



CITY COUNCIL Staff Report

Meeting Date: April 7, 2020

To: Mayor and City Council

From: Celia Brewer, City Attorney

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Subject: Temporary Suspension of Evictions of Commercial Tenants Located in the City of Carlsbad for Nonpayment of Rent Due to COVID-19 Related Decreases in Business Income

Recommended Action

Adopt a resolution temporarily suspending evictions of commercial tenants located in the City of Carlsbad for nonpayment of rent due to COVID-19 related decreases in business income.

Executive Summary

COVID-19's economic impacts have raised questions about the need for relief from commercial evictions as well as residential evictions, foreclosures, and rent increases. On March 16, 2020, Governor Gavin Newsom issued Executive Order N-28-20 (EO N-28-20), authorizing local governments to provide relief from commercial and residential evictions through the end of May.

Since then, several local governments within San Diego County and across the state have enacted temporary eviction relief, although their approaches to providing the relief are varied. Concerned about the speed and consistency of relief measures, members of the state Legislature, the League of California Cities, and other interested groups, including the City of Carlsbad, the Carlsbad Chamber of Commerce, and the Carlsbad Village Association, asked Governor Newsom to impose a statewide eviction moratorium.

On March 27, 2020, Governor Newsom issued Executive Order N-37-20, which provides temporary eviction relief for residential tenants. Governor Newsom previously obtained agreements from national and state financial institutions for residential foreclosure relief, and there are existing state laws that limit residential rent increases generally and during a state of emergency.

Left unaddressed is statewide eviction relief for commercial tenants. The proposed resolution, to the extent permitted by federal law, temporarily suspends evictions of commercial tenants located in the City of Carlsbad for nonpayment of rent due to COVID-19 related decreases in business income.

Discussion

In the wake of COVID-19, questions have arisen about whether reductions in household and business income will spur residential and commercial evictions and whether the city should temporarily suspend such evictions.

Currently, evictions are not occurring because the county courts are closed for non-emergency matters and are expected to remain closed at least through the end of April. Once county courts resume operations, it is unclear whether evictions will resume immediately or whether they will be deferred to allow the courts time to address other priorities (e.g., criminal, juvenile, and family matters).

Residential Evictions

Even without COVID-19's impacts, existing laws limit why and when certain residential evictions may occur. For example:

- The federal Servicemembers Civil Relief Act (50 USC § 3901 et seq.) requires court approval for evictions of a servicemember or a dependent from residential rentals where the monthly rent is below a certain dollar amount (currently about \$3,900/month).
- California Civil Code Section 798, et seq., the Mobilehome Residency Law, prohibits termination of a mobilehome tenancy except for specified reasons and only after at least 60 days' notice.
- California Civil Code Section 1946.2, subdivisions (a) and (c), prohibit evictions of certain residential tenancies of 12 months or longer without just cause and, where the just cause is curable, such as a default in the payment of rent, only after the landlord provides an opportunity to cure.
- California Penal Code Section 396, subdivision (f), prohibits a landlord, during a state of emergency, from evicting a residential tenant and then renting the premises for more than the landlord could have charged the evicted tenant.

The federal government, through the U.S. Department of Housing and Urban Development, has addressed concerns about COVID-19 related residential evictions by imposing a 60-day suspension of evictions of persons from properties secured by FHA-insured single family mortgages. The suspension began on March 18, 2020.

In California, Governor Newsom first addressed eviction concerns on March 16, 2020, by issuing EO N-28-20, which includes provisions authorizing local governments to impose limits on residential or commercial evictions if:

- The basis for the eviction is either nonpayment of rent or a foreclosure;

- The nonpayment of rent or foreclosure resulted from a substantial decrease in household or business income, or substantial out-of-pocket medical expenses; and
- The decrease in income or out-of-pocket medical expenses are documented and were caused either by the COVID-19 pandemic or government response to COVID-19.

The authorization is not intended to relieve a tenant of the obligation to pay rent or to restrict a landlord's ability to recover rent due. The authorization is effective through May 31, 2020, unless extended.

EO N-28-20 prompted several local governments throughout the state to impose eviction moratoriums. Locally, as of this writing, the County of the San Diego and the cities of Chula Vista, Encinitas, Imperial Beach, Oceanside, San Diego, and San Marcos have taken this step and cities of Escondido and Santee are considering whether to take this step. However, the details of their respective actions vary.

Concerned about the speed and consistency of relief measures, members of the state Legislature, the League of California Cities, and other interested groups, including the City of Carlsbad, the Carlsbad Chamber of Commerce, and the Carlsbad Village Association, asked Governor Newsom to impose a statewide eviction moratorium. On March 27, 2020, Governor Newsom issued Executive Order N-37-20 (EO N-37-20), which provides temporary eviction relief for residential tenants statewide through the end of May.

Residential Foreclosure Limits

Governor Newsom has not issued an Executive Order authorizing local governments to enact emergency foreclosure relief. However, EO N-28-20 requested financial institutions to implement such relief. Since issuing EO N-28-20, Governor Newsom announced an agreement with Citigroup, JPMorgan Chase, U.S. Bank, Wells Fargo and nearly 200 state-chartered banks, credit unions, and servicers to provide the following relief for Californians impacted by COVID-19:

- A 90-day grace period for mortgage payments;
- A 60-Day moratorium on initiating foreclosure sales or evictions;
- A 90-day waiver of mortgage-related late fees and other fees; and
- No negative credit impacts resulting from relief.

Bank of America is not part of Governor Newsom's agreement, but it has stated publicly it will be deferring mortgage payments on a month-to-month basis until the end of the state of emergency.

Additionally, on March 18, 2020, the federal government, through the U.S. Department of Housing and Urban Development, imposed a 60-day moratorium on the initiation and completion of foreclosures on properties secured by FHA-insured single family mortgages.

Residential Rent Increase Limits

Governor Newsom has not issued an Executive Order authorizing local governments to enact emergency rent increase relief. In addition, the city does not have a rent control ordinance and past efforts to obtain voter approval for such an ordinance have been unsuccessful.

Nonetheless, California Penal Code Section 396, subdivision (e), prohibits a landlord from raising rent more than 10% during a declared state of emergency. Recently enacted California Civil Code Section 1947.12 also limits certain residential rent increases to no more than 10% annually.

Commercial Evictions

Left unaddressed by Governor Newsom's efforts as of this writing is eviction relief for commercial tenants. The eviction relief enacted by the County of the San Diego and the cities of Chula Vista, Oceanside, Imperial Beach and San Diego applies to both residential and commercial tenants. The eviction relief being considered by the cities of Escondido and Santee also applies to both residential and commercial tenants.

Local governments have enacted eviction relief by adopting either a resolution or an urgency ordinance. Both actions take effect immediately. Adopting a resolution requires a majority vote, or an affirmative vote of three council members. Adopting an urgency ordinance requires a 4/5 vote, or an affirmative vote of four council members. Because the proposed commercial tenant eviction relief is temporary and confined to the COVID-19 emergency circumstance, the City Attorney's Office is recommending the City Council adopt a resolution, if the City Council decides to act on this issue.

The proposed resolution, to the extent permitted by federal law, temporarily suspends evictions of commercial tenants located in the City of Carlsbad for nonpayment of rent due to COVID-19 related decreases in business income. To obtain this eviction relief, a commercial tenant must satisfy the following requirements:

- Prior to Governor Newsom's proclamation of a state of emergency on March 4, 2020, the commercial tenant was current on rent due to the landlord under the terms of the commercial tenant's rental agreement with the landlord.
- The commercial tenant notifies the landlord in writing, which includes email, before the rent is due, or within a reasonable time afterwards not to exceed 10 business days, that the commercial tenant needs to delay all or some payment of rent because of an inability to pay the full amount due to reasons related to COVID-19, including, without limitation, the following:
 - The commercial tenant was unable to operate or fully operate the commercial tenant's business because:

- the business was not in one of the federal critical infrastructure sectors or one of the additional critical sectors designated by the California State Health Officer, or
 - the business was in a federal or state critical sector, but could not be operated in compliance with the social distancing and related requirements imposed by state or local public health officers, or
 - the business was in a federal or state critical sector, but was owner-operated and the owner was sick with, showing symptoms of, or had been directly exposed to COVID-19; was caring for another who was sick with, showing symptoms of, or had been directly exposed to COVID-19; or was caring for a minor child who did not have school or child care supervision.
- The commercial tenant experienced a substantial decrease in the tenant's business income resulting from COVID-19, the state of emergency, or related government response.
- Within 10 business days of providing notice of inability to pay rent, the commercial tenant provides the landlord with documentation or objectively verifiable information showing the commercial tenant's inability to pay rent was due to reasons related to COVID-19. If the commercial tenant does not provide the landlord with the documentation or objectively verifiable information within this time period, the landlord may pursue any enforcement action permitted under applicable law and the parties' rental agreement.

These requirements are modeled after the requirements established by Governor Newsom for residential eviction relief in EO N-37-20. They are also consistent with the authorization Governor Newsom provided to local governments in EO N-28-20 and the eviction relief enacted by other local agencies in the San Diego region.

The resolution does not allow a commercial tenant who is able to pay all or some of the rent due to delay paying that rent amount. The resolution also does not relieve a commercial tenant of liability for unpaid rent or applicable late fees. The resolution allows the landlord to seek unpaid rent and applicable late fees after the expiration of the local emergency declaration and requires the tenant to pay the unpaid rent and applicable late fees within three months of the expiration of the local emergency, unless the landlord and the commercial tenant agree upon an alternative payment arrangement. If a commercial tenant elects to vacate the premises while the resolution is effective, all rent due is owed at the time of the vacancy.

The temporary suspension remains in effect until the end of May 2020, unless extended. If state or federal authorities enact laws or issue orders or regulations providing commercial

tenants located in the City of Carlsbad with COVID-19 related eviction relief, those state or federal laws, orders, or regulations will control over the resolution.

Fiscal Analysis

The City Attorney's Office does not anticipate needing an additional budget appropriation to fund the costs of preparing, noticing, and publicizing the resolution. The City Attorney's Office is unable to estimate the potential costs of enforcing the resolution as such costs would depend on the compliance rate of those subject to it and the complexity of individual cases. Like other city departments, the City Attorney's Office is tracking its time spent on COVID-19 related matters for possible later reimbursement from the Federal Emergency Management Agency or similar sources.

Next Steps

Provide widespread notice and publicity of the resolution.

Environmental Evaluation (CEQA)

Pursuant to California Public Resources Code Section 21065, this action does not constitute a "project" within the meaning of CEQA in that it has no potential to cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and therefore does not require environmental review.

Public Notification and Outreach

This item was noticed in accordance with the Ralph M. Brown Act requirements for special meetings and was available for public viewing and review at least 24 hours prior to scheduled meeting.

Exhibits

1. City Council resolution
2. Correspondence