



CITY COUNCIL AGENDA REPORT

MEETING DATE: APRIL 6, 2021

ITEM NUMBER: NB-1

SUBJECT: ADOPTION OF URGENCY ORDINANCE NO. 2021-XX TO REPEAL ORDINANCE NO. 2020-11 RELATING TO TEMPORARY MORATORIA ON EVICTING TENANTS, AND DECLARING THE ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

DATE: APRIL 6, 2021

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

**PRESENTATION BY: KIMBERLY HALL BARLOW, CITY ATTORNEY
JENNIFER LE, DIRECTOR OF DEVELOPMENT SERVICES**

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RECOMMENDATION:

Staff recommends that the City Council:

Introduce and adopt Urgency Ordinance No. 2021-XX that would take effect immediately, to repeal the temporary moratorium on the eviction of commercial tenants who are unable to pay rent due to the impacts of the novel coronavirus disease (COVID-19) (Attachment 1).

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 to assist with the increased costs associated with addressing the emergency, and to provide emergency authority to the City Manager to swiftly adopt measures to help ensure social distancing and protect vulnerable populations, among other critical items. Furthermore, on March 19, 2020, the Governor established a statewide Executive Order closing all non-

essential services and businesses and ordering the public to stay at home in order to prevent the spread of COVID-19 throughout the state.

On March 16, 2020, the Governor issued Executive Order N-28-20 (the “Original Order”), which suspends any state law that would preempt or otherwise restrict the city’s exercise of its police power to impose substantive limitations on evictions based on nonpayment of rent resulting from the impacts of COVID-19. On April 21, 2020, the City Council adopted regular Ordinance No. 2020-11 that established a temporary moratorium on the eviction of residential or commercial tenants who were unable to pay rent due to the impacts of COVID-19. The intent of this ordinance was for the moratorium to remain in effect until the expiration of the Governor’s Executive Order N-28-20, including any extensions.

On May 29, 2020 the Governor issued Executive Order N-66-20 which, among other things, extended the term of the Original Order through July 28, 2020. On June 30, 2020, the Governor issued Executive Order N-71-20 which further extended the term of the Original Order through September 30, 2020. Thereafter, on August 31, 2020, the legislature adopted the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (A.B. 3088), which, inter alia, preempts cities from enacting new residential tenant protections until January 31, 2021. On September 24, 2020, the Governor issued Executive Order N-80-20 which, among other things, further extended the term of the Original Order through March 31, 2021, but with respect to commercial evictions only. Effective January 30, 2021, the legislature adopted Senate Bill 91 to extend A.B. 3088 through June 30, 2021, and to establish a state rental assistance program. The extension of A.B. 3088 continues the preemption against cities from enacting residential tenant protections until June 30, 2021. Most recently, on March 4, 2021, the Governor issued Executive Order N-03-21 which, among other things, further extended the term of the Original Order through June 30, 2021, with respect to commercial evictions only.

ANALYSIS:

The adoption of A.B. 3088 and S.B. 91 and issuance of Executive Order No. N-80-20 have preempted the ability of cities from adopting and enforcing ordinances relating to protection for residential tenants from eviction due to the inability to pay rent during the state of emergency. As such, the provisions of Ordinance No. 2020-11 as it relates to residential tenancies are no longer enforceable. Pursuant to Executive Order N-03-21, the remaining protections of the ordinances for commercial tenants are set to expire on June 30, 2021. However, because of the recent availability of federal, state, and local programs to assist the small businesses that make up the majority of commercial tenants in the City, such businesses are in a better position to repay past due rent than they were when the moratorium was enacted.

At the federal level, these programs include the American Rescue Plan Act, signed into law by President Biden on March 11, 2021, which provides additional relief for the nation’s small businesses and hard-hit industries. These include: an additional \$7.25 billion for the Paycheck Protection Program (PPP); additional funds allocated for the Shuttered Venue Operators Grant (SVOG) program, (businesses to apply for both a PPP loan after Dec. 27, 2020 and the SVOG); \$15 billion additional for Targeted Economic Injury Disaster Loan (EIDL) Advance payments,

including new \$5 billion for supplemental Targeted EIDL Advance payments for those hardest hit; \$28.6 billion for the Restaurant Revitalization Fund for industry-focused grants; and \$100 million to establish a Community Navigator pilot program, where grants will go to eligible organizations supporting efforts to improve access to COVID-19 pandemic assistance programs and resources. At the state level, Governor Newsom signed into law a comprehensive package providing urgent relief for the small businesses of CA. The California Small Business COVID-19 Relief Grant Program provides \$2 billion for grants of up to \$25,000 for small businesses impacted by the pandemic. At the local level, the City has implemented multiple programs to provide grants to small businesses to reduce the impact of COVID-19 restrictions and closures.

Accordingly, many of the businesses that have been protected by the moratorium now have access to federal, state, and local funds which can be used to defray the costs of rent. Commercial landlords are unlikely to be able to take advantage of these monies, and as such will continue to suffer the from the economic downturn to a greater extent and for a longer period if their tenants continue to be able to withhold rent under the moratorium. Because of the potential financial inequity and impact to the City's economy, staff recommends that the City Council adopt the proposed urgency ordinance to terminate the moratorium on commercial evictions and collection of rent. The proposed urgency ordinance would allow the rent repayment provision in Section 1.G. of Ordinance 2020-11 to continue in effect for 120 days, to allow payment to landlords of past due rent.

PUBLIC NOTICE:

This Urgency Ordinance was noticed pursuant to the requirements of the Brown Act by timely placing this item on the April 6, 2021 regular City Council meeting 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:

The City Council could forego adoption of the urgency ordinance. Such action would keep the protections for commercial tenants in place until June 30, 2021, unless the Governor issues a further executive order extending Executive Order N-28-20 relating to commercial tenancies.

FISCAL REVIEW:

No fiscal impact.

LEGAL REVIEW:

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

CONCLUSION:

Staff recommends the City Council adopt Urgency Ordinance No. 2021-XX.

JENNIFER LE
Director of Economic and Development
Services

KIMBERLY HALL BARLOW
City Attorney

CAROL MOLINA
Finance Director

Attachment: 1. [Urgency Ordinance No. 2021-XX](#)