



Staff Report

File #: REPORT 20-0625, Version: 1

Honorable Mayor and Members of the Hermosa Beach City Council
Regular Meeting of September 22, 2020

**ADOPTION OF AN URGENCY ORDINANCE OF THE
CITY OF HERMOSA BEACH, CALIFORNIA, CLARIFYING
THE TEMPORARY MORATORIUM ON EVICTIONS DURING
THE COVID-19 PANDEMIC TO REFLECT STATE LAW AND
SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY**

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

Recommended Action:

Staff recommends that the City Council:

1. Adopt an Urgency Ordinance No. 20-1417U of the City of Hermosa Beach to clarify provisions of the moratorium on residential evictions to reflect state law; and
2. Extend the temporary moratorium on commercial evictions, 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

Executive Summary

The City Council adopted a moratorium on residential and commercial evictions and foreclosures related to COVID-19. The moratoria are set to expire on September 30, 2020. The state legislature recently adopted urgency legislation to provide residential eviction protections throughout the state (AB 3088).

Presented here for Council consideration is an urgency ordinance that clarifies the current residential eviction moratorium to incorporate and reflect the greater protections to tenants provided under the new state law; but retains the local provisions that provide the most protection for local renters. The proposed urgency ordinance also extends the moratorium on commercial evictions through January 31, 2021, to support businesses that must remain closed under government directives to prevent the spread of COVID-19.

Background:

Residential & Commercial Eviction Protections During COVID-19 Emergency

On March 4, 2020, California Governor Gavin Newsom declared a State of Emergency to address

the global pandemic caused by a respiratory disease which has been named “COVID-19”. On March 15, 2020, the Mayor of the City of Hermosa Beach (“City”), Mayor Mary Campbell, declared a state of local emergency. At a special meeting on March 16, 2020, the City Council approved and ratified the declaration of local emergency.

On March 24, 2020, the City passed an Urgency Ordinance, which instituted an eviction moratorium covering nonpayment of rent due to COVID-19 retroactive to March 16, 2020. The current moratorium allows commercial and residential tenants to avoid eviction for non-payment of rent due to financial impacts related to COVID-19 and ultimately, to defer paying that rent during the moratorium period. The moratorium is set to expire on September 30, 2020.

Effective April 6, 2020, the Judicial Council of California adopted emergency rules amending the California Rules of Court to effectively suspend all unlawful detainer (eviction) and foreclosure actions, unless necessary to protect public health and safety, until 90 days after the state’s declaration of emergency is lifted. The Judicial Council recently voted to sunset those rules on September 1, 2020.

Assembly Bill 3088: New State Legislation Affecting Residential Eviction Moratorium

To prevent a wave of evictions with the sunset of the Judicial Council rules, Governor Newsom signed Assembly Bill 3088 (AB 3088) on August 31, 2020. The bill, which took immediate effect, enacted the COVID-19 Tenant Relief Act of 2020 (Act) to provide statewide eviction protections for residential tenants (including mobile home tenants) experiencing a financial hardship relating to COVID-19.

The Act prohibits residential tenants from being evicted for failure to pay rent due to a COVID-19-related hardship occurring between March 1 and August 31, 2020, so long as the tenant provides the landlord with a written declaration of hardship.

Residential tenants experiencing COVID-19-related financial hardships between September 1, 2020 and January 31, 2021 are also protected from eviction provided they pay at least 25 percent (25%) of the rent due during this period. In addition to providing a written declaration of hardship, tenants with a household income of not less than \$100,000 per year and whose household income is 130 percent (130%) of the county median household income, may be asked to submit additional documentation to support their hardship declarations.

130 Percent (130%) Median Household Income
Los Angeles County, 2020

Members in Household	Income Limit
1	\$102,570
2	\$117,130
3	\$131,820
4	\$146,380
5	\$158,210
6	\$169,910
7	\$181,610
8	\$193,310

Though nonpayment of rent due between March 1, 2020 through January 31, 2021 is not grounds for eviction for tenants who comply with the Act's preconditions for protection (timely returning signed hardship declarations and paying at least 25% of rent owed between September 1, 2020 and January 31, 2021), residential tenants are still obligated to pay back all rent accrued between March 1, 2020 through January 31, 2021. If a residential tenant fails to take the steps needed to qualify for eviction protection by January 31, 2021, the landlord may serve an eviction notice to file an unlawful detainer action to evict the tenant as early as February 1, 2021. The Act does not specify a specific repayment period (as the local eviction moratorium ordinances have done).

The Act allows landlords to start recovering deferred rent beginning March 1, 2021 by filing claims in small claims court. All existing local ordinances must also comply with the repayment time limits of the new state law.

Local ordinances with repayment periods that start on or before March 1, 2021, like Hermosa Beach's ordinance, may not be extended beyond the existing repayment start dates, and their repayment periods may not be altered. The City's current ordinance has a six-month repayment period, starting on October 1, 2020, and requires tenants to repay rent deferred between March 1, 2020 through September 30, 2020, in full, *before* April 1, 2021. Staff recommends keeping this repayment period in place, which is authorized by the bill.

As the City's eviction protections wind down, the state now provides uniform eviction protection through January 31, 2021. The new law introduces a requirement for tenants who seek eviction protection to pay at least 25% of rent beginning in September 2020 through January 31, 2021, to avoid eviction based on nonpayment of rent that came due during that period. The bill provides that the 25% of rent due for those covered months must be paid by January 31, 2021. Although not encouraged, a tenant could potentially wait until January 31, 2021 to pay 25% of five-months' worth of rent (i.e. one month and quarter of monthly rent). Since Hermosa Beach has an existing eviction moratorium that ends on September 30, 2020 (and that cannot be extended), the new state law eviction protection will be applicable to Hermosa Beach residents on October 1, 2020. This means

that for the months of October, November, December and January, upon receipt of notice from their landlord, the tenants must provide a declaration and pay 25% of rent for those months, in total, to avoid eviction.

The law also makes it easier for tenants to obtain eviction protection in a different regard. As opposed to the current ordinance's documentation or explanation requirements, a tenant (other than a "high-income tenant") need only sign a declaration of hardship to avoid eviction moving forward for a given month of deferred rent. This also provides consistency and certainty for landlords on what documentation is required. To conform to the new law and ease documentation burdens on a majority of tenants, staff recommends amending select provisions of the local eviction moratorium ordinance to clarify when the new state law provisions take over, as described in more detail below.

Furthermore, any extension of a current ordinance or enactment of a new ordinance adopted in response to the COVID-19 pandemic to protect residential tenants from eviction for nonpayment of rent will have no effect "before February 1, 2021". This phrasing by the Act suggests that cities may revise ordinances to reflect the new state law for now and again adopt residential tenant protections for non-payment of rent beginning next February. We will monitor the state law and report back on any extensions of the schedule in the state law, or any renewed authorization to regulate locally. Accordingly, staff recommends ordinance revisions that implement the provisions of state eviction protection, while retaining the existing six-month repayment period (October 1, 2020-March 31, 2021). This approach seems to provide the best eviction protections while applying a more uniform and consistent set of rules throughout the state.

Finally, courts cannot process unlawful detainer (or eviction) actions until October 5, 2020, whether or not the action is based in whole or in part on nonpayment of rent or other charges. The Act does not affect the moratorium on commercial tenant evictions; but rather, sets forth a process for residential tenants who have been financially impacted by COVID-19 to avoid eviction for non-payment of rent.

Residential Landlord Foreclosure Protections Under AB 3088

AB 3088 also enacted the COVID-19 Small Landlord and Homeowner Relief Act of 2020 (Homeowner Act). The Homeowner Act extends certain foreclosure protections to small landlords that would not otherwise apply to them under existing law. In general, a "small landlord" is a landlord that owns a residential property with no more than four dwelling units and that is occupied by one or more residential tenants. Among other protections created under the Homeowner Act, if a landlord has submitted a loan modification application to a lender, the lender cannot start or continue a foreclosure on a first lien mortgage or deed of trust that is secured by the landlord's residential real property if certain conditions are met. Those conditions require that the property be occupied by a tenant, contain no more than four dwelling units, and meet certain other criteria, including that the tenant occupying the property is unable to pay rent due to reduction in income resulting from COVID-19. These foreclosure protections will be in effect until January 1, 2023.

Conclusion

AB 3088 has a preemptive effect on local ordinances, and the City's ordinance must be consistent with its provisions. The proposed Urgency Ordinance therefore clarifies the current residential eviction moratorium to incorporate and reflect the greater protections to tenants provided under the new state law; but retains the local provisions that provide the most protection for local renters. The ordinance also extends the moratorium on commercial evictions to support businesses that must remain closed under government directives to prevent the spread of COVID-19.

Analysis

Proposed Urgency Ordinance

Residential Eviction Moratorium for Non-Payment of Rent Due to COVID-19

The proposed ordinance would clarify current local provisions governing the steps residential tenants must take to receive eviction protection for nonpayment of rent due to COVID-19. After September 30, 2020, when the city's eviction moratorium ends, these eviction protections are governed by the Act. This means that unless a tenant is a "high-income" tenant, the tenant no longer needs to provide documentation or detailed explanation of financial hardship caused by COVID-19. The Act instead requires tenants to return to their landlords a signed declaration of hardship within 15 days of receiving a notice of eviction from their landlords. High income tenants have additional documentation requirements. Tenants do not have to prepare this declaration. Landlords must provide a blank declaration to each tenant when serving a 15-day notice to pay rent.

Landlords will also not be able to recover rent from this period covered by the state law until at least March 1, 2021. For rent due between October 1, 2020 and January 31, 2021, tenants will have to sign hardship declarations and pay at least 25% of back-rent from that period by January 31, 2021 to avoid eviction. Per the Act, as long as the tenant complies with these procedures, a landlord cannot go to small claims court to recover back rent from tenants until March 1, 2021. Under Hermosa Beach's ordinance, while the Act authorizes landlords to recover deferred rent as early as March 1, 2021, the rent in Hermosa Beach will not be considered past due until after the six-month repayment period, beginning on October 1, 2020, ending on March 31, 2021. So landlords should not be recovering deferred rent as consumer debt until after that time.

Residential landlords are still encouraged to offer payment plans to tenants, and the parties may still draw down on a security deposit to pay due or past-due rent, provided it is replenished by March 31, 2021 (the end of the repayment period under the current ordinance), or at a later date if mutually agreed upon in writing by the parties. Any agreements between landlords and tenants must not conflict with or waive provisions of the Act.

For clarity, the Ordinance would provide the following:

The City had an eviction moratorium in place from March 2020 through September 2020. Those procedures govern that time period and the repayment of rent that was deferred during that time period. The City's current ordinance has a six-month repayment period, starting on October 1, 2020, and requires tenants to repay rent deferred between March 1, 2020 through September 30, 2020, in full, before April 1, 2021.

1. Beginning October 1, 2020, a "high income tenant" must:
 - Return to the landlord a signed declaration of hardship within 15 days of receipt. A declaration must be signed each time one is provided by the landlord for the specified month or months.
 - If the landlord already has proof of the tenant's income on file, the tenant must also provide documentation of hardship if requested by the landlord in the 15-day notice.
 - Repayment obligations are as follows:
 - For rent that came due March 16, 2020 through September 30, 2020, the tenant must pay past due rent in full by the end of the repayment period (March 31, 2021).
 - For rent that comes due October 1, 2020 through January 31, 2021, the tenant must pay 25% of the total rent that came due during this period by January 31, 2021 to avoid eviction. The remaining rent must be paid by the end of the repayment period (March 31, 2021).
2. Beginning October 1, 2020, a tenant that is not a "high-income tenant" must:
 - Return to the landlord a signed declaration of hardship within 15 days of receipt. A declaration must be signed and returned each time one is provided by the landlord for the specified month or months. No documentation of COVID-19 related financial hardship is required.
 - Repayment obligations are as follows:
 - For rent that came due March 16, 2020 through September 30, 2020, the tenant must pay past due rent in full by the end of the repayment period (March 31, 2021).
 - For rent that comes due October 1, 2020 through January 31, 2021, the tenant must pay 25% of the total rent that came due during this period by January 31, 2021 to avoid eviction. The remaining rent must be paid by the end of the repayment period (March 31, 2021).
3. Beginning October 1, 2020, a residential landlord is subject to the following:
 - To evict a tenant, a landlord must serve a 15-day notice to pay rent or quit, which must

be accompanied by an unsigned copy of a declaration of hardship. The notice must contain the text prescribed in the Act. If the landlord was required by law to provide a translation of the rental agreement in another language, a copy of the declaration form in that language must also be provided.

- A landlord may ask a “high-income tenant” to provide documentation of hardship in the 15-day notice only if the landlord already has proof of the tenant’s income on file. A landlord may not demand proof of income for any tenant.
- If a tenant fails to timely return a hardship declaration or fails to meet his or her repayment obligations by January 31, 2021, a landlord may file an eviction action on or after February 1, 2021.
- A landlord may not seek past due rent (March 2020-January 31, 2021) until the end of the repayment period (March 31, 2021).

In sum, the current Hermosa Beach moratorium period for nonpayment of rent ends September 30, 2020 and cannot be extended. Tenants who comply with Hermosa Beach’s ordinance through September 30 will be protected from eviction for nonpayment of rent due to COVID-19. The repayment period for deferred rent begins October 1, 2020 and runs through March 31, 2021. For the period of time of October 1, 2020 through January 31, 2021, tenants shall follow the preconditions for eviction protection under the Act to receive eviction protection. Tenants shall pay the remaining rent due from this period by the end of the repayment period.

The City can revisit new, additional or expanded protections in February 2021, if still warranted.

Commercial Eviction Moratorium

If the proposed Urgency Ordinance is adopted, commercial tenant eviction protections would remain unchanged and extended through January 31, 2021. Until now, the City’s eviction ordinances have tracked with the Governor’s Orders concerning eviction protection. The Governor’s most recent Order on this topic has not been extended as of the time of writing this report and it is not clear if the Order will be extended, given the residential moratorium under AB 3088. Accordingly, this proposed date tracks the residential eviction moratorium under state law for consistency.

Commercial tenants would continue to provide documentation of COVID-related financial hardship to receive protection under the City’s moratorium, and pay a pro-rated share of their rent if they suffered only a partial loss of net income. The amount of time to repay rent in arrears would continue to be six months after the end of the moratorium period, and landlords would not be allowed to evict a tenant during that six-month period if the tenant is paying rent that is due in a timely manner and repaying past due rent.

Alternatively, should the Council decide not to extend above-described commercial protections, the commercial eviction protections provided under the Los Angeles County Eviction Moratorium would

apply to City residents. The County extended its eviction protections for all incorporated cities within the County that do not have their own eviction moratorium. The County's eviction moratorium lasts through October 31, 2020, and the Board of Supervisors is currently reviewing the moratorium on a monthly basis.

The County's commercial eviction moratorium provides that commercial property owners shall not evict a commercial tenant for nonpayment of rent, late charges, interest, or any other fees accrued if the tenant demonstrates an inability to pay rent and/or a related charge due to financial impacts related to COVID-19. The tenant must generally provide notice to the landlord within seven days after the date that rent is due. The County's commercial eviction moratorium provides that commercial tenants with nine or less employees have 12 months to repay landlords for outstanding rent amounts, while commercial tenants with 10 to 99 employees have six months to repay their landlords. The repayment period begins at the conclusion of the moratorium period.

Mortgage Foreclosure Moratorium

The proposed urgency ordinance would not extend the foreclosure moratorium, which will expire automatically on September 30, 2020. After that date, AB 3088 and other applicable laws and federal and state relief programs would govern foreclosure protections available to Hermosa Beach residents.

Other Considerations to Justify Proposed Urgency Ordinance

Eviction protections are still very much warranted and an important part of slowing the spread of COVID-19, and recovery from this global health pandemic. Effective August 31, 2020, Governor Newsom's "Blueprint for a Safer Economy" replaced the County Data Monitoring List that had been used to regulate permitted activities at the county level. Under the new framework, every county is assigned to a tier based on its COVID-19 adjusted case rate and test positivity from the last two weeks. Counties can progress through four tiers, ranging from "widespread" (Purple Tier 1) to "minimal" (Yellow Tier 4) community disease transmission. Los Angeles County is assigned to Tier 1, which has the strictest limitations on activities. Tier 1 mandates all bars and nightclubs where no meals are provided to remain closed, and prohibits restaurants from offering indoor dining.

As of September 7, 2020 (Labor Day), there were 248,822 confirmed cases and 6,030 deaths in Los Angeles County. The County Public Health Department saw rapid increases of COVID-19 cases in the weeks following Memorial Day and the Fourth of July, which lead to the closures of many businesses. The Department urged the public to take measures over the Labor Day weekend to prevent this from happening again. While the effects from the holiday weekend will not be known for some weeks, local businesses may again take a financial hit due to more closures and reduced sales.

The degree of the health and economic impact of the pandemic is unprecedented and unknown. Millions of people have filed for unemployment, further fueling a decline in business revenues. Despite the passage of AB 3088, many of the recitals and findings for the City's prior urgency ordinances remain applicable here.

During this period of continued eviction protection, City staff will explore the need for further changes or revisions to the moratoria to the extent permitted by the Tenant Relief Act of 2020. As the epidemic proceeds for longer periods of time and certain economic sectors open, the City will need to reassess whether the same factors exist that warrant keeping the moratoria in place or whether their terms should be modified. For the time being, so long as the health officer's order instructs residents to remain in their residences as much as practicable and sectors of the economy remain closed, then the stated justifications for preventing mass commercial and residential evictions remain applicable.

The CDC has also issued a federal eviction moratorium. The Governor's office has stated that the CDC moratorium does not apply to California because AB 3088 offers more protection.

In light of the foregoing, the proposed ordinance should be adopted on an urgency basis to reflect new state law and extend the moratorium on commercial evictions, taking effect immediately pursuant to Government Code section 36937, for the preservation of the public peace, health, and safety of residents living within the City, based on the facts described herein and set forth in the Urgency Ordinance.

Alternatively, the City Council may decline to extend the commercial eviction moratorium by rejecting Section 2 of the proposed ordinance and allow the provisions to expire on September 30, in which case the Los Angeles County Eviction Moratorium would then control.

Fiscal Impact:

The City of Hermosa Beach initially incurs all costs related to the City's response to the COVID-19 Pandemic, but will submit requests for cost recovery to the California Office of Emergency Services (CalOES), either directly, or through the Los Angeles County Office of Emergency Management, (LACoOEM), the local reporting agent.

Attachments:

1. Urgency Ordinance No. 20-1417U to clarify provisions of the moratorium on residential evictions to reflect state law and extend the temporary moratorium on commercial evictions, setting forth the facts constituting such urgency.

Respectfully Submitted by: Michael Jenkins, City Attorney

Legal Review: Lauren Langer, Assistant City Attorney

Approved: Suja Lowenthal, City Manager