



Staff Report

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Honorable Mayor and Members of the Hermosa Beach City Council Regular Meeting of May 26, 2020

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

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

Recommended Action:

Staff recommends that the City Council adopt an Urgency Ordinance of the City of Hermosa Beach extending the temporary moratorium on evictions and foreclosure during the COVID-19 pandemic and setting forth the facts constituting such urgency (**Attachment 1**).

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

Background:

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. 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 also declared a federal emergency as a result of the spread of the COVID-19.

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, 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 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.

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, which was further clarified on March 21, 2020 and again on April 10, 2020 and May 13th. This public health order prohibits all public and private group gatherings and events and requires people to stay in their homes with limited exceptions; and requires closure of all non-essential retail businesses, shopping centers, playgrounds for children, bars, nightclubs, movie theaters and all similar gathering places. 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. Restrictions are constantly evolving to prevent the spread of COVID-19. As of the drafting of this report, the Governor has authorized some limited retail and outdoor recreation venues to reopen and the County of Los Angeles updated its Safer at Home Order on May 13, 2020 to begin the move into stage 2 of the County's Roadmap to Recovery. The restrictions have been in place for nearly two months and according to a recent report from Los Angeles County, the Stay at Home Orders are likely to be in place for another three months.

On March 24 and April 14, 2020, the City Council of the City of Hermosa Beach adopted Urgency Ordinances which temporarily suspended foreclosures and residential and commercial evictions for the nonpayment of rent resulting from COVID-19-related financial impacts through May 31, 2020 (**Attachments 2 and 3**). On April 7, 2020, there were 6,910 confirmed cases of COVID-19, and 169 deaths in Los Angeles County. As of May 21, 2020, those numbers had risen to 40,857 cases and 1970 deaths in Los Angeles County alone, while the stay at home orders are in place. The recitals and findings for the City's Urgency Ordinances remain applicable here.

Analysis:

The degree of health and economic impact is unprecedented and unknown. Unemployment numbers are higher than ever with millions of people filing for unemployment and the city has a tremendous interest in preventing widespread homelessness and supporting the purpose behind safer-at-home directives issued by federal, state and county health authorities.

EVICITION PROTECTION THROUGHOUT THE STATE

In addition to the City's local ordinances, eviction protection has been provided from other sources.

The Governor's Executive Order N-28-20 ("Order 28-20"), effective March 16, 2020 through May 31, 2020, creates statewide protections against evictions. Order 28-20 authorizes local governments to halt evictions in two ways. First, it suspends the preemptive effect of applicable state laws on local regulation of residential and commercial evictions. The order permits cities to use their police power to impose restrictions on residential and commercial tenant evictions resulting from certain financial impacts of COVID-19 without any concern of state preemption through May 31, 2020, namely reduced income or out-of-pocket medical expenses caused by COVID-19. The Order also temporarily protects tenants from eviction by authorizing cities to enact legislation that suspends

judicial foreclosures (Code Civ. Proc. §§ 725a et seq.), unlawful detainers (Code Civ. Proc. §§ 1161 et seq.), “and any other statutory cause of action that could be used to evict or eject a residential or commercial tenant after foreclosure.” Importantly and consist with the Order, the city’s ordinance does not relieve a tenant of the obligation to pay rent or restrict a landlord’s ability to recover rent due after the period of emergency. Consistent with the Order, the city’s ordinances are in effect through May 31, 2020.

The next executive order affecting evictions was issued by Governor Newsom on March 27, 2020. Executive Order N-37-20, extends the deadline to respond to an eviction complaint by 60 days for any tenant who, from March 27 through May 31, is served a complaint seeking to evict the tenant for nonpayment of rent. To receive the extension, the tenant must satisfy specified requirements. The tenant must be current on rent payments at the time Order 37-20 was issued. The tenant must also notify the landlord in writing before rent is due, or no later than seven days after it is due, that he or she cannot pay the entire rent for financial reasons related to COVID-19. The City’s ordinance says that the tenant must provide notice within 30 days after rent is due. The tenant’s inability to pay must be verified with documentation (e.g. termination notice, pay stub, medical bills, etc.), but it need not be provided until the payment of back-due rent. Protected tenants are still obligated to repay the entire rent owed to landlords in a timely manner and will be subject to eviction enforcement once the executive order expires. The order also prohibits, through May 31, the Sheriff from enforcing any writ of possession to evict protected tenants

Comparing the two orders, Order 37-20 delays nonpayment evictions without requiring cities to adopt local legislation mirroring the order. In effect, Order 28-20 gives local governments the option to suspend evictions, halt court actions that could result in eviction, and afford renters the ability to pay rent at a later date but does not require them to do so. Order 37-20, on the other hand, applies uniformly across the state and requires no local legislation. Tenants facing financial difficulties as a result of COVID-19 are still subject to unlawful detainer actions (unless a local ordinance pursuant to Order 28-20 prohibits them) and may be evicted after May 31, 2020.

Effective April 6, 2020, the California Judicial Council also approved eleven temporary emergency rules to be added to the California Rules of Court. Emergency Rule 1, in essence, prevents unlawful detainer actions filed on or after April 6 to proceed, bars entry of default for any defendant who failed to appear in an action filed on or after April 6 (unless excused under an executive order), and sets or continues trial dates for at least 60 days, unless contrary to public health and safety. The rules Remains effective until 90 days after the Governor lifts the state of emergency. Thus, tenants have some statewide relief from evictions generally.

On April 14, 2020, the County Board of Supervisors amended its county eviction moratorium. The resolution extends the county eviction moratorium to *incorporated* areas of the County; but, exempts “cities that have local eviction moratoria in place.” The County’s resolution extends the repayment period to one year and is effective through June 30th. The county ordinance requires notice to

landlords of inability to pay within 7 days (the city ordinance allows 30 days). The county's ordinance also prohibits no-fault evictions through June 30, 2020. The County's ordinance does not address foreclosures.

There is also an array of eviction protection bills pending in the state legislature for consideration now that the legislature is back in session.

We do not know if or when the Governor's eviction orders will be extended beyond May 31. The City Council desires to provide more assurances to renters that they will not be evicted after May 31, 2020.

The web of regulation is complicated and this situation is unprecedented. The applicable rules continue to change and evolve and we are monitoring the situation closely. As of the time of writing this report, we do not know if the Governor's Orders will be extended; but, it is likely that the state and local emergency period will extend well beyond May 31. As such, the stated justification for preventing mass commercial and residential evictions will remain beyond May 31. Even if evictions are not being processed through the courts, there is value in having a local ordinance that tailors the eviction protections to the community's specific needs and sets out the repayment protocols after the local emergency. The practical reality of this situation is that financially impacted tenants will not be able to repay back rent the day the emergency order is lifted, and repayment provisions are important to achieve the stated purpose of the ordinance (and the state orders). As such and given the all of the interests at play for both the landlord and tenants, the city may consider extending the local ordinance. However, the City should proceed cautiously and slowly in its efforts to protect commercial and residential tenants and manage any risk associated with regulating evictions in the time of a global health pandemic.

In order to prevent confusion for tenants from the complicated web of state and county eviction protections, the City Attorney's office recommends extending the local ordinances in short increments. This means the local eviction protection (and rent deferral before repayment period) would remain in place until July 31, 2020, at which time the Council can assess the status of the local emergency and the efficacy of the ordinance in relationship to the state and county protections. This will allow the city to revise local regulations as necessary as federal, state and county regulations evolve. This is a complex and unprecedented area of the law, and the legal analysis underlying these ordinances should also be revisited periodically. Accordingly, the attached ordinance proposes to extend the local eviction moratoria through July 31, 2020.

Attachments:

1. Draft Urgency Ordinance Extension
2. April 14 Urgency Ordinance
3. March 24 Urgency Ordinance

Respectfully Submitted by: Lauren Langer, Assistant City Attorney

Concur: Mike Jenkins, City Attorney

Approved: Suja Lowenthal, City Manager