

**CITY OF SOUTH EL MONTE
SPECIAL MEETING AGENDA OF THE SOUTH EL MONTE CITY COUNCIL
APRIL 7, 2020 6:00 P.M.
COUNCIL CHAMBERS
1415 N. SANTA ANITA AVENUE
SOUTH EL MONTE, CA 91733**

*****SPECIAL NOTICE REGARDING COVID-19*****

On March 17, 2020, Governor Newsom issued Executive Order N-29-20 in response to the COVID-19 pandemic, which authorizes the City Council to hold public meetings via teleconferencing and waives all requirements of the Brown Act requiring the physical presence of Council Members, staff, or the public as a condition of participation in or quorum for a public meeting.

**THIS IS A CITY COUNCIL MEETING BY TELECONFERENCE ONLY.
Members of the public will have access to listen to and participate in the meeting by calling-in at the information below.**

**Teleconference participation shall be available to the public at the following number,
1-916-245-8982, Conference Id: 543 381 712#.**

Members of the public wishing to submit a general comment or a comment on an agenda item, can email rjuarez@soelmonte.org or call (626) 579-6540 to leave a voicemail message. All comments received by 5:00 p.m. on Tuesday, April 7, 2020 received and filed and added to the City Council agenda as a Consent Calendar item so the City Council can receive and file them and make them part of the meeting record. The April 7, 2020 City Council agenda is focused on urgent or essential consideration items only.

The public may also view a live telecast of the meeting online at cityosouthelmonte.org.



**GLORIA OLMOS, MAYOR
GRACIE RETAMOZA, MAYOR PRO TEM
MANUEL ACOSTA, COUNCILMEMBER
RICHARD ANGEL, COUNCILMEMBER
HECTOR DELGADO, COUNCILMEMBER**

**ANTHONY R. TAYLOR, CITY ATTORNEY
RACHEL BARBOSA, CITY MANAGER
ROSE JUAREZ, CITY CLERK**

1. CALL TO ORDER AND ROLL CALL:

Councilmembers: Acosta, Angel, Delgado, Retamoza, (Mayor) Olmos

2. APPROVAL OF AGENDA:

3. PUBLIC COMMENTS:

Persons wishing to address the City Council on any item on the agenda are invited to do so at this time. Pursuant to the Brown Act, the City Council cannot discuss or take action on items not on the agenda. Matters brought before the City Council that are not on the agenda may, at the City Council's discretion, be referred to staff or placed on the next agenda.

4. CONSIDERATION OF URGENCY ORDINANCE NO. 1244-U ENACTING COMMERCIAL EVICTION PROTECTIONS AND RESIDENTIAL RENT DEFERRALS RELATED TO THE COVID-19 PANDEMIC

Loss of income and revenue, and an increase in expenses, as a result of the COVID-19 pandemic, may inhibit City residents and businesses from fulfilling their financial obligations, including paying rent, leaving tenants vulnerable to eviction. In order to protect the health, safety, and welfare of the residents and businesses of the City of South El Monte, City staff has prepared the proposed Urgency Ordinance ("Ordinance") to establish protections against evictions of businesses from commercial property and residential rent deferrals during the current declared state of emergency related to the COVID-19 pandemic.

RECOMMENDED ACTION: Staff recommends that the City Council adopt Urgency Ordinance No. 1244-U, enacting commercial eviction protections and residential rent deferrals related to the COVID-19 Pandemic.

5. CONSIDERATION OF URGENCY ORDINANCE NO. 1245-U ENACTING EMERGENCY PRICE-GOUGING PROTECTIONS RELATED TO THE COVID-19 PANDEMIC

Due to the rapid spread of the COVID-19 disease, some individuals may exploit this emergency and increase the price of household goods, particularly those related to sanitization, paper goods, and toiletries. In order to protect the health, safety, and welfare of the residents and businesses of the City of South El Monte, City staff has prepared the proposed Urgency Ordinance ("Ordinance") to establish protections against price-gouging during the current declared state of emergency related to the COVID-19 pandemic.

RECOMMENDED ACTION: Staff recommends that the City Council adopt Urgency Ordinance No. 1245-U, enacting emergency price-gouging protections COVID-19 Pandemic.

6. CONSIDERATION OF RESOLUTION NO. 20-33 WAIVING FORMAL BIDDING PROCEDURES AND AUTHORIZING THE CITY MANAGER TO EXECUTE APPROPRIATE AGREEMENTS AND DOCUMENTATION FOR THE FINANCING, PROCUREMENT, AND IMPLEMENTATION OF EQUIPMENT TO UPGRADE THE CITY'S TECHNOLOGY INFRASTRUCTURE FOR A TOTAL PROJECT AMOUNT NOT TO EXCEED \$130,000 DUE TO THE COVID-19 PANDEMIC

The City's technology infrastructure has reached a point in its life cycle that requires its equipment to be upgraded in order to continue operating at optimal levels. This need has only been exacerbated by the rise of the COVID-19 pandemic, which has put further strain upon the City's technology infrastructure. In order to conduct this upgrade (Project), there are three components to be completed. This includes a lease agreement to finance the procurement and implementation of the equipment; an agreement with the vendor from which the equipment will be procured; and a Professional Services Agreement for the installation of the equipment.

RECOMMENDED ACTION: Staff recommends that the City Council adopt Resolution No. 20-33 waiving formal bidding procedures and authorizing the City Manager to execute appropriate agreements and documentation for the financing, procurement, and implementation of equipment to upgrade the City's technology infrastructure for a total project amount not to exceed \$130,000.

7. ADJOURNMENT:



City Council Agenda Report

**Agenda
Item No.
4.**

DATE: April 7, 2020

TO: Honorable Mayor and Members of the City Council

APPROVED BY: Rachel Barbosa, City Manager

APPROVED AS TO FORM: Anthony R. Taylor, City Attorney

SUBMITTED BY: Anthony R. Taylor, City Attorney

SUBJECT: CONSIDERATION OF URGENCY ORDINANCE
NO. 1244-U ENACTING COMMERCIAL EVICTION
PROTECTIONS AND RESIDENTIAL RENT DEFERRALS
RELATED TO THE COVID-19 PANDEMIC

SUMMARY: Loss of income and revenue, and an increase in expenses, as a result of the COVID-19 pandemic, may inhibit City residents and businesses from fulfilling their financial obligations, including paying rent, leaving tenants vulnerable to eviction. In order to protect the health, safety, and welfare of the residents and businesses of the City of South El Monte, City staff has prepared the proposed Urgency Ordinance ("Ordinance") to establish protections against evictions of businesses from commercial property and residential rent deferrals during the current declared state of emergency related to the COVID-19 pandemic.

RECOMMENDATION: Staff recommends that the City Council adopt Urgency Ordinance No. 1244-U, enacting commercial eviction protections and residential rent deferrals related to the COVID-19 Pandemic.

FISCAL IMPACT: The Ordinance would prohibit landlords in the City from evicting commercial tenants from any property based on failure to pay rent, if the failure to pay rent is due to the COVID-19 pandemic and is documented, at least until May 31, 2020. The proposed Ordinance would also establish a process for rent deferrals for residential properties.

DISCUSSION: A novel coronavirus (COVID-19) was detected in Wuhan City, Hubei Province, in China in December 2019. On January 30, 2020, the World Health Organization declared COVID-19 a public health emergency of international concern. The

United States, the State of California, and the City of South El Monte have all declared states of emergency arising from the COVID-19 pandemic.

As a result of the public health emergency and the precautions recommended by health authorities, residents and businesses in South El Monte have experienced or expect soon to experience sudden and unexpected income loss and may experience unexpected increased medical expenses. City businesses have also suffered loss of revenue due to the need for employees to work from home, the need to reduce business hours, legal requirements for certain kinds of businesses to close, and a decrease in consumer demand.

Loss of income and revenue, and an increase in expenses, as a result of COVID-19, may inhibit City residents and businesses from fulfilling their financial obligations, including paying rent, leaving tenants vulnerable to eviction.

On March 16, 2020, the Governor issued Executive Order N-28-20, which waived any provisions 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 until May 31, 2020, unless extended.

On March 27, 2020, the Governor issued Executive Order N-37-20, which prohibits the execution of a writ of possession to evict a residential tenant who:

- (1) paid rent due up through March 26, 2020;
- (2) gave the landlord notice no later than seven days after rent was due of the tenant's inability to pay rent due to (a) missing work due to the COVID-19 related illness of the tenant or the tenant's family member, (b) a lay-off, loss of hours, or other income reduction due to COVID-19, or (c) missing work to care for child whose school was closed due to COVID-19; and
- (3) can verify these facts with documentation, which may be provided to the landlord up until the time that the tenant pays back-due rent.

Executive Order N-37-20 also give tenants an additional 60 days to respond to a complaint filed by their landlord for unlawful detainer. This Order is effective until May 31, 2020 and does not apply to commercial tenants.

However, Executive Order N-37-20 does not prevent residential renters from paying rent in full if they are able to pay all or some rent, nor does it relieve residential renters from having to eventually pay rent owed. Further, it does not provide a period in which residential renters may avoid eviction upon expiration of Executive Order N-37-20 by paying lawfully charged rent to their landlords

In response to the imminent threat of eviction facing many City residents and businesses, as well as the Governors' Executive Order N-28-20, the Ordinance would temporarily enact protections against commercial evictions within the City for failure to pay rent, or

due to foreclosure, caused by the COVID-19 pandemic. The Ordinance provides protections against evictions when the tenant cannot pay rent due to workplace closures, owner or employee sicknesses, increased childcare costs, or reasonable expenditures related to government orders related to COVID-19. The tenant must provide notice of their inability to pay prior to the rent being due, as well as documentation related to their reasons for non-payment.

The Ordinance does not forgive or excuse the payment of rent, or prohibit landlords from seeking to recover rent by means other than eviction. The Ordinance also does not prohibit eviction for reasons other than nonpayment of rent, or due to foreclosure, nor does it prohibit eviction for nonpayment of rent that preceded or is unrelated to the COVID-19 pandemic. Once the Ordinance expires, commercial tenants will have 180 days to re-pay deferred rent payments.

The Ordinance provides for a period up to 180-day in which a residents can repay deferred rental payments following the expiration of Executive Order N-37-20.

The Ordinance would remain in place until the termination of the local emergency proclaimed by the Mayor on March 12, 2020, and ratified by the City Council on March 17, 2020.

The Ordinance would take effect immediately upon adoption by a four-fifths (4/5) vote pursuant to Government Code section 36937(b), which applies to ordinances "[f]or the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency."

The proposed Urgency Ordinance would also promote income stability for employees, ensure that necessary commercial services remain available, and otherwise mitigate the economic impacts of COVID-19, all of which will preserve public peace, health, and safety.

ATTACHMENTS: Urgency Ordinance No. 1244-U

URGENCY ORDINANCE NO. 1244-U

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH EL MONTE, CALIFORNIA, ENACTING COMMERCIAL EVICTION PROTECTIONS AND RESIDENTIAL RENT DEFERRALS RELATED TO THE COVID-19 PANDEMIC

WHEREAS, pursuant to Government Code Section 36937(b), any ordinance for the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the City Council, shall take effect immediately upon its adoption; and

WHEREAS, in December, 2019, an outbreak of respiratory illness due to a novel coronavirus (COVID-19) was first identified in Wuhan City, Hubei Province, China; and

WHEREAS, the Center for Disease Control and Prevention (CDC) considers COVID-19 to be a very serious public health threat with outcomes ranging from very mild (including some with no reported symptoms) to severe, including illness resulting in death; and

WHEREAS, according to the CDC, there is no vaccine to prevent COVID-19 and there is no specific antiviral treatment recommended for COVID-19 at this time; and

WHEREAS, on January 30, 2020, the World Health Organization declared a Public Health Emergency of International Concern over the global spread of COVID-19; and

WHEREAS, on January 31, 2020, Health and Human Services declared a Public Health Emergency for the United States to aid the nation's healthcare community in responding to COVID-19; and

WHEREAS, the California Department of Public Health (CDPH) has activated its Medical and Health Coordination Center, and the Office of Emergency Services recently activated the State Operations Center to provide support and guide actions to preserve public health; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a State of Emergency for the State of California; and

WHEREAS, on March 11, 2020, the World Health Organization characterized COVID-19 as a "pandemic"; and

WHEREAS, on March 12, 2020, Governor Newsom issued Executive Order N-25-20 regarding COVID-19 further enhancing State and local government's ability to respond to the COVID-19 pandemic; and

WHEREAS, on March 12, 2020, the Mayor of the City of South El Monte, pursuant to Section 2.60.060 of the South El Monte Municipal Code, signed a proclamation which proclaimed the existence of a local emergency based on COVID-19 ("Proclamation"); and

WHEREAS, on March 13, 2020, President Trump declared a National State of Emergency in response to increased spread of COVID-19; and

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-20, in response to the COVID-19 pandemic, which permits, but does not require, cities and counties to adopt measures against evictions; and

WHEREAS, on March 17, 2020, the City Council of the City of South El Monte ratified the Proclamation; and

WHEREAS, on March 19, 2020, Governor Newsom issued Order N-33-20 requiring all individuals, except those performing essential services as defined by the order, living in California to stay home or at their place of residence in order to combat the COVID-19; and

WHEREAS, on March 19, 2020 the Los Angeles County Board of Supervisors issued an Executive Order prohibiting residential and commercial evictions in the unincorporated portions of the County under certain circumstances; and

WHEREAS, on March 23, 2020, the Chief Justice of the Supreme Court of California issued an order generally suspending and continuing all jury trials for a period of 60 days; extending the time period for holding a criminal trial by 60 days from the date of the order; extending the time period for the holding of a civil trial by 60 days; and further allow affected courts to enact rule amendments to address the impacts of COVID-19; and

WHEREAS, on March 27, 2020, Governor Newsom issued Executive Order N-37-20, which effectively enacted a moratorium on residential evictions by giving renters 60 days to respond to an eviction complaint filed in court and by banning enforcement of evictions orders through May 31, 2020 ("Executive Order N-37-20"). In order to qualify for such protections, residential renters must do the following:

(1) Prior to March 27, 2020, residential renters must have paid their landlord rent that is due and be current on their rent.

(2) Notify their landlord in writing no later than 7 days after rent is due that they need to delay all or some of their rent payment for COVID-19 reasons, such as the following:

(i) They were sick with suspected/confirmed COVID-19 or were caring for a household/family member sick with suspected/confirmed COVID-19; or

(ii) They experienced a lay-off, loss of hours, or other income reduction due to COVID-19, the state of emergency, or related governmental response; or

(iii) They missed work to care for a child whose school was closed due to COVID-19.

(3) Retain verifiable documentation of the above and provide it to their landlord no later than the time upon payment of back-due rent. Examples of documentation include termination notices, payroll checks, pay stubs, bank statements, medical bills, or signed letters or statements from an employer/supervisor explaining your changed financial circumstances.

However, Executive Order N-37-20 does not prevent residential renters from paying rent in full if they are able to pay all or some rent, nor does it relieve residential renters from having to eventually pay rent owed; and

WHEREAS, Executive Order N-37-20 does not provide a period in which residential renters may avoid eviction upon expiration of Executive Order N-37-20 by paying lawfully charged rent to their landlords; and

WHEREAS, there are currently no similar eviction protections for businesses renting commercial property provided by Executive Order N-37-20 even though such businesses may have suffered a decrease in business income due to COVID-19, including impacts that reduce operational hours and reduce customer demand for a business' services; and

WHEREAS, individuals currently part of a long-term stay at a hotel, motel, or similar are not covered by the residential eviction protections provided by Executive Order N-37-20, although these individuals are equally vulnerable to COVID-19; and

WHEREAS, based on the foregoing, the City Council seeks and intends to protect health, safety, and welfare of the residents and businesses of the City of South El Monte by enacting protections against evictions of such businesses from commercial property during the current declared state of emergency related to the COVID-19 pandemic.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH EL MONTE, CALIFORNIA DOES ORDAIN AS FOLLOWS:

SECTION 1. **Recitals.** The foregoing recitals are true and correct, and are incorporated herein by reference as findings of fact.

SECTION 2. **Urgency and Emergency Findings.** The City Council finds that there is a current and immediate threat to public health, safety, and welfare posed by COVID-19, and there is an immediate need for the preservation of public peace, health or safety of the residents and community, including the businesses, of the City.

Businesses in the City may experience sudden reduction in business income due to decreased operational hours and customer demand relating to the impacts of COVID-19 and governmental responses to COVID-19. This sudden decrease in business income jeopardizes the City's businesses' ability to pay rent to their landlords and, consequently, will negatively impact such businesses' ability to provide critical services and income to the City's community such that it jeopardizes public health, safety, and welfare. This is of particular concern during the COVID-19 pandemic as the City's businesses provide critical services and supplies to the City's residents.

Additionally, Executive Order N-37-20 currently does not provide residential renters in the City protections from evictions, including the opportunity for residential renters to pay lawfully charged rent, after its expiration. Without these protections, the public health, safety, and welfare is jeopardized in that there may be a sudden increase in evictions after Executive Order N-37-20 expires and the COVID-19 pandemic is over, which can result in a sudden increase in homelessness in the City and could lead to the re-establishment of COVID-19 in the City.

SECTION 3. Commercial Eviction Protections.

A. Restrictions on Commercial Evictions.

(1) No person, business, or other entity ("landlord") shall initiate proceedings or otherwise act to evict a commercial tenant. This prohibition shall only be imposed upon no-fault evictions and/or evictions in which all of the following circumstances exist:

(i) The basis for eviction is nonpayment of rent arising out of circumstances related to the COVID-19 pandemic. These circumstances include, but is not limited to, any of the following:

(a) a loss of business income due to a COVID-19 related workplace closure; the owner, management personnel, or key employees of the commercial tenant were/are sick with COVID-19 or caring for household or family members who were/are sick with COVID-19; the commercial tenant experienced income reduction resulting from COVID-19 or a governmental response to COVID-19; the commercial tenant's compliance with an order or recommendation from a government agency to close, reduce service, or limit contact between members of the public and its personnel/employees; or key employee(s) of the commercial tenant need to miss work to care for a home-bound school-age child.

(b) increased child care expenditures due to school closures or healthcare expenses related to being ill with COVID-19.

(c) reasonable expenditures that stem from government-ordered or recommended emergency measures.

(ii) The commercial tenant retains verifiable documentation supporting that at least one of the reasons described in Section 3(A)(1)(i) exists in order to support the commercial tenant's assertion of an inability to pay rent. This documentation may be provided to the landlord no later than the time upon payment of back-due rent.

(iii) The commercial tenant has complied with the requirements of this Ordinance, including, but not limited to, Section 3(B).

(2) It shall not be a violation of this Ordinance for a landlord to evict a commercial tenant based on an eviction process that was lawfully begun prior to the Effective Date of this Ordinance.

(3) It is not the City Council's intent, nor shall anything in this Ordinance be construed to mean that a commercial tenant is free from the obligation to pay lawfully charged rent.

B. Procedures

(1) Notice to Landlord. In order to take advantage of the protections under this Ordinance, a commercial tenant shall do all of the following:

(i) Notify the landlord in writing before the day rent is due that the commercial tenant is unable to pay rent due to at least one of the reasons provided in Section 3(A)(1)(i). For purposes of this Ordinance, "in writing" includes, but is not limited to, email or text communications to a landlord or the landlord's representative with whom the commercial tenant has previously corresponded by email or text communication, as well as traditional written communication. Any medical or financial information provided to the landlord, or the landlord's representative, shall be held in confidence and may only be used for evaluating the commercial tenant's pursuant to Section 3(A)(1).

(ii) Provide the landlord with the verifiable documentation described in Section 3(A)(1)(ii).

(iii) Pay the portion of the rent that the commercial tenant is able to pay.

(2) If a commercial tenant complies with the requirements of this Ordinance, a landlord shall not take steps to evict the commercial tenant for nonpayment of rent.

C. 180-Day Payback Period

(1) A commercial tenant afforded eviction protection under this Ordinance, or any executive order of the Governor, shall have up to one hundred eighty (180) days after the expiration of this Ordinance, or, if the Governor issues an executive order providing commercial tenants eviction protection, the expiration of such executive order, to pay its landlord unpaid rent. The terms of the repayment plan are to be agreed upon between the landlord and commercial tenant, provided that, if no agreement is reached between the landlord and commercial tenant, the back/past rent due shall be repaid in six (6) equal installments to be paid in monthly intervals beginning thirty (30) days after the date the rent becomes due pursuant to the terms of this Ordinance. No late fees, costs or other penalties shall be assessed or due from the commercial tenant based on the delay in paying rent as provided for in this Ordinance or any applicable executive order of the Governor. During this 180-day period, the protections against eviction set forth in this

Ordinance or any applicable executive order of the Governor shall apply to such commercial tenants.

(2) The date upon which a delayed payment comes due for the purposes of Code of Civil Procedure Section 1161(2) shall be the date agreed upon by the landlord and commercial tenant in a repayment plan, or, if no agreement is reached, as specified in Section 3(C)(1) above.

SECTION 4. 180-Day Deferral of Residential Rent Due Date

A. A residential tenant afforded eviction protection under Executive Order N-37-20, as it may be amended or extended, shall have up to one hundred eighty (180) days after the expiration of Executive Order N-37-20, as it may be amended or extended, to pay their landlord unpaid rent. The terms of the repayment plan are to be agreed upon between the landlord and residential tenant, provided that, if no agreement is reached between the landlord and residential tenant, the back/past rent due shall be repaid in six (6) equal installments to be paid in monthly intervals beginning thirty (30) days after the date the rent becomes due pursuant to the terms of this Ordinance. No late fees, costs or other penalties shall be assessed or due from the residential tenant based on the delay in paying rent as provided for in Executive Order N-37-20, as it may be amended or extended, or this Ordinance. During this 180-day period, the protections against eviction set forth in Executive Order N-37-20, as it may be amended or extended, shall apply to such residential tenants.

B. The date upon which a delayed payment comes due for the purposes of Code of Civil Procedure Section 1161(2) shall be the date agreed upon by the landlord and commercial tenant in a repayment plan, or, if no agreement is reached, as specified in Section 4(A) above.

C. Nothing in this Ordinance shall be construed to mean that a residential tenant will still not be obligated to pay lawfully charged rent.

SECTION 5. Long-Term Stay Eviction Protections. The protections and procedures of Executive Order N-37-20 apply to individuals who currently reside in a long-term stay at a hotel, motel, or similar establishment. "Long-term Stay" includes a stay which began one week prior to March 17, 2020. No individual currently in a long-term stay at a hotel, motel, or similar establishment shall be evicted if the notice is provided to the hotel, motel, or similar establishment as required by Executive Order N-37-20.

SECTION 6. Adoption and Effective Date. Pursuant Government Code Section 36937, this ordinance shall take effective immediately upon approval of the same by a four-fifths (4/5) affirmative vote of the City Council. The City Council finds and determines that the same is necessary to the preservation of the public peace, health or safety, in that adoption of the same will help prevent commercial evictions and control residential rent issues that may arise during declared states of emergency.

SECTION 7. **Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or circumstances, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the application of any other section, subsection, sentence, clause, phrase, or portion of this Ordinance, and to this end the invalid or unconstitutional section, subsection, sentence, clause, phrase of this ordinance are declared to be severable. The South El Monte City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

SECTION 8. **Expiration Date.** This Ordinance shall automatically expire upon the termination of the City's local emergency proclaimed by the Mayor on March 12, 2020, and ratified by the City Council on March 17, 2020, pursuant to Chapter 2.60 of the South El Monte Municipal Code.

SECTION 9. **Certification.** The City Clerk shall certify to the adoption of this Ordinance, and shall cause the same to be posted and codified in the manner required by law.

PASSED, APPROVED and ADOPTED by a four-fifths (4/5) vote at a special meeting of the South El Monte City Council on this 7th day of April, 2020.

Gloria Olmos, Mayor

ATTEST:

Rose Juarez, City Clerk

APPROVED AS TO FORM:

Anthony R. Taylor, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF SOUTH EL MONTE)

I, Rose Juarez, City Clerk of the City of South El Monte, do hereby certify that the foregoing Ordinance, being Ordinance No. 1244-U, was duly passed and approved by the City Council of the City of South El Monte at a special meeting of said Council held on the 7th day of April, 2020, and that said Ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Rose Juarez, City Clerk



City Council Agenda Report

Agenda
Item No.
5.

DATE: April 7, 2020

TO: Honorable Mayor and Members of the City Council

APPROVED BY: Rachel Barbosa, City Manager

APPROVED AS TO FORM: Anthony R. Taylor, City Attorney

SUBMITTED BY: Anthony R. Taylor, City Attorney

SUBJECT: CONSIDERATION OF URGENCY ORDINANCE NO.
1245-U ENACTING EMERGENCY PRICE-GOUGING
PROTECTIONS RELATED TO THE COVID-19
PANDEMIC

SUMMARY: Due to the rapid spread of the COVID-19 disease, some individuals may exploit this emergency and increase the price of household goods, particularly those related to sanitization, paper goods, and toiletries. In order to protect the health, safety, and welfare of the residents and businesses of the City of South El Monte, City staff has prepared the proposed Urgency Ordinance ("Ordinance") to establish protections against price-gouging during the current declared state of emergency related to the COVID-19 pandemic.

RECOMMENDATION: Staff recommends that the City Council adopt Urgency Ordinance No. 1245-U, enacting emergency price-gouging protections COVID-19 Pandemic.

FISCAL IMPACT: None. Any administrative costs in enforcing the proposed ordinance could be made up for via the fines and penalties associated with the violations.

DISCUSSION: A novel coronavirus (COVID-19) was detected in Wuhan City, Hubei Province, in China in December 2019. On January 30, 2020, the World Health Organization declared COVID-19 a public health emergency of international concern. The United States, the State of California, and the City of South El Monte have all declared states of emergency arising from the COVID-19 pandemic.

One of the many effects of the COVID-19 pandemic is the panicked increased demand for consumer goods and products, including sanitary face masks, medical supplies, hand sanitizer, soap, disinfectants, household products, and groceries. Some individuals may

attempt to take advantage of these market demands by offering the in-demand products for sale at outrageous prices, a practice known as price-gouging. By way of example, ABC7news.com reported on March 5, 2020, that some online sellers were offering a two-pack of hand sanitizer for \$84.99 and face masks at a markup of 582%, and KTLA5 news reported on March 13, 2020 that Los Angeles City authorities recently discovered a half-gallon of bleach being sold for over \$100 and two one-liter containers of hand sanitizer being sold online for \$149.

Price gouging is not limited to household goods, and can also occur in the context of rental housing with respect to increased rents. Of particular concern are those who may not be able to earn enough wages to pay for the next few months of rent on their homes. This can have the effect of precluding tenants from finding available housing and can lead to evictions in the event an existing tenant is faced with a rent increase that he or she cannot afford to pay. This concern is especially pertinent in the context of the instant COVID-19 pandemic, in light of the direction from all levels of government and health authorities regarding maintaining social distancing, avoiding large gatherings, self-quarantining, and sheltering in place, much of which is not possible to follow without a home.

Price gouging can occur during any emergency situation that causes a panicked demand for certain types of products or services, whether such situation may arise from disease, natural disasters, wildfires, war, or otherwise.

California Penal Code Section 396 controls price increases for consumer goods, contractor's services related to emergency response and recovery, hotel and motel room rates, and rental housing rates for an initial period of thirty days after a declaration of an emergency by the President, Governor, or local agency. The provisions of Section 396 generally prohibit increasing prices by more than percent (10%) of the price charged immediately before the declaration of emergency. However, this conduct is generally not illegal if the seller can prove that the higher price increase was due to costs imposed on it. For example, with respect to consumer goods, the higher prices do not constitute illegal price-gouging if the seller can prove that the increase was directly attributable to additional costs imposed on it by the supplier of the goods during the state of emergency, and the price is no more than 10 percent greater than the total of the cost to the seller plus the markup customarily applied by the seller prior to the declared state of emergency. Penal Code Section 396's rental housing price-gouging restrictions apply to hotels, motels, and rental housing with an initial lease term of no longer than one year.

Penal Code Section 396 permits a local legislative body to extend the price controls for additional thirty-day periods as needed to protect the lives, property or welfare of its citizens. Penal Code Section 396 expressly provides that it does NOT preempt a city's ability to adopt an ordinance that prohibits the same or similar conduct, and expressly allows a city to impose a more severe penalty for the conduct prohibited by Penal Code Section 396.

The proposed ordinance provides that it is illegal in the City of South El Monte for any person, business, or other entity to take any of the following actions during the effective period of a declared national, state, or local state of emergency, and for 60 days thereafter:

- (a) ***Charge prices reflecting an increase of more than ten percent (10%) over the price normally charged by a seller for any consumer food items or goods***, including goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels. Increasing prices by more than 10% would be permitted only if the seller can prove that the increase is directly attributable to additional costs imposed by a supplier of the goods or additional labor or materials to provide services.
- (b) ***Increase the residential rental rates of housing by more than ten percent (10%)*** for an existing or prospective residential tenant. An increase of more than 10% would be permitted only when the landlord can prove the increase is directly due to costs of repairs or additions beyond the normal maintenance or that the increase is due to a contract agreed to by the tenant prior to the declaration of emergency.
- (c) ***Increase rates for short-term rental units or hotel or motel rooms by more than ten percent (10%)*** of its regular rates for that time of year, as advertised immediately prior to the declaration of a national, state, or local emergency. An increase of more than 10% would be permitted only if the owner or operator can prove that the increase is due to the additional costs imposed for goods or labor used in the business, seasonal adjustments in rates, or previously contracted rates prior to the declaration of emergency.

The penalty for violating the proposed ordinance is a \$1,000 administrative fine for a first-time violation, and subsequent \$1,000 fines for each additional violation. Violations are also punishable as misdemeanors in accordance with South El Monte Municipal Code Section 1.14 (\$1,000 fine and/or imprisonment of up to one year).

Because the proposed ordinance is an urgency ordinance, a two-thirds affirmative vote of the City Council is necessary, per Government Code Section 36937. If passed, the ordinance would take effect immediately.

ATTACHMENTS: Urgency Ordinance No. 1245-U

URGENCY ORDINANCE NO. 1245-U

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH EL MONTE, CALIFORNIA, ENACTING EMERGENCY PRICE-GOUGING PROTECTIONS RELATED TO THE COVID-19 PANDEMIC

WHEREAS, pursuant to Government Code Section 36937(b), any ordinance “[f]or the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the city council”, shall take effect immediately upon its adoption; and

WHEREAS, in December, 2019, an outbreak of respiratory illness due to a novel coronavirus (COVID-19) was first identified in Wuhan City, Hubei Province, China; and

WHEREAS, the Center for Disease Control and Prevention (CDC) considers COVID-19 to be a very serious public health threat with outcomes ranging from very mild (including some with no reported symptoms) to severe, including illness resulting in death; and

WHEREAS, according to the CDC, there is no vaccine to prevent COVID-19 and there is no specific antiviral treatment recommended for COVID-19 at this time; and

WHEREAS, on January 30, 2020, the World Health Organization declared a Public Health Emergency of International Concern over the global spread of COVID-19; and

WHEREAS, on January 31, 2020, Health and Human Services declared a Public Health Emergency for the United States to aid the nation’s healthcare community in responding to COVID-19; and

WHEREAS, the California Department of Public Health (CDPH) has activated its Medical and Health Coordination Center, and the Office of Emergency Services recently activated the State Operations Center to provide support and guide actions to preserve public health; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a State of Emergency for the State of California; and

WHEREAS, on March 11, 2020, the World Health Organization characterized COVID-19 as a “pandemic”; and

WHEREAS, on March 12, 2020, Governor Newsom issued Executive Order N-25-20 regarding COVID-19 further enhancing State and local government’s ability to respond to the COVID-19 pandemic; and

WHEREAS, on March 12, 2020, the Mayor of the City of South El Monte, pursuant to Section 2.60.060 of the South El Monte Municipal Code, signed a

proclamation which proclaimed the existence of a local emergency based on COVID-19 ("Proclamation"); and

WHEREAS, on March 13, 2020, President Trump declared a National State of Emergency in response to increased spread of COVID-19; and

WHEREAS, on March 16, 2020, the Health Officer of the County of Los Angeles issued an order cancelling all gatherings with an expected attendance of greater than 50 due to COVID-19; and

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-20, in response to the COVID-19 pandemic, which permits, but does not require, cities and counties to adopt measures against price-gouging and evictions; and

WHEREAS, in orders dated March 17, 2020, March 19, 2020, and March 23, 2020, the Superior Court of California, County of Los Angeles, issued orders affecting Superior Courts in Los Angeles County, which includes orders requiring the following: closing all Superior Courts in Los Angeles County, except to hear certain time-sensitive and essential functions and such order further continued all other matters; restricting court access to only court personnel and authorized individuals; suspending all civil and criminal trials, including unlawful detainer trials, until further notice; continuing for a period of 90 days all status and progress reports for criminal trials; and continuing all criminal misdemeanor cases with out-of-custody defendants for 90 days unless statutorily required ; and

WHEREAS, on March 17, 2020, the City Council of the City of South El Monte ratified the Proclamation; and

WHEREAS, on March 19, 2020, the Health Officer of the County of Los Angeles issued an order cancelling all gatherings with an expected attendance of greater than 10 due to COVID-19; and

WHEREAS, on March 19, 2020, Governor Newsom issued Order N-33-20 requiring all individuals, except those performing essential services as defined by the order, living in California to stay home or at their place of residence in order to combat the COVID-19; and

WHEREAS, on March 21, 2020, the Health Officer of the County of Los Angeles issued an order cancelling all gatherings, except as permitted by the Governor's Order N-33-20 50 due to COVID-19; and

WHEREAS, on March 23, 2020, the Chief Justice of the Supreme Court of California issued an order generally suspending and continuing all jury trials for a period of 60 days; extending the time period for holding a criminal trial by 60 days from the date of the order; extending the time period for the holding of a civil trial by 60 days; and further allow affected courts to enact rule amendments to address the impacts of COVID-19; and

WHEREAS, one of the many effects of the COVID-19 pandemic is increased demands for consumer good and products that can help people prepare for or protect themselves from the pandemic, including sanitary face masks, medical supplies, hand sanitizer, soap, disinfectants, household products, and groceries. Some unsavory individuals attempt to take advantage of these market demands by offering the in-demand products for sale at outrageous prices, a practice known as price-gouging. By way of example, ABC7news.com reported on March 5, 2020, that some online sellers were offering a two-pack of hand sanitizer for \$84.99 and face masks at a markup of 582%, and KTLA5 news reported on March 13, 2020 that Los Angeles City authorities recently discovered a half-gallon of bleach being sold for over \$100 and two one-liter containers of hand sanitizer being sold online for \$149; and

WHEREAS, price gouging is not limited to household goods, and can also occur in the context of rental housing and with respect to increased rents. This can have the effect of precluding tenants from finding available housing and can lead to evictions in the event an existing tenant is faced with a rent increase that he or she cannot afford to pay. This concern is especially pertinent in the context of the instant COVID-19 pandemic, in light of the direction from all levels of government and health authorities regarding maintaining social distancing, avoiding large gatherings, and self-quarantining, much of which is not possible without a home; and

WHEREAS, during an address on March 4, 2020, Governor Newsom expressed a need to curb the abuse of price-gouging during the COVID-19 pandemic, and Attorney General Xavier Becerra issued a price-gouging alert, reminding Californians of laws prohibiting the practice; and

WHEREAS, specifically, California Penal Code Section 396 controls price increases for rental housing, consumer goods, and services related to emergency response and recovery for an initial period of thirty days after a declaration of an emergency by the President, Governor, or local agency, and generally prohibits charging a price that exceeds by more than ten percent of the price of the rental units, goods or services as such existed before the declaration of an emergency event. Penal Code Section 396 permits a local legislative body to extend the price controls for additional thirty-day periods as needed to protect the lives, property or welfare of its citizens. Nothing in Penal Code Section 396 preempts a city's ability to adopt an ordinance that prohibits the same or similar conduct and allows a city to impose a more severe penalty for the conduct prohibited by Penal Code Section 396. Penal Code Section 396 applies to hotels, motels and any other rental housing with an initial lease term of no longer than one year; and

WHEREAS, price gouging can occur during any emergency situation that causes a spike in demand for certain types of products or services, whether such situation may arise from disease, natural disasters, wildfires, war, or otherwise; and

WHEREAS, pursuant to Chapter 2.60 of the South El Monte Municipal Code, the City is further able to enact rules and regulations to ensure the public health, safety, and

welfare, such as anti-price gouging regulations, during a local emergency that is punishable pursuant to Section 2.60.100 of South El Monte Municipal Code; and

WHEREAS, based on the foregoing, the City Council seeks and intends to protect the residents and guests of the City of South El Monte by enacting protections against price gouging during the current declared state of emergency related to the COVID-19 pandemic.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH EL MONTE, CALIFORNIA DOES ORDAIN AS FOLLOWS:

SECTION 1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference as findings of fact.

SECTION 2. **Urgency and Emergency Findings.** The City Council finds that there is a current and immediate threat to public health, safety, and welfare posed by COVID-19, and there is an immediate need for the preservation of public peace, health or safety of the residents and community of the City. One of the many effects of the COVID-19 pandemic is increased demands for consumer goods and products that can help people prepare for or protect themselves from the pandemic, including sanitary face masks, medical supplies, hand sanitizer, soap, disinfectants, household products, and groceries. Some unsavory individuals attempt to take advantage of these market demands by offering the in-demand products for sale at outrageous prices, a practice known as price-gouging. By way of example, ABC7news.com reported on March 5, 2020, that some online sellers were offering a two-pack of hand sanitizer for \$84.99 and face masks at a markup of 582%, and KTLA5 news reported on March 13, 2020, that Los Angeles City authorities recently discovered a half-gallon of bleach being sold for over \$100 and two one-liter containers of hand sanitizer being sold online for \$149. Price gouging is not limited to household goods, and can also occur in the context of rental housing with respect to increased rents. Of particular concern are those who may not be able to earn enough wages to pay for the next few months' of rent on their homes. This can have the effect of precluding tenants from finding available housing and can lead to evictions in the event an existing tenant is faced with a rent increase that he or she cannot afford to pay. This concern is especially pertinent in the context of the instant COVID-19 pandemic, in light of the direction from all levels of government and health authorities regarding maintaining social distancing, avoiding large gatherings, and self-quarantining, much of which is not possible without a home.

SECTION 3. **Emergency Price-Gouging Protections.**

A. **Definitions.**

“Building materials” means lumber, construction tools, windows, and anything else used in the building or rebuilding of property.

“Consumer food item” means any article that is used or intended for use for food, drink, confection, or condiment by a person or animal.

"Declared Emergency" means a state of emergency or local emergency.

"Emergency Declaration Period" means the longer of the period of time stated in the declaration of a state of emergency, or the declaration of a local emergency or such other period of time established or ratified by the City Council.

"Emergency supplies" includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers.

"Gasoline" means any fuel used to power any motor vehicle or power tool.

"Goods" has the same meaning as defined in subdivision (c) of Section 1689.5 of the Civil Code.

"Housing" means any rental housing with an initial lease term of no longer than one year.

"Local Emergency" means a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or manmade disaster for which a local emergency has been declared by the City Council or City official vested with such authority to make such declaration.

"Medical supplies" includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products.

"Rental Price" for housing means any of the following:

1. For housing rented within one year prior to the time of the proclamation or declaration of emergency, the actual rental price paid by the tenant. For housing not rented at the time of the declaration or proclamation, but rented, or offered for rent, within one year prior to the proclamation or declaration of emergency, the most recent Rental Price offered before the proclamation or declaration of emergency. For housing rented at the time of the proclamation or declaration of emergency but which becomes vacant while the proclamation or declaration of emergency remains in effect, the actual rental price paid by the previous tenant or the amount specified in subparagraph 2 of this definition, whichever is greater. This amount may be increased by five percent if the housing was previously rented or offered for rent unfurnished, and it is now being offered for rent fully furnished. This amount shall not be adjusted for any other good or service, including, but not limited to, gardening or utilities currently or formerly provided in connection with the lease.

2. For housing not rented and not offered for rent within one year prior to the proclamation or declaration of emergency, one hundred sixty percent of the fair market rent established by the United States Department of Housing and Urban Development. This amount may be increased by five percent if the housing is offered for rent fully furnished. This amount shall not be adjusted for any other good or service, including, but not limited to, gardening or utilities currently or formerly provided in connection with the lease.
3. Housing advertised, offered, or charged, at a daily rate at the time of the declaration or proclamation of emergency, shall be subject to the rental price described in subparagraph 1 of this definition, if the housing continues to be advertised, offered, or charged, at a daily rate. Housing advertised, offered, or charged, on a daily basis at the time of the declaration or proclamation of emergency, shall be subject to the rental price in subparagraph 2 of this definition, if the housing is advertised, offered, or charged, on a periodic lease agreement after the declaration or proclamation of emergency.
4. For mobile home spaces rented to existing tenants at the time of the proclamation or declaration of emergency, the amount authorized under that chapter. For new tenants who enter into a rental agreement for a mobile home space that is subject to rent control, but not rented at the time of the proclamation or declaration of emergency, the amount of rent last charged for a space in the same mobile home park. For mobile home spaces not subject not rented at the time of the proclamation or declaration of emergency, the amount of rent last charged for the space.

"State of Emergency" means a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or manmade disaster for which a state of emergency has been declared by the President of the United States or the Governor of California.

"Transportation, freight, and storage services" means any service that is performed by any company that contracts to move, store, or transport personal or business property or that rents equipment for those purposes, including towing services.

B. Prohibitions on Price Gouging.

(1) **Consumer Goods.** It is unlawful for a person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent greater than the price charged by that person for those goods or services

immediately prior to the emergency declaration period. However, a greater price increase is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, during the emergency declaration period, and the price is no more than 10 percent greater than the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business immediately prior to the onset of the emergency declaration period.

(2) Rental Housing. It is unlawful for any person, business or other entity, during an emergency declaration period, to increase the rental price, as defined by this Chapter, advertised, offered, or charged for housing, to an existing or prospective tenant, by more than ten percent. However, a greater rental price increase is not unlawful if that person can prove that the increase is directly attributable to additional costs for repairs or additions beyond normal maintenance that were amortized over the rental term that caused the rent to be increased greater than ten percent or that an increase was contractually agreed to by the tenant prior to the proclamation or declaration.

(3) Transient Housing. It is unlawful for any person, business or other entity during the emergency declaration period to rent or lease a hotel or motel room, or other short-term or long-term rental unit, in the City of South El Monte, for more than ten percent above the hotel, motel or other short-term or long-term rental's regular rates, as advertised immediately prior to the occurrence of a declared emergency, unless that person, business or other entity can prove that the increase in price is directly attributable to additional costs imposed on it for goods or labor used in the business, to seasonal adjustments in rates that are regularly scheduled, or to previously contracted rates prior to the proclamation or declaration of emergency.

C. Penalties for Violations.

(1) A violation of this Ordinance can result in the issuance of an administrative citation with fine of \$1,000 for a first-time violation, and thereafter \$1,000 for each additional violation of such provisions. The fine established herein shall be enforced pursuant to Chapter 1.14 of the South El Monte Municipal Code.

(2) A violation of this Ordinance is also punishable as a misdemeanor, punishable by a fine of not to exceed \$1,000, or by imprisonment for period not to exceed 6 months.

(3) This Ordinance may also be enforced pursuant to Section 2.60.100 of the South El Monte Municipal Code.

(4) Each person shall be guilty of a separate offense for each and every violation and for each and every day during any portion of which any

violation is committed, continued, or permitted by such person and shall be punishable accordingly.

(5) The remedies provided in this Section 3(C) may be exercised in place of, or in addition to, any administrative, criminal, civil, or equitable remedy allowed by law.

SECTION 4. **Adoption.** Pursuant to Government Code Section 36937, this ordinance shall take effective immediately upon approval of the same by a four-fifths (4/5) affirmative vote of the City Council. The City Council finds and determines that the same is necessary to the preservation of the public peace, health or safety, in that adoption of the same will help prevent price gouging during declared states of emergency.

SECTION 5. **Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or circumstances, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the application of any other section, subsection, sentence, clause, phrase, or portion of this Ordinance, and to this end the invalid or unconstitutional section, subsection, sentence, clause, phrase of this ordinance are declared to be severable. The South El Monte City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

SECTION 6. **Effective Date.** This Ordinance shall take effect immediately, pursuant to the authority conferred upon the City Council by Government Code Section 36937, upon its adoption by a four-fifths (4/5) vote of the City Council as if, and to the same extent that, such ordinance had been adopted pursuant to each of the individual sections set forth hereinabove.

SECTION 7. **Automatic Repeal.** This Ordinance shall automatically expire upon the termination of the City's local emergency proclaimed by the Mayor on March 12, 2020, and ratified by the City Council on March 17, 2020, pursuant to Chapter 2.60 of the South El Monte Municipal Code.

SECTION 8. **Certification.** The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be posted and codified in the manner required by law.

PASSED, APPROVED and ADOPTED by a four-fifths (4/5) vote at a special meeting of the South El Monte City Council on this 7th day of April, 2020.

Gloria Olmos, Mayor

ATTEST:

Rose Juarez, City Clerk

APPROVED AS TO FORM:

Anthony R. Taylor, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF SOUTH EL MONTE)

I, Rose Juarez, City Clerk of the City of South El Monte, do hereby certify that the foregoing Ordinance, being Ordinance No. 1245-U, was duly passed and approved by the City Council of the City of South El Monte at a special meeting of said Council held on the 7th day of April, 2020, and that said Ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Rose Juarez, City Clerk



City Council Agenda Report

Agenda
Item No.
6.

DATE: April 7, 2020

TO: Honorable Mayor and Members of the City Council

APPROVED BY: Rachel Barbosa, City Manager

SUBMITTED BY: William Fox, Interim Director of Finance

PREPARED BY: Monica Heredia, Public Works Analyst

SUBJECT: CONSIDERATION OF RESOLUTION NO. 20-33 WAIVING FORMAL BIDDING PROCEDURES AND AUTHORIZING THE CITY MANAGER TO EXECUTE APPROPRIATE AGREEMENTS AND DOCUMENTATION FOR THE FINANCING, PROCUREMENT, AND IMPLEMENTATION OF EQUIPMENT TO UPGRADE THE CITY'S TECHNOLOGY INFRASTRUCTURE FOR A TOTAL PROJECT AMOUNT NOT TO EXCEED \$130,000 DUE TO THE COVID-19 PANDEMIC

SUMMARY: The City's technology infrastructure has reached a point in its life cycle that requires its equipment to be upgraded in order to continue operating at optimal levels. This need has only been exacerbated by the rise of the COVID-19 pandemic, which has put further strain upon the City's technology infrastructure. In order to conduct this upgrade (Project), there are three components to be completed. This includes a lease agreement to finance the procurement and implementation of the equipment; an agreement with the vendor from which the equipment will be procured; and a Professional Services Agreement for the installation of the equipment.

RECOMMENDATION: Staff recommends that the City Council adopt Resolution No. 20-33 waiving formal bidding procedures and authorizing the City Manager to execute appropriate agreements and documentation for the financing, procurement, and implementation of equipment to upgrade the City's technology infrastructure for a total project amount not to exceed \$130,000.

FISCAL IMPACT: Staff is proposing to finance the acquisition and installation of the equipment via a lease agreement in an amount not to exceed \$130,000, which includes an anticipated interest rate of 3.75%. This approach will permit the City to spread the costs over a five-year period (the life of the product) and minimize the large fiscal impact from any one given year. Project costs for the procurement of the equipment are estimated at \$90,000 and \$40,000 for the implementation phase. A total amount of \$40,000 has been appropriated in the current Fiscal Year 2019-20 Budget for this project. This will require a continued \$22,500 budget allocation for the next consecutive four years, ending in Fiscal Year 2023-24 when the five-year lease terminates.

DISCUSSION: A novel coronavirus (COVID-19) was detected in Wuhan City, Hubei Province, in China in December 2019. On January 30, 2020, the World Health Organization declared COVID-19 a public health emergency of international concern. The United States, the State of California, and the City of South El Monte have all declared states of emergency arising from the COVID-19 pandemic.

COVID-19 has placed an additional strain upon the City's technological infrastructure. It is now more important than ever that the City have up to date and effective computers and associated technologies. Further, the City's current technology makes working remotely difficult. As working remotely is one of the most effective ways to slow the spread of the COVID-19 pandemic, this is especially problematic. As such, the City has determined that an upgrade to its technological infrastructure is necessary.

In coordination with the City's I.T. provider, Advanced Microcomputing Concepts, Inc. (AMC), staff is currently in the process of obtaining quotes for the necessary equipment and exploring viable financing solutions to finance the Project. Services for the implementation phase of the project will be provided by AMC. Resolution No. 20-33 (Resolution) waives the formal bidding requirements for the equipment purchase, and authorizes the City Manager to execute appropriate agreements and documentation for the financing, procurement, and implementation of equipment to upgrade the City's technology infrastructure.

EQUIPMENT

Due to the City declaring a state of local emergency in response to the COVID-19 pandemic (Local Emergency), which permits the Director of Emergency Services, currently designated as the City Manager, to forego formal bidding procedures during the event, staff recommends that the formal bidding procedures be waived in the procurement of the equipment. The upgrade of the City's equipment is key to the City's ongoing response to the Local Emergency. While the City is committed to securing the best price for the equipment, there is insufficient time and manpower to conduct the formal bidding in the face of the Local Emergency.

In lieu of the formal bidding, a minimum of three (3) different quotes are being sought-out, including two (2) different vendors that offer competitive government pricing (CDW-G and Dell). Both the pricing, functionality, and availability of the equipment will be assessed when selecting the equipment and respective provider(s).

The necessary equipment/licensing to be purchased includes:

- 45 Desktop Computers
- 11 Laptop Computers
- 12 Docking Stations
- 73 Monitors
- 2 Server Licenses
- 1 Firewall License
- Cabling and other miscellaneous supplies

FINANCING

Staff is exploring multiple options to finance the project over a period of five (5) years. Currently, there are two potential leasing firms and our current bank, Citizens Bank, who may offer favorable interest rates estimated to be 3.75%. Staff is experiencing delays in finalizing responses, which is linked to the COVID-19 pandemic. Additional options being researched include leasing programs offered through the equipment providers.

IMPLEMENTATION

The implementation phase will consist of the receipt of the equipment; migration of data from existing servers, desktops, and laptops; testing of hardware; verifying the compatibility of the new equipment and operating system; removal of old and installation of new equipment; installation of computer applications; and, training employees on how to utilize the new equipment.

While staff anticipates the implementation phase of the project to take between four (4) and six (6) months. The commencement and completion of the implementation phase will be dependent on the availability of the equipment. The demand for the equipment has significantly increased during this Local Emergency as much of the nation's workforce is required to work remotely and invest in additional equipment for home use, while the manufacturing of the equipment has decreased as a result of the Local Emergency impacting this industry, with a majority of the industry residing in China – the world's largest supplier.

ATTACHMENTS: Resolution No. 20-33

RESOLUTION NO. 20-33

A RESOLUTION OF THE SOUTH EL MONTE CITY COUNCIL WAIVING FORMAL BIDDING PROCEDURES AND AUTHORIZING THE CITY MANAGER TO EXECUTE APPROPRIATE AGREEMENTS AND DOCUMENTATION FOR THE FINANCING, PROCUREMENT, AND IMPLEMENTATION OF EQUIPMENT TO UPGRADE THE CITY'S TECHNOLOGY INFRASTRUCTURE FOR A TOTAL PROJECT AMOUNT NOT TO EXCEED \$130,000 DUE TO THE COVID-19 PANDEMIC

WHEREAS, in December, 2019, an outbreak of respiratory illness due to a novel coronavirus (COVID-19) was first identified in Wuhan City, Hubei Province, China; and

WHEREAS, the Center for Disease Control and Prevention (CDC) considers COVID-19 to be a very serious public health threat with outcomes ranging from very mild (including some with no reported symptoms) to severe, including illness resulting in death; and

WHEREAS, according to the CDC, there is no vaccine to prevent COVID-19 and there is no specific antiviral treatment recommended for COVID-19 at this time; and

WHEREAS, on January 30, 2020, the World Health Organization declared a Public Health Emergency of International Concern over the global spread of COVID-19; and

WHEREAS, on January 31, 2020, Health and Human Services declared a Public Health Emergency for the United States to aid the nation's healthcare community in responding to COVID-19; and

WHEREAS, the California Department of Public Health (CDPH) has activated its Medical and Health Coordination Center, and the Office of Emergency Services recently activated the State Operations Center to provide support and guide actions to preserve public health; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a State of Emergency for the State of California; and

WHEREAS, on March 11, 2020, the World Health Organization characterized COVID-19 as a "pandemic"; and

WHEREAS, on March 12, 2020, Governor Newsom issued Executive Order N-25-20 regarding COVID-19 further enhancing State and local government's ability to respond to the COVID-19 pandemic; and

WHEREAS, on March 12, 2020, the Mayor of the City of South El Monte, pursuant to Section 2.60.060 of the South El Monte Municipal Code, signed a proclamation which proclaimed the existence of a local emergency based on COVID-19; and

WHEREAS, on March 13, 2020, President Trump declared a National State of Emergency in response to increased spread of COVID-19; and

WHEREAS, on March 19, 2020, Governor Newsom issued Order N-33-20 requiring all individuals, except those performing essential services as defined by the order, living in California to stay home or at their place of residence in order to combat the COVID-19; and

WHEREAS, COVID-19 has placed an additional strain upon the City's technological infrastructure, and it is now more important than ever that the City's employees be able to use and rely upon up-to-date and effective computers and related technologies; and

WHEREAS, the City's current computers and associated technologies make working remotely difficult, requiring employees to be present at the City despite the shelter in place order; and

WHEREAS, prior to the declaration of a local emergency, the City's technological infrastructure was already at the stage where an upgrade was needed, and the local emergency has placed an additional strain upon it; and

WHEREAS, in order to address computer upgrades to meet demands for emergency responsiveness, the City wishes to enter into a lease agreement for the purchase of the required equipment and implementation costs, a purchase agreement with the equipment vender, and a services agreement with Advanced Microcomputing Concepts, Inc., the City's IT provider; and

WHEREAS, South El Monte Municipal Code Chapter 3.16 requires that a purchase of the equipment be subject to public bidding, although this process can be waived if the City Manager finds that exigent circumstances require the immediate purchase of such services, supplies or equipment pursuant to South El Monte Municipal Code Section 3.16.120; and

WHEREAS, the City's declaration of local emergency grants the Emergency Services Director the ability to suspend formal bidding requirements where necessitated by the City's response to COVID-19; and

WHEREAS, the City's ongoing response to COVID-19 does not allow for the additional time, resources, and manpower required to formally bid the purchase of the computer and related technologies; and

WHEREAS, the City Manager has found that exigent circumstances exist sufficient to justify waiving the formal bidding process, and the Emergency Services Director has determined that the City's response to COVID-19 requires the suspension of the formal bidding requirement for this purchase; and

WHEREAS, the City Council now wishes to waive the formal bidding process for the purchase of the necessary equipment, and authorize the City Manager to execute appropriate agreements and documentation for the financing, procurement, and implementation of equipment to upgrade the City's technology infrastructure.

NOW, THEREFORE, THE SOUTH EL MONTE CITY COUNCIL HEREBY RESOLVES AS FOLLOWS:

SECTION 1: The foregoing recitals are true and correct, and are incorporated herein by reference as though set forth in full.

SECTION 2: The City Council hereby waives the formal bidding requirements found in Chapter 3.16 for the purchase of computers and related technologies.

SECTION 3: The City Council hereby authorizes the City Manager to execute, subject to approval and amendment by the City Attorney, appropriate agreements and documentation for the financing, procurement, and implementation of equipment to upgrade the City's technology infrastructure for a total project amount not to exceed \$130,000.

SECTION 4: This resolution shall be effective immediately upon its adoption.

SECTION 5: The City Clerk shall certify to the passage and adoption of this Resolution.

PASSED, APPROVED and ADOPTED this 7th day of April, 2020.

Gloria Olmos, Mayor

ATTEST:

Rose Juarez, City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF SOUTH EL MONTE)

I, Rose Juarez, City Clerk of the City of South El Monte, do hereby certify that the foregoing Resolution, being Resolution No. 20-33 was passed and approved by the City Council of the City of South El Monte at a Special meeting of said Council held on the 7th day of April, 2020, and that said Resolution was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Rose Juarez, City Clerk