



City of Culver City

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Staff Report

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Item #: A-2.

CC - Discussion and Direction Regarding (1) Extension of the Residential and Commercial Tenant Eviction Moratoria Beyond May 31, 2020; (2) Applicability of and Repayment Grace-Period Options for Commercial Tenant Eviction Moratorium Based on the Type of Commercial Tenant; and (3) Options for Including Repayment Plan Provisions in the Commercial Tenant Eviction Moratorium Implementation Measures.

Meeting Date: May 18, 2020

Contact Person/Dept: Jesse Mays/City Manager's Office
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Phone Number: 310-253-5660

Fiscal Impact: Yes ☐ No ☒

General Fund: Yes ☐ No ☒

Public Hearing: ☐ **Action Item:** ☒ **Attachments:** ☐

Commission Action Required: Yes ☐ No ☒ **Date:**

Public Notification: (E-Mail) Meetings and Agendas - City Council (05/14/20)

Department Approval: John Nachbar (05/13/20)

RECOMMENDATION

Staff recommends the City Council discuss and provide direction to the City Manager regarding the following items: (1) extension of the Residential and Commercial Tenant Eviction Moratoria beyond May 31, 2020; (2) applicability of and repayment grace-period options for Commercial Tenant Eviction Moratorium based on the type of commercial tenant; and (3) options for including repayment plan provisions in the Commercial Tenant Eviction Moratorium Implementation Measures.

BACKGROUND

On March 16, 2020, the City Manager issued a Public Order enacting City measures to protect members of the public and City workers from undue risk of COVID-19, which included, among other things, the imposition of a moratorium on residential tenant evictions ("Residential Tenant Eviction Moratorium" or "RTEM"), which was extended and expanded by the Second Supplement to Public Order issued on March 27, 2020.

On March 20, 2020, the City Manager issued a First Supplement to Public Order, which included, among other things, protections for commercial tenants against evictions based on an inability to pay rent due to COVID-19 related circumstances (“Commercial Tenant Eviction Moratorium” or “CTEM”), which was extended by the Fifth Supplement to Public Order issued on April 7, 2020.

The Residential Tenant Eviction Moratorium and Commercial Tenant Eviction Moratorium (collectively, “Eviction Moratoria”) expire on May 31, 2020.

Included in the Eviction Moratoria is a provision that requires a tenant who has an inability to pay rent during the local emergency period, and who qualifies for protection under the respective Eviction Moratoria, to pay any rent that remains unpaid (“Back Rent”) within 12 months of the expiration of the Eviction Moratoria.

At its meeting of May 11, 2020, the City Council discussed possible options for including repayment plan provisions in the Eviction Moratoria, in order to ensure that tenants are not faced with unmanageable “balloon payments” at the end of the 12-month grace period, and risk eviction for nonpayment of rent.

The City Council directed, for the Residential Tenant Eviction Moratorium, the following provisions be included in the RTEM implementation measures:

- Landlord and tenant are encouraged to mutually agree to a plan for the repayment of Back Rent during the 12-month grace period; however, a landlord may not require a tenant to enter into a repayment plan.
- By mutual agreement of the landlord and tenant, the repayment plan also may waive portions of what the tenant owes, and may grant the tenant additional time to repay Back Rent beyond the 12-month grace period.
- A tenant’s failure to comply with an agreed upon payment plan prior to the end of the 12-month grace period is not cause to evict.
- If the parties do not agree on a payment plan, then a landlord may have cause to evict the tenant based on the unpaid Back Rent once the 12-month grace period ends.
- A landlord is prohibited from evicting a tenant for the failure to pay the Back Rent, unless a landlord can demonstrate that, among other things required by law, prior to delivering a three-day notice to pay or quit (under Code of Civil Procedure Section 1161), the landlord offered the tenant a reasonable repayment plan to repay the Back Rent owed over a 12-month period beginning from when the moratorium expired.

Consistent with such direction, the City Manager issued the *Third Amended Rules and Implementation Measures Regarding Residential Tenant Eviction Moratorium* on May 12, 2020 (Attachment 1), modifying Section 9 pertaining to the Payment of Back Rent.

With regard to the Commercial Tenant Eviction Moratorium, the City Council directed staff to return on May 18, 2020 with (1) further discussion of repayment provisions; and (2) discussion of the applicability of the CTEM and repayment grace-period options based on the type of commercial tenant.

The City Council also directed staff return on May 18th to discuss a possible extension of the Eviction Moratoria beyond the current expiration date of May 31, 2020.

DISCUSSION

Extension of Eviction Moratoria

The Eviction Moratoria currently expire on May 31, 2020. Over the past several weeks, tenants have expressed concerns that once the *Safer at Home* orders are lifted and they are able to go back to work or reopen a business, as the case may be, it will be a slow financial recovery and challenging to begin paying rent on June 1st. (Note: Since the enactment of the Residential Tenant Eviction Moratorium, Housing staff has received over 700 inquiries, including emails and phone calls, on a myriad of issues regarding the RTEM; and on the CTEM side, Economic Development staff has received close to 30 requests for information or assistance.)

Other cities have the following expiration dates for their respective moratoria as follows:

- **Beverly Hills** - end of emergency
- **Burbank** - May 31, 2020
- **Glendale** - June 30, 2020 (residential); June 3, 2020 (commercial)
- **Los Angeles City** - end of emergency
- **Los Angeles County** - June 30, 2020
- **Pasadena** - end of emergency
- **Santa Monica** - June 30, 2020
- **Torrance** - May 31, 2020
- **West Hollywood** - July 31, 2020

Staff recommends the City Council discuss whether to extend the RTEM, CTEM or both and provide direction to the City Manager as deemed appropriate.

Applicability and Grace Period Options for CTEM

Some cities exclude certain types of commercial tenants from the protections of their commercial eviction moratoria, finding that such protections should prioritize small businesses that are more likely to experience severe financial hardship due to COVID-19. The following are some examples:

- **Beverly Hills** - excludes a publicly traded entity, an entity that is listed on the Fortune 1000, or any entity that employs more than 500 employees.
- **Burbank** - excludes a tenant that is a multi-national company, a publicly traded company, or a company that is not eligible for the Small Business Administration's Paycheck Protection Program.
- **Glendale** - excludes a publicly traded company (still in discussion on expanding this exception further)
- **Los Angeles City** - excludes a multi-national company, a publicly traded company, or a company that employs more than 500 employees.
- **Los Angeles County** - excludes commercial tenants that are multi-national, publicly-traded or

have more than 100 employees.

- **Santa Monica** - excludes a multi-national company, a publicly traded company, or a company that, with its affiliates, employs more than 500 employees.

There is also variation among cities on the period allowed for the repayment of Back Rent:

- **Beverly Hills** - 12 months
- **Burbank** - 6 months
- **Glendale** - 12 months (residential); 3 months (commercial)
- **Los Angeles City** - 12 months (residential); 3 months (commercial)
- **Los Angeles County** - 12 months, except 6 months for commercial tenants that have 10 or more, but less than 100, employees or that lease space of 250,000 sq. ft or more.
- **Pasadena** - 6 months
- **Santa Monica** - 12 months, except “non-retail commercial tenants” have only 30 days. “Non-retail commercial tenants” are defined as tenants in office buildings, other than non-profits, who do not collect sales tax on greater than 50 percent of their revenues, and do not provide the following services: medical, dental or veterinary services; fitness services; or child, marriage, family, mental health, or substance abuse counseling services.
- **Torrance** - 6 months
- **West Hollywood** - 12 months (residential); 6 months (commercial)

The following are potential options the City Council may wish to consider regarding the scope and grace period of the commercial tenant eviction moratorium:

1. Exclude certain types of commercial tenants, such as multi-national companies, etc., from the CTEM on a going forward basis. Such tenants would no longer be protected by the CTEM as of June 1 (assuming the CTEM is extended beyond May 31).
2. Provide all commercial tenants protection from eviction under the CTEM, but establish different grace periods depending on the nature of the commercial tenant. For example, give small “mom and pop” businesses a 12-month grace period to repay Back Rent owed, and establish a shorter period (i.e. 3 months, 6 months) for larger tenants based on size of business and/or amount of leased space. Consideration could also be given to a variation on the grace period depending on the remaining months on a tenant’s lease; although, staff has not found any of the survey cities that distinguish between commercial tenants in this manner. Any changes to the grace period would apply to any unpaid rent that has accrued during the Commercial Eviction Moratoria, including March, April and May unpaid rents.

Staff recommends the City Council discuss the applicability of the moratorium to small versus large commercial tenants, as well as any variation on the length of time for the CTEM grace period, and provide direction to the City Manager as deemed appropriate.

CTEM Repayment Plan Provisions

At its May 11, 2020 City Council Meeting, the City Council discussed options for including repayment plan provisions in the Eviction Moratoria implementation measures. The City Council provided

direction with regard to the Residential Tenant Eviction Moratorium, which has been implemented as discussed in the Background section of this report. The City Council deferred this matter with respect to the Commercial Tenant Eviction Moratorium until May 18th, in light of discussing whether the type of commercial tenant is a factor when determining moratorium requirements and provisions.

Attached for City Council's reference and further discussion is the staff report for the May 11th meeting (Attachment 2), which provides information on how other cities are addressing repayment plans. (See also Section 9 of Attachment 1 for Culver City's provision with regard to the Residential Tenant Eviction Moratorium, as discussed earlier in this report). Subsequent to the May 11th meeting, staff learned that the City of Glendale added a provision to their residential tenant eviction moratorium to require tenants to pay 25% of the unpaid rent every three months during the 12-month grace period, and that a missed payment would be cause for eviction. We are unaware of other cities that have mandated a repayment plan.

Any repayment plan provisions for the Commercial Tenant Eviction Moratorium that may be directed by the City Council will be included in the CTEM Implementation Measures (Attachment 3).

Next Steps

Staff recommends the City Council discuss the above items and provide direction to the City Manager as deemed appropriate. If the City Council provides direction to modify the Eviction Moratoria, the City Manager will issue a supplemental public order and/or amended Implementation Measures, as applicable. Any supplemental public order issued will return to City Council for confirmation at the next City Council meeting.

FISCAL ANALYSIS

There is no fiscal impact associated with the discussion of this item.

ATTACHMENTS

1. 2020-05-18_ATT 1_RTEM Third Amended Implementation Measures
2. 2020-05-18_ATT 2_May 11, 2020 Staff Report Repayment Plan Provisions
3. 2020-05-18_ATT 3_CTEM Amended Implementation Measures

MOTION

That the City Council:

1. Discuss an extension of the Residential and Commercial Tenant Eviction Moratoria beyond May 31, 2020;
2. Discuss applicability of the Commercial Tenant Eviction Moratorium and grace-period options

based on the type of commercial tenant;

3. Discuss options for including repayment plan provisions in the Commercial Tenant Eviction Moratoria Implementation Measures; and
4. Provide direction to the City Manager as deemed appropriate.