services include barber and beauty shops, shoe and luggage repair, photographers, laundry and cleaning services and pick-up stations, copying, repair and fitting of clothes, and similar services.

**Fortunetelling.** Any place of business where any person allows or professes to carry on, engage in or practice the art or transaction of palmistry, fortunetelling, clairvoyance, crystal gazing, seancing, numerology, mediumship, tarot-card reading, past-life regression, prophecy, phrenology or divination for personal gain or other similar activity.

**Massage Establishments.** Any establishment having a fixed place of business where any person engages in or carries on any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the body with the hands or with the aid of any mechanical electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments, or other similar preparations commonly used in this practice. Such establishment shall have health enhancement as part of its purpose. Exempted from this definition are massage therapists operating in conjunction with and on the same premises as a physician, surgeon, chiropractor, osteopath, nurse or any physical therapist (State-licensed professions or vocations) who are duly State-licensed to practice their respective professions in the State of California.

**Tattoo or Body Modification Parlor.** An establishment whose principal business activity is one or more of the following: (1) using ink or other substances that result in the permanent coloration of the skin using needles or other instruments designed to contact or puncture the skin; or (2) creation of an opening in the body of a person for the purpose of inserting jewelry or other decoration.

**Retail Sales.**

**Building Materials Sales and Services.** Retail sales or rental of building supplies or equipment. This classification includes lumber yards, tool and equipment sales or rental establishments, and includes establishments devoted principally to taxable retail sales to individuals for their own use. This definition does not include construction and material yards, hardware stores less than 10,000 square feet in floor area, or plant nurseries.

**Convenience Markets.** Establishments primarily engaged in the provision of frequently or recurrently needed small personal items or services for residents within a reasonable walking distance. These include various general retail sales and personal services of an appropriate
size and scale to meet the above criteria. Typical uses include neighborhood grocery stores, convenience markets, and drugstores.

**Food and Beverage Sales.** Retail sales of food and beverages primarily for off-site preparation and consumption. Typical uses include food markets, groceries, liquor stores, meat markets and butcher shops, and retail bakeries.

**General Retail.** The retail sale or rental of merchandise not specifically listed under another use classification. This classification includes retail establishments with 25,000 square feet or less of sales area; including department stores, clothing stores, furniture stores, pet supply stores, small hardware stores (with 10,000 square feet or less of floor area), and businesses retailing the following goods: toys, hobby materials, handcrafted items, jewelry, cameras, photographic supplies and services (including portraiture and retail photo processing), medical supplies and equipment, pharmacies, electronic equipment, sporting goods, kitchen utensils, hardware, appliances, antiques, art galleries, art supplies and services, paint and wallpaper, carpeting and floor covering, office supplies, bicycles, video rental, and new automotive parts and accessories (excluding vehicle service and installation). Retail sales may be combined with other services such as office machine, computer, electronics, and similar small-item repairs.

**Secondhand Store.** Any establishment whose business includes buying, selling, trading, selling on consignment, or auctioning secondhand tangible personal property. Tangible personal property shall be defined as stated in the California Business and Professions Code. Acceptance of donated material and goods are not allowed. (Ord. 19-1 § 3)