



CITY COUNCIL AGENDA REPORT

MEETING DATE: APRIL 7, 2020

ITEM NUMBER: NB-3

SUBJECT: ADOPT RESOLUTION NO. 20-YY RATIFYING REGULATION NO. 2 PURSUANT TO PROCLAMATION NO. 2020-01 AND INTRODUCTION OF ORDINANCE NO. 20-XX IMPOSING A TEMPORARY MORATORIUM ON THE EVICTION OF RESIDENTIAL OR COMMERCIAL TENANTS UNABLE TO PAY RENT BECAUSE OF COVID-19

DATE: APRIL 1, 2020

**FROM: DEVELOPMENT SERVICES DEPARTMENT
CITY ATTORNEY'S OFFICE**

**PRESENTATION BY: KIMBERLY HALL BARLOW, CITY ATTORNEY
BARRY CURTIS, DIRECTOR OF DEVELOPMENT SERVICES**

**FOR FURTHER INFORMATION CONTACT: BARRY CURTIS (714) 754-5278
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RECOMMENDATION:

Staff recommends that the City Council:

1. Adopt Resolution No. 20-YY ratifying Regulation No. 2 Pursuant to Proclamation No. 2020-01 issued by Emergency Services Director (Attachment 1); and
2. Introduce by title only Ordinance No. 20-XX to establish a temporary moratorium on the eviction of residential or commercial tenants who are unable to pay rent due to the impacts of the novel coronavirus disease (COVID-19) (Attachment 2).

BACKGROUND:

On March 4, 2020, the Governor declared a State of Emergency in California due to the threat of Coronavirus Disease 19 ("COVID-19"). On March 13, 2020, the Costa Mesa City Council ratified the Director of Emergency Services' March 12, 2020 proclamation declaring the existence of a local emergency due to COVID-19 in order to seek federal and state resources and to provide emergency authority to the City Manager. Furthermore, on March 19, 2020, the Governor established a statewide "Stay at Home" Executive Order

thereby closing all non-essential services and businesses in order to prevent the spread of COVID-19 throughout the state.

Because of directives from federal, state and local health officials, most events have been canceled, schools have been closed, and residents have been advised to avoid public gatherings and stay at home to prevent the spread of this disease. Restaurant and retail business has significantly declined and parents have missed work to care for homebound school-age children, resulting in workers being impacted by lost wages and layoffs. In Costa Mesa, South Coast Plaza, hotels and countless businesses across the city have temporarily closed, suspended or severely restricted operations. As a result, workers are experiencing loss of wages due to business closures, loss of working hours, layoffs, or out-of-pocket medical costs caused by COVID-19. All of these factors will undoubtedly impact tenants – both residential and commercial - and their ability to pay rent, leaving them vulnerable to eviction.

ANALYSIS:

On March 16, 2020, Governor Newsom issued Executive Order N-28-20, authorizing local governments to implement emergency measures to protect both residential and commercial tenants from evictions resulting from loss of income attributable to COVID-19 impacts. Providing tenants with a short-term protection from eviction due to the inability to pay rent will help stabilize the rental housing market and commercial business tenants by reducing displacement. During this state of emergency, and in the interests of protecting the public health and preventing transmission of the coronavirus, it is essential to avoid unnecessary displacement of tenants. To that end, prohibiting evictions on a temporary basis is important until the impact of the virus can be minimized and the emergency restrictions lifted.

The City Council considered an urgency ordinance for this moratorium on March 24, 2020. Governor Newsom issued an Executive Order on March 27 (N-37-20) providing additional time for residential tenants to respond to unlawful detainer actions and a stay on residential evictions. In order to provide immediate protections to both residential and commercial tenants pending adoption of an ordinance by City Council, on April 1, 2020, the City Manager, as Costa Mesa Director of Emergency Services, issued Regulation No. 2 which imposed additional restrictions on residential eviction activities and on commercial eviction activities. Staff recommends that the City Council approve proposed Resolution No. 20-YY ratifying Regulation No. 2.

As always, we recommend that regular ordinances be adopted which provide a strong legal backstop to emergency orders and ordinances. If approved, the proposed ordinance would mirror the provisions of Regulation No. 2, and would prohibit a landlord from initiating proceedings or otherwise take steps to evict a tenant for nonpayment of rent from any residential dwelling (including single family and multi-family homes, mobile homes or other structures lawfully used as a residential dwelling) if the tenant demonstrates that the inability to pay rent is due to COVID-19. The ordinance would also apply to commercial tenants, such as a business or commercial enterprise renting or leasing a structure used for business purposes.

In order to take advantage of the protections provided in the ordinance, both residential and commercial tenants would be required to, within 30 days after the rent is due: (1) notify the landlord “in writing” of the substantial COVID-19-Related Financial Impacts, and (2) provide documentation “in writing” establishing such substantial COVID-19-Related Financial Impacts. Nothing in the proposed regular ordinance is intended to waive a tenant’s obligation to pay back rent owed once this ordinance is no longer effective. Note that this ordinance provides a longer period of time for residential tenants to notify landlords than the State’s eviction order. This ordinance also provides protections to commercial tenants who are not covered by the State’s order.

The ordinance provides that a tenant will have up to one-hundred and twenty (120) days after the expiration of this ordinance to pay its landlord unpaid rent. No late fees, costs or other penalties shall be assessed or due from the tenant based on the delay in paying rent as provided for in this ordinance. These provisions also provide tenants greater protections and flexibility than the State’s eviction order. The moratorium on residential and commercial eviction would remain in effect until the expiration of the Governor’s Executive Order N-28-20, including any extensions by the State.

PUBLIC NOTICE:

The Resolution and Ordinance were noticed pursuant to the requirements of the Brown Act by timely placing this item on the April 7, 2020 regular agenda.

ENVIRONMENTAL DETERMINATION:

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City’s environmental procedures, and has been found to be exempt pursuant to Section 15061(b)(3) (general rule) of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility that the proposed ordinance will have a significant effect on the environment.

ALTERNATIVES CONSIDERED:

If the City Council chooses not to adopt the resolution, the regulation will expire. Tenants would then be limited to the protections of the State’s order until the City’s regular ordinance takes effect. The City Council could forego introduction of the regular ordinance, however the City Attorney recommends that the regular ordinance be introduced and ultimately adopted, in order to provide additional protections to residents and businesses in the City.

FISCAL REVIEW:

Neither the approval of the resolution nor adoption of this ordinance will have any fiscal impact on the City’s budget.

LEGAL REVIEW:

The City Attorney's Office has reviewed this agenda report, the Resolution and the ordinance and approves them as to form.

CITY COUNCIL GOALS & PRIORITIES:

The proposed project is consistent with City Council Goal Nos. 3 (Keep the City Fiscally Sustainable) and 4 (Address Housing Shortages and Homelessness).

CONCLUSION

Staff recommends the City Council approve Resolution No. 20-YY and introduce Ordinance No. 20-XX.

BARRY CURTIS, AICP
Director of Economic and Development
Services

KIMBERLY HALL BARLOW
City Attorney

- Attachment: 1. [Resolution No. 20-YY](#)
2. [Ordinance No. 20-XX](#)