

REPORT TO CITY COUNCIL

DATE: JUNE 24, 2020

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: LOUIS CELAYA, DEPUTY CITY MANAGER

SUBJECT: ADOPT RESOLUTION NO. 20-1948, EXTENDING THE DIRECTOR OF EMERGENCY SERVICES' EXECUTIVE ORDER NO. 2020-01 IMPOSING EMERGENCY REGULATIONS RELATED TO RESIDENTIAL AND COMMERCIAL TENANT EVICTIONS; AND POTENTIALLY REVISE RENT REPAYMENT REQUIREMENTS FOR RESIDENTIAL TENANTS; AND POTENTIALLY REVISE EVICTION AND RENT REPAYMENT REQUIREMENTS FOR COMMERCIAL TENANTS

At the May 13, 2020, City Council meeting, the City Council received a summary report on research conducted from other cities, in connection with eviction moratorium and rent re-payment guidelines, and methods for tenants and landlords to reach consensus on repayment. The City Council was also advised that the temporary eviction moratorium in place at that time, as dictated in the City's Executive Order No. 2020-01, was scheduled to expire on May 31, 2020.

On May 27, 2020, after receiving additional information on the current landscape of the COVID-19 pandemic, the City Council adopted Resolution No. 20-1932, extending the Director of Emergency Services Executive Order No. 2020-01, which extended the temporary eviction moratorium to June 30, 2020. After some discussion, the City Council also directed staff to return prior to the June 30th expiration to once again review the COVID-19 pandemic landscape. This included providing information about possible changes to the rent payment timeframes currently in place, as well as information on possible differences between residential and commercial properties designations.

As the COVID-19 landscape continues to evolve, there are also reports that several cities, such as the cities of Duarte, Upland, La Verne, Rancho Cucamonga, and Yucaipa, have either rescinded their eviction moratoria or allowed them to expire.

Judicial Council's Emergency Rules on Tenant Evictions

On April 6, 2020, the Judicial Council of California adopted emergency rules addressing evictions and foreclosures during the statewide emergency caused by the COVID-19 pandemic. The Judicial Council is the policymaking body of the California courts. Under the leadership of the Chief Justice of the California Supreme Court, and in accordance with the California Constitution, the Judicial Council is responsible for ensuring the consistent, independent, impartial, and accessible administration of justice.

The Judicial Council's Emergency Rule 1 effectively suspends all residential and commercial evictions throughout California during the emergency. The rule applies to all courts and to all eviction cases, regardless of the grounds for the eviction. Emergency Rule 1 has three basic provisions that will remain in effect **until 90 days after the Governor terminates the statewide emergency** caused by the COVID-19 pandemic, unless the rule is amended or repealed earlier by the Judicial Council. As stated above, this rule applies to all eviction lawsuits (or "unlawful detainers") throughout the state, regardless of whether it was related to the impacts from COVID-19.

First, the rule prohibits courts from issuing a summons to compel a tenant to appear in court to defend themselves from an unlawful detainer, unless the court finds that the lawsuit is necessary to protect public health and safety. The summons is the document that is submitted by the landlord to the court for "filing", which is then served on the tenant, and it starts the eviction process. Under this emergency rule, landlords are effectively blocked from even beginning the process to evict a tenant for non-payment of rent and effectively suspends all pending residential and commercial evictions throughout California and prevents any new eviction actions for the duration of the emergency plus a period of 90 days thereafter.

Second, the rule bans default judgments for landlords who file an unlawful detainer. Ordinarily, a landlord would be able to win an eviction lawsuit by default—and get a court order for payment of past due rent—if the tenant failed to appear in court. Because Emergency Rule 1 excuses most tenants from appearing in court during the COVID-19 pandemic, it also prevents landlords from obtaining these default judgments in most situations. A court may issue a default judgment if it finds that the lawsuit is necessary to protect public health and safety and the defendant has not appeared in court within the time provided by law. The time provided by law includes any extensions granted by the Governor's Executive Orders regarding evictions.

Third, the rule prohibits courts from setting a trial date for an eviction lawsuit earlier than 60 days from the date on which a trial is requested. A court may only set an early trial date if it finds that an earlier trial is necessary to protect public health and safety. Any trial that was scheduled prior to April 6, 2020, will be continued from the original trial date. This most likely would affect only those persons who had already defaulted on their rent payments in March 2020 or earlier.

Emergency Rule 1 does not relieve a tenant from liability for unpaid rent, nor does it prevent a tenant from paying all or some of rent due if the tenant is able to do so in a timely manner. Also, these Judicial Court Emergency Rules do not conflict with local eviction bans, and local eviction bans can still provide additional tenant protections that supplement these rules.

Additional Litigation Information

At the May 27, 2020, meeting, the City Council received information concerning legal actions being undertaken by landlords against agencies in connection with eviction moratoriums. On June 12th, new information was received identifying that the Apartment Association of Greater Los Angeles, on behalf of its members, filed a lawsuit in federal court against the City of Los Angeles for its tenant eviction ban. Also, to our knowledge, at least three cities have received letters threatening law suits if eviction bans are not repealed.

As the City Council reviews the information, it should determine whether to extend the City's current temporary eviction moratorium or allow it to lapse. At the time of this report and agenda release for this meeting, the County of Los Angeles' current moratorium is also scheduled to expire on June 30, 2020, and reports for Supervisorial staff indicated the Board of Supervisors is scheduled to revisit their current moratorium at their June 23, 2020, meeting. Staff will provide an update of the County's actions at the City Council meeting.

The attached resolution continues to document the existence of the COVID-19 crisis, acknowledges the need to continue to take measures to ensure the protection of life and property, and extends the temporary eviction moratorium to July 31, 2020. Staff can once again return to the City Council with an update on the COVID crisis, and options for the City Council to consider based on the COVID-19 pandemic landscape.

Rent Repayment Timeframes and Commercial Tenants

Under the direction from the City Council, staff conducted research on information concerning rental repayment frames, repayment plans, possible distinctions between residential and commercial tenants. The following summarizes the findings regarding other agencies' rent repayment timelines:

- Majority of agencies still maintain the 6 month repayment timeframe after the expiration of the state of the local emergency declared by the City (63%)*.
- Four Agencies (14%) with shorter repayment time periods less than six months*
- Seven agencies (23%) designate 12 months repayment after the expiration of the local emergency. The County of Los Angeles ties rent repayment to the expiration of the County tenant eviction moratorium, not the expiration of the local emergency.*
- Of the seven agencies with 12 month repayment parameters, four agencies have excluded commercial properties from the moratorium protections that meet the following criteria:
 - 1) Multi-national companies, publicly traded businesses or have more than 100 employees; or

- 2) Commercial tenants that are public traded, listed on Fortune 1000, or an entity with 500 employees or combined with the commercial tenant and other subsidiaries more than 500 employees.

(*35 agencies surveyed)

With respect to repayment plans, staff did not discover specific plans within many orders, but more general language that encouraged tenants and landlords to work cooperatively with respect to repayment arrangements.

Should the City Council elect to take action on the rent repayment guidelines and distinctions to be made in connection with commercial or residential moratorium applicability, staff could return at the next scheduled meeting with a resolution modifying the order. The City Council could also elect to leave the moratorium in its current state.

RECOMMENDATION

City staff respectfully recommends the City Council:

- 1) Adopt Resolution No. 20-1948 Extending the Director of Emergency Services' Executive Order No. 2020-01 Imposing Emergency Regulation Related to Residential and Commercial Tenant Evictions; and
- 2) Direct staff to continue to monitor rent repayment and distinctions on commercial tenants; or
- 3) Amend Resolution No. 20-1948 to include revisions to rent repayment requirements and distinctions for commercial tenants

Attachments: Resolution No. 20-1948
Mercury News Article – *Landlords Threaten to Sue California Cities Over Corona Virus Eviction Bans; May 14, 2020*
LA Times – *Landlord Group Sues City of LA over Coronavirus anti-eviction process; June 11, 2020*

RESOLUTION NO. 20-1948

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, EXTENDING THE DIRECTOR OF EMERGENCY SERVICES' EXECUTIVE ORDER NO. 2020-01 IMPOSING EMERGENCY REGULATIONS RELATED TO RESIDENTIAL AND COMMERCIAL TENANT EVICTIONS

WHEREAS, Section 3605 of the Agoura Hills Municipal Code empowers the Director of Emergency Services ("Director") to proclaim the existence of a local emergency, as defined by Government Code § 8558, Subdivision (c), when the City Council of the City of Agoura Hills is not in session, subject to ratification by the City Council within seven days; and

WHEREAS, in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in December 2019 and has spread globally, impacting more than 75 countries, including the United States; and

WHEREAS, since the federal Center for Disease Control and Prevention ("CDC") confirmed the first possible case of community spread of COVID-19 in the United States on February 26, 2020, there has been a significant escalation of United States domestic cases and deaths from COVID-19; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom, proclaimed a state of emergency to exist in California due to the spread of COVID-19; and

WHEREAS, as on March 16, 2020, the Director of Emergency Services proclaimed the existence of a local emergency; and

WHEREAS, the declaration of the local emergency was ratified by the Agoura Hills City Council on March 17, 2020; and

WHEREAS, on March 16, 2020, and March 19, 2020, the Los Angeles County Health Officer issued two orders for the control of the COVID-1, imposing temporary prohibition of group events and gatherings, implementing social distancing requirements, closures of non-essential businesses; and

WHEREAS, pursuant to Agoura Hills Municipal Code Section 3605(a)(7)a, in the event of the proclamation of a local emergency the Director of Emergency Services is empowered to make and issue rules and regulations on matters, reasonably related to the protection of life and property affected by such an emergency; and

WHEREAS, pursuant to Agoura Hills Municipal Code Section 3605, on March 20, 2020, the Director ordered, adopted, and issued City of Agoura Hills Executive Order No. 2020-01, placing a temporary moratorium on evictions for non-payment of rent by residential or commercial tenants impacted by the COVID-19 crisis, and adopted by reference the March 16, 2020, Los Angeles Health County Order for the control of COVID-

19, and the March 19, 2020, Los Angeles Health Officer Order for the Control of COVID-19; and

WHEREAS, the City Council did hereby find that the Director's Executive Order was necessary for continued protection of life and property affected by the COVID-19 crisis, and adopted Resolution No. 20-1927, ratifying and confirming the Director's Executive Order No. 2020-01 on April 7, 2020; and

WHEREAS, the City Council does hereby find that the COVID-19 pandemic still exists, thereby requiring additional measures be undertaken to ensure the protection of life and property affected by the crisis, and

WHEREAS, on May 13, 2020, the City Council directed that City staff prepare a resolution extending the temporary eviction moratorium to June 30, 2020, to continue to ensure the protection and life and property; and

WHEREAS, on May 27, 2020, the City Council adopted Resolution No. 20-19-32, Extending The Director Of Emergency Services' Executive Order No. 2020-01 Imposing Emergency Regulations Related To Residential And Commercial Tenant Evictions, Group Events, And Gatherings to June 30, 2020,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AGOURA HILLS DOES HEREBY DOES RESOLVE AS FOLLOWS:

Section 1. Extension of Director's Executive Order No. 2020-01. The City Council of the City of Agoura Hills hereby extends the Director of Emergency Services' Executive Order No. 2020-01 Imposing Emergency Regulations Related to Residential and Commercial Tenant Evictions to July 31, 2020.

PASSED, APPROVED, AND ADOPTED, this 24TH day of June, 2020, by the following vote to wit:

AYES: ()
NOES: ()
ABSENT: ()
ABSTAIN: ()

Illece Buckley Weber, Mayor

ATTEST:

Kimberly M. Rodrigues, City Clerk

BREAKING NEWS Coronavirus: California deaths near 5,000, cases rise to almost 140

Business > Real Estate

Landlords threaten to sue California cities over coronavirus eviction bans

Three Southern California cities are warned of potential lawsuits if COVID-19 renter protections aren't repealed.



Irma Zamorano, an El Monte resident, wants a stronger eviction moratorium. (Staff photo by Pierce Singgih, SCNG)

By **JEFF COLLINS** | Southern California News Group

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Three Southern California cities have received letters threatening lawsuits if they don't repeal eviction bans enacted to protect out-of-work or ill renters during the coronavirus pandemic.

Two of the cities — Upland and La Verne — repealed their bans after getting the letters.

But the city attorney for the third municipality, Costa Mesa, said she's confident her city's order is lawful.

"There's a long line of Supreme Court decisions about the ability to make emergency orders in the interest of public health," Costa Mesa City Attorney Kimberly Hall Barlow said in response to the threatening missive. "We do not intend to respond."

The letters, sent by Douglas Dennington of the Costa Mesa-based law firm Rutan & Tucker, argue the eviction moratoriums amount to "a taking," or virtual confiscation, of his clients' rental properties. The cities either must repeal their ordinances or reimburse landlords for lost income, he argued.

"Given the magnitude of the rent loss property owners anticipate from implementation of the eviction ban, property owners will have no choice but to pursue any and all available legal relief," Dennington's letters said.

The letters potentially have statewide implications.

At least 148 California cities and counties have passed eviction moratoriums since March, although some since have expired or been repealed, according to the California Apartment Association. Additionally, Gov. Gavin Newsom and the state court system's Judicial Council issued emergency orders in March and April freezing the eviction process.

Dennington declined to identify most of his clients, saying only that they include “a large number of both residential and commercial property owners of all sizes throughout the state of California.”

State and local eviction bans generally prohibit the removal of tenants from their homes for failing to pay rent either because of lost income or illness due to COVID-19. Local bans often go further than state moratoriums, banning late fees, giving tenants from two months to a year to repay back rent and forbidding the posting of three-day pay-up notices.

Some city and tenants’ rights attorneys have disputed Dennington’s claims that eviction bans run afoul of the law, including at least one member of his own law firm who acts as city attorney for the San Gabriel Valley city of Duarte.

Advising Duarte City Council members before their March 24 vote adopting a moratorium, Rutan & Tucker partner David Cosgrove said: “I don’t believe the ordinance would result in a taking.”

Another Rutan & Tucker partner, Phil Kohn, did not raise objections when the city he advises, Laguna Beach, adopted an eviction moratorium April 7.

Dennington said he is not disputing the validity of less restrictive moratoriums ordered by Newsom and the state Judicial Council.

But the “highly questionable” moratoriums in Upland, La Verne and Costa Mesa interfere with landlord-tenant contracts by giving tenants more time to pay rent, waiving late fees or prohibiting the filing of eviction notices, he said.

The municipal bans force landlords “to become involuntary lenders to their tenants,” Dennington’s letter said.

“Owners have operating expenses to pay, security that must be maintained, (and) critical engineering and maintenance staff. Where is the relief for property owners?” Dennington asked.

After getting Dennington’s letter, Upland City Council members immediately revoked their own eviction moratorium April 13, expressing concern the ban exposed the city to litigation costs.

“I don’t think it is in the city’s best interest to become part of a lawsuit,” said Councilman Bill Velto, who led the unanimous vote to repeal the ordinance.

La Verne City Manager Bob Russi said Dennington’s letter didn’t play a role in his city’s April 20 decision to repeal its moratorium. The city believes state and county moratoriums provide adequate renter protections already, he said.

But Barlow, Costa Mesa’s city attorney, said Dennington’s arguments are based on case law that doesn’t apply when there is an emergency.

“I disagree with (his) analysis,” Barlow said. “The cases are uniform in saying when the circumstances justify it and (the ordinance) is designed to address a public health emergency, which this is, then constitutional rights give way.”

Barlow argued further that landlords have other remedies besides eviction to seek damages from tenants, noting further that banks have offered mortgage relief and low-interest loans to landlords.

“There are many, many things landlords can do to protect themselves,” she said.

Tenants’ rights attorneys also disputed Dennington’s arguments, saying the law gives local government the ability to regulate evictions.

Dennington’s legal reasoning is “more than a stretch,” said Craig Castellanet, an attorney with the Oakland-based Public Interest Law Project.

“It selectively cites, and largely ignores, relevant court precedent,” added Faizah Malik, staff attorney with the nonprofit Public Counsel Law Center in Los Angeles. “Cities are understandably and rightly trying to protect tenants, and keep them housed, in the context of a deadly pandemic where being unhoused could mean death.”

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Landlord group sues city of L.A. over coronavirus anti-eviction protections



Rows of apartment buildings in the Palms neighborhood of Los Angeles. (Gina Ferazzi / Los Angeles Times)

By LIAM DILLON | STAFF WRITER

JUNE 11, 2020 | 12:09 PM



Southern California's largest landlord organization has launched a legal action against the city of Los Angeles aimed at stripping away protections from evictions during the COVID-19 pandemic.

economic or health effects of the coronavirus violate landlords' 5th Amendment rights against government taking of their property without compensation. The lawsuit also targets a measure passed by the L.A. City Council to [halt rent increases in more than 600,000 apartments covered by the city's rent stabilization program](#) due to the pandemic.

"If allowed to stand, the ordinances will not only continue to violate plaintiffs members' rights under both the California and United States Constitutions, but will continue to inflict massive and widespread economic damage on property owners and landlords throughout the city," said the lawsuit, which was filed in U.S. District Court for the Central District of California.

The suit is the latest effort from landlord groups to attempt to overturn anti-eviction rules passed by local governments across the region in the wake of the coronavirus. In at least one case, [the city of Upland rescinded its eviction protections](#) under threat of litigation.

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A spokesman for L.A. City Atty. Mike Feuer didn't immediately respond to a request for comment about the lawsuit. Property law experts have said that local governments have [broad constitutional authority to temporarily ban](#) evictions during emergencies.

**Apartment Assn. of Greater Los Angeles lawsuit against the city of Los Angeles**

June 11, 2020

Under the city of L.A.'s rules, [landlords cannot evict tenants](#) for unpaid rent if they can show in court that they've been economically affected by the coronavirus, including those who have lost jobs or wages during the pandemic. Tenants must repay all past-due rent, but they have a year following the expiration of the city's state of emergency related to the coronavirus to do it. The city also has [passed a measure allowing renters to sue their landlords](#) if they violate the anti-eviction regulations.

protections and that historically tenants in the vast majority of eviction cases have not had legal representation. A recent report from the UCLA Luskin Institute on Inequality and Democracy estimated that 365,000 renter households in the county are at high risk of evictions despite the rules aimed at preventing them in the city and across the region.

State courts are blocking almost all evictions and home foreclosures from going forward until three months after California ends its state of emergency because of the COVID-19 pandemic. Earlier this week, the Judicial Council, the policymaking arm of the court system, considered allowing eviction lawsuits to proceed in early August, but backtracked after conversations with Gov. Gavin Newsom, state lawmakers and interest groups, said Chief Justice Tani Cantil-Sakauye in a statement.

“I believe the executive and legislative branches will need more time to sort through various policy proposals,” Cantil-Sakauye said.

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