



Staff Report

File #: REPORT 20-0176, Version: 1

**Honorable Mayor and Members of the Hermosa Beach City Council
Regular Meeting of March 24, 2019**

**TEMPORARY MORATORIUM ON FORECLOSURES AND
RESIDENTIAL AND COMMERCIAL EVICTIONS FOR
NONPAYMENT OF RENT DURING COVID-19 PANDEMIC**

(City Attorney Michael Jenkins)
(Assistant City Attorney Lauren Langer)

Recommended Action:

Staff recommends that the City Council adopt an Urgency Ordinance of the City of Hermosa Beach enacting a temporary moratorium on foreclosures and evictions due to nonpayment of rent by residential and commercial tenants impacted by the novel coronavirus (covid-19), and setting forth the facts constituting such urgency.

The Urgency Ordinance requires four-fifths vote of the City Council and if approved, will take effect immediately.

Background and Analysis

On March 4, 2020, Los Angeles County declared a local and public health state of emergency in response to the increased spread of COVID-19, the disease caused by the novel coronavirus. As of March 18, 2020, there are 190 confirmed cases of COVID-19 in Los Angeles County, and this number is expected to continue to grow as the virus spreads throughout the community.

On March 12, 2020, California Governor Gavin Newsom declared a State of Emergency in response to the increased spread of COVID-19. The President of the United States has declared a federal emergency as a result of the spread of the COVID-19.

On March 12, 2020, California Governor Gavin Newsom ordered cancellation of gatherings over 250 statewide and further called for canceling or postponing even smaller gatherings where those attending cannot keep six feet apart from each other, and limiting groups of older or unhealthier people more vulnerable to the disease to no more than 10.

On March 16, 2020, the City Council of the City of Hermosa Beach declared a state of local emergency in response to the COVID-19 global pandemic and imposed certain orders in response to the pandemic.

On March 16, 2020, the Los Angeles County Public Health Officer issued an order countywide that (1) prohibits gatherings where at least 50 people are expected to attend, (2) puts limits and regulations on gatherings of 10-49 people, (3) limits restaurants to drive-through/takeout/delivery, (4) closes bars (that don't serve food), gyms, movie theaters, etc.

While social distancing and the abovementioned measures are necessary to fight the global pandemic, they can have extreme economic impacts. Fear of the widening public health crisis has impacted consumer behavior with closure of restaurants, and bars; fewer people going to shops, events being cancelled; and people reducing their traveling. As a result of this social distancing, people in our community may see their incomes reduced or may have to take time off work to care for their health or the health of family members. In the face of this uncertainty, people may need to make difficult financial decisions and may be unable to pay rent due to reduced income.

On March 16, 2020, Governor Newsom promulgated Executive Order N-28-20, which authorized local governments to exercise their police power to impose substantive limitations on foreclosures and residential and commercial evictions based on nonpayment of rent when the nonpayment of rent arose out of a substantial decrease in household or business income due to the effects of COVID-19.

On March 19, 2020 the Los Angeles County Public Health Officer issued a second countywide order, the Safer at Home For Control of COVID-19 Order, ordering closure of all non-essential retail businesses, indoor malls and shopping centers, playgrounds for children, and prohibiting all public and private group events and gatherings of 10 or more people (which includes any gathering likely to bring together 10 or more people indoors or outdoors in a confined space for more than 5 minutes for any purpose, including business, cultural, entertainment, or social event). The purpose of the order is to further restrict and limit gathering of persons and require closures of non-essential retail businesses in an effort to stem or slow the spread of the virus.

On March 19, 2020, the Governor of the State of California, also issued Executive Order N-33-20, an Order of the State Public Health Officer ordering all individuals living in California to stay home or at their place of residence except as needed to maintain continuity of operations of outlined federal critical infrastructure sectors.

Residential Eviction Moratorium

The attached Urgency Ordinance is in accordance with Executive Order N-28-20. It imposes a moratorium on evictions for failure to pay rent during this emergency period, if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19. Under the proposed ordinance, a landlord knows of a tenant's inability to pay rent for the covered reasons if the tenant, within 30 days after the date that rent is due, notifies the landlord in writing of lost income and inability to pay full rent due to financial impacts related to COVID-19, and provides

documentation to support the claim. Notification “in writing” includes email or text communications to a landlord or the landlord’s representative with whom the tenant has previously corresponded by email or text. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant’s claim.

For purposes of this moratorium on residential evictions, “financial impacts related to COVID-19” include, but are not limited to, tenant lost household income as a result of any of the following: (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (2) lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19; (3) compliance with a recommendation from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (4) extraordinary out-of-pocket medical expenses; or (5) child care needs arising from school closures related to COVID-19.

The moratorium does not relieve the tenant from eventually paying the rent within six months after the expiration of the local emergency. The landlord may not charge a late fee on the rent. The moratorium is intended to be narrow and no other legal remedies available to landlord are affected by this ordinance.

During a state of emergency, it is a crime for a landlord to take advantage of the situation by evicting a tenant and then raising the rent above the existing tenant's rent under Penal Code s. 396(f). This moratorium will provide additional protections to tenants. In addition to the City’s general police power under article XI, section 7 of the California Constitution to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws, during a local emergency, Government Code § 8634 (and Chapter 2.56 of the Hermosa Beach Municipal Code) also authorize the City to promulgate orders and regulations necessary to provide for the protection of life and property. The coronavirus outbreak presents a health and financial crisis to all and this situation is unprecedented and constantly evolving.

This urgency measure will provide protections to those who have had unforeseen financial impacts due to COVID-19. Displacement through eviction or foreclosure creates undue hardship for tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing, and lack of moving services and supplies as stores and businesses close. During the COVID-19 pandemic outbreak, affected tenants who have lost income due to impact on the economy or their employment may be at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted. People experiencing homelessness are especially vulnerable to the spread of COVID-19 due to an inability to practice social distancing and a lack of access to health care.

The Governor has ordered the State to take extraordinary measures to secure shelter for homeless populations during this emergency to limit exposure to and spreading of COVID-19. The Governor

has ordered all Californian's to stay home, except as needed to maintain continuity of operations of outlined federal critical infrastructure sectors. Widespread evictions of tenants vulnerable to eviction due to financial hardship occurring due to COVID-19 would exacerbate the challenge of sheltering the homeless during this emergency, and increase the risk of spread of COVID-19 (and cause people to violate the Governor's Executive Order).

This situation is unprecedented and the circumstances are changing hourly. At the time of writing this report, people are directed to stay home, large and small social events are cancelled, gatherings of more than 10 people are prohibited, schools are all closed, the County of Los Angeles has closed non-essential retail, bars and restaurants and gathering places, libraries are closed, municipal operations are shifting to essential emergency operations only, and many workers are not permitted to work and may not be paid for missed work. The situation is evolving so rapidly that it is hard to capture the full scale of the closures. However, many City residents will be unable to work at any job that requires physical presence.

Commercial Eviction Moratorium

For commercial tenants, businesses are expected to see a sharp drop in revenue, making it difficult to pay workers. The loss of business income as a result of COVID-19 may inhibit City businesses from fulfilling their financial obligations, including payment of rent, payment of wages to workers, and making public utility payments such as water and sewage charges and parking penalties. This moratorium will allow businesses to follow the national, state and local directives to close their businesses without fear of losing their business during this emergency. This moratorium will promote stability in commercial tenancies in order to relieve economic pressures and impacts caused by COVID-19.

Foreclosure Moratorium

In accordance with the Governor's order, the ordinance also suspends residential and commercial foreclosures. While this is a complex area of the law and we expect some federal or state relief on this topic, it is imperative that property owners also not fear foreclosure during this limited time of emergency. The ordinance does not relieve the mortgagor of liability for any unpaid mortgage payments after the emergency, encourages the parties to create a payment plan in lieu of foreclosure later on, and acknowledges that respective rights and obligations of the parties in any foreclosure proceeding shall be adjudicated in the appropriate court of law.

Conclusion

If approved, the Ordinance will go into effect immediately upon adoption and will remain in effect until May 31, and may be extended during the period of local emergency. In order to prevent inconsistencies in the law, the City Manager may also suspend the Ordinance if a similar federal or

state law is adopted.

Other cities in California, including San Jose, West Hollywood, Hayward, Oakland, Sacramento, Los Angeles, San Diego, Palm Springs and Santa Monica have approved, or are considering, similar urgency measures.

These proposed measures are extraordinary and should be narrowly tailored and utilized to the minimum extent necessary to achieve the stated goals of preventing the spread of the virus and keeping people in their homes and without imminent fear of foreclosure or eviction during this unprecedented health crisis.

Attachments:

1. Urgency Ordinance

Respectfully Submitted by: Lauren Langer, Assistant City Attorney

Concur: Michael Jenkins, City Attorney

Approved: Suja Lowenthal, City Manager