



City of Culver City

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Staff Report

File #: 21-175, **Version:** 1

Item #: A-2.

CC - (1) Discussion of the Residential and Commercial Tenant Eviction Moratoria; and (2) Direction to the City Manager as Deemed Appropriate.

Meeting Date: September 14, 2020

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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 (09/10/2020); Stay Informed - Housing Issues (09/10/2020)

Department Approval: John Nachbar, City Manager (09/10/2020)

RECOMMENDATION:

Staff recommends the City Council (1) discuss the Residential and Commercial Tenant Eviction Moratoria; and (2) provide direction to the City Manager as deemed appropriate.

BACKGROUND:

Declaration of Local Emergency and City Public Orders

On March 14, 2020, pursuant to the authority granted by Culver City Municipal Code ("CCMC") Section 3.09.020.B.1.a, the City Manager, as the Director of Emergency Services, issued a Proclamation of Local Emergency due to the outbreak and spread of the coronavirus respiratory disease ("COVID-19") pandemic.

On March 16, 2020, the City Manager issued a Public Order enacting City measures to protect the public health and safety 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 March 27, 2020 Second Supplement to Public Order (Attachment 1), and further extended by the May 19, 2020 Twelfth Supplement to Public Order (Attachment 2) and the August 4, 2020 Twenty-Second Supplement to Public Order (Attachment 3).

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”) (Attachment 4), which was extended by the April 7, 2020 Fifth Supplement to Public Order, May 19, 2020 Twelfth Supplement to Public Order, and August 4, 2020 Twenty-Second Supplement to Public Order.

The Residential Tenant Eviction Moratorium and Commercial Tenant Eviction Moratorium (collectively, “Eviction Moratoria”) **currently expire on September 30, 2020.**

Summary of Residential Tenant Eviction Moratorium

The following is a summary of the key provisions of the Residential Tenant Eviction Moratorium:

- Prohibits tenant evictions during the moratorium period, except for limited circumstances, mostly related to public health and safety.
- RTEM does not establish a rent freeze during the moratorium period. Rent increases are governed by the Interim Rent Control Ordinance (“IRCO”).
- Tenant required to provide notice, a declaration and supporting documentation, when possible, demonstrating inability to pay rent.
- Late charges, fees or interest when the payment of rent is late during the RTEM are prohibited.
- 12-month grace period for the repayment of back rent, commencing after the RTEM expires.
- After the expiration of the RTEM, landlord may not evict for nonpayment of back rent until after the 12-month grace period.
- Landlords and tenants are encouraged to reach a repayment plan during the grace period, although it is not required.
- Where a conflict exists between the RTEM and the IRCO, the terms that provide greater protection to tenant shall apply.

The implementation measures for the RTEM, which contain more details regarding the restrictions, implementation and enforcement of the RTEM, are included for reference as Attachment 5.

Since the enactment of the Residential Tenant Eviction Moratorium, Housing staff has received over 2300 inquiries, including emails and phone calls, on a myriad of issues, including requests for assistance, regarding the RTEM.

Summary of Commercial Tenant Eviction Moratorium

The following is a summary of the key provisions of the Commercial Tenant Eviction Moratorium:

- Prohibits tenant evictions for nonpayment or late payment of rent if the tenant has an inability to pay rent due to circumstances related to COVID-19.
- Late charges, fees or interest when the payment of rent is late during the CTEM are prohibited.
- Tenant required to provide notice and supporting documentation demonstrating inability to pay rent is due to circumstances related to COVID-19.
- 12-month grace period for the repayment of back rent, commencing after the CTEM expires.
- Landlords and tenants are encouraged to reach a repayment plan during the grace period, although it is not required.
- As of June 1, 2020, the CTEM does not apply to a commercial tenant that is a multi-national company, publicly traded company, or a company that employed 200 or more employees on March 20, 2020.

The implementation measures for the CTEM, which contain more details regarding the restrictions, implementation and enforcement of the CTEM, are included for reference as Attachment 6.

Since the enactment of the Commercial Tenant Eviction Moratorium, Economic Development staff has received approximately 58 requests for information or assistance regarding the CTEM.

County Public Health Orders

Beginning in May, 2020, the Los Angeles County Department of Public Health began implementation of its *“Reopening Safer at Work and in the Community for Control of COVID 19: Moving the County of Los Angeles through Stage 2 of California’s Pandemic Resilience Roadmap,”* to allow additional businesses to conditionally reopen, following the State of California’s phased reopening that progressively designates sectors, businesses, establishments or activities that may reopen or resume, with necessary modifications to protect the public health and safety, and to lower the risk of transmission of COVID-19.

Additional Los Angeles County Orders were issued in June 2020, to continue to align with the State of California as it moves through Stage 2 of the *Resilience Roadmap*, by allowing activities to resume and businesses to safely reopen. The City Manager issued further supplemental orders in alignment with the County orders, as well as orders unique to Culver City to assist with the recovery of existing businesses and help new businesses establish themselves.

However, later in June and during the month of July, 2020, due to increases in the daily reported COVID-19 cases, hospitalizations, and the testing positivity rates, the Los Angeles County Public Health Officer issued revised orders, in alignment with the California Governor’s announcements, requiring the closure of specific activities and business sectors, superseding previous orders, to address the serious regression of COVID-19 indicators within Los Angeles County. Such closures of certain higher risk businesses, recreational sites, commercial properties, and activities, where more frequent and prolonged person-to-person contacts are likely to occur, superseded any previous openings permitted in Culver City.

Most recently, on September 2, 2020, the County of Los Angeles Public Health Officer issued a

revised Order, to align with the State of California's August 28, 2020 *Blueprint for a Safer Economy*, which describes a tiered approach to relaxing and tightening restrictions based on specific criteria. This included the reopening of additional businesses (hair salons and barbershops) at significantly reduced capacity.

Slow Recovery Period

Despite these gradual reopenings, there are a substantial number of businesses that remain closed or are operating at severely reduced capacities, resulting in a slow financial recovery for many tenants, both residential and commercial.

Since March 2020, the effects of the COVID-19 pandemic and the measures taken to slow its spread and protect the public's health and safety have impacted record numbers of workers. California's Employment Development Department (EDD) reports it processed over 7 million claims for unemployment benefits over a 16-week period ending June 27, 2020, compared to about 3.8 million claims processed over the worst full year of the Great Recession (2010). According to the EDD, as of July 2020, California has an unemployment rate of 13.7%, with 2,591,200 jobless. This is above the 12.3% unemployment rate set during the height of the Great Recession (March, October, and November 2010).

The Public Policy Institute of California reports that about 12.3 million Californians in families headed by working age adults live in or near poverty, and the largest number of poor and near-poor Californians live in Los Angeles County; and that there is a 24% poverty rate among workers in the accommodation and food service sector, which has been severely impacted by reduced tourism and dining out; and a disproportionate share of essential workers such as laborers, cooks, cashiers, and personal care aides are poor or nearly poor.

Low-income households are more likely to be employed in industries that have been severely impacted by COVID-19 and are less likely to hold jobs that allow them to continue working from home.

Based on historical and projected trends, housing shortages in the City and continued escalation in rents will persist well beyond the economy's recovery from the impacts of COVID-19, making it more difficult for renters who face eviction to relocate to replacement housing in the City.

Assistance for Landlords and Tenants

Residential: On May 26, 2020, the City Council approved the COVID-19 Emergency Rental Assistance Program (ERAP) guidelines; and on August 10, 2020, the City Council and Housing Authority Board approved \$1.5 million in funding for the ERAP. The COVID-19 ERAP is designed to preserve and facilitate housing security and stability and prevention of residents from falling into homelessness due to the current health crisis. COVID-19 ERAP is a two component program that will provide either temporary 12-month rental assistance or one-time 3-month rent catch-up grants to income-eligible Culver City renter households that have been economically impacted by the COVID-19 pandemic through job loss, furlough, reduction in hours or pay and financial burden due to childcare or medical expenses related to COVID-19. The program provides rent subsidies for those households defined as "extremely low income," "very low income," and "low income."

Applications for the COVID-19 ERAP were accepted both on-line and by mail. The on-line applications process took place from August 20 - 23, 2020. To accommodate applicants without computers or WIFI access, hard copy applications were mailed upon request. Applicants could request a hard copy application on September 24, 2020. Submitted hard copy applications were required to have a postmark of August 31, 2020 to meet the required deadline. The hard copy applications included a postage paid envelope for return to the Housing Division at no cost. Applicants also could drop off their applications at the Housing Division drop box.

COVID-19 ERAP applicants will be selected by lottery during the early part of September 2020.

Commercial: Economic Development staff has been working closely with the Small Business Development Center (SBDC) along with the Los Angeles Economic Development Corporation (LAEDC) to refer commercial tenants and commercial property owners that are in need of financial assistance to available resources and opportunities for help.

State Executive Orders and Recent Legislation

Executive Orders: On June 30, 2020, the Governor of California issued an Executive Order extending to September 30, 2020 prior orders waiving certain statutory restrictions enabling local governments to set limitations on residential and commercial evictions.

AB 3088: On August 31, 2020, the Governor signed AB 3088, the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020, urgency legislation which took effect immediately. The Act consists of two components, the COVID-19 Small Landlord and Homeowner Relief Act of 2020, which addresses mortgage relief; and the COVID-19 Tenant Relief Act of 2020 ("CTRA"), which addresses non-payment of rent due to COVID-19.

The following is a summary Factsheet issued by the Governor's Office regarding AB 3088:

Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020

- **No COVID-19-Related Evictions Until February 1, 2021**
 - Tenant cannot be evicted for a COVID-19 related hardship that accrued between March 4 - August 31, 2020 if tenant returns declaration of hardship under penalty of perjury.
 - Tenant cannot be evicted for a COVID-19 related hardship that accrues between September 1, 2020 - January 31, 2021 if tenant returns declaration of hardship under penalty of perjury and pays at least 25% of the rent due.
 - Higher income tenants (over \$100K household income or over 130% of median household income, whichever is higher) must provide documentation to support their declaration upon a landlord's request.
 - Applies to all residential tenants (including mobile home tenants), regardless of immigration status.
- **Tenants Still Responsible for Paying Unpaid Amounts to Landlords**
 - So long as the tenant with COVID-19 related hardship follows the bill's procedures, any unpaid rent due between March 4, 2020 - January 31, 2021

- is not a ground/basis for eviction, but is still owed to the landlord as a form of consumer debt.
- Small claims court jurisdiction is temporarily expanded to allow landlords to recover these amounts.
 - Landlords may begin to recover this debt on March 1, 2021. This expanded small claims court provision sunsets on February 1, 2025.
- **Additional Legal and Financial Protections for Tenants**
 - Extends notice period for nonpayment of rent from 3 to 15 days to provide tenant additional time to respond to landlord's notice to pay rent or quit.
 - Requires landlords to provide hardship declaration forms in a different language if rental agreement was negotiated in a different language.
 - Provides tenants a backstop if they have a good reason for failing to return the hardship declaration within 15 days.
 - Requires landlords to provide tenants a notice detailing their rights under the Act.
 - Limits public disclosure ("masking") of eviction cases involving nonpayment of rent between March 4, 2020 - January 31, 2021.
 - Protects tenants against being evicted for "just cause" if the landlord is shown to be evicting the tenant for COVID-19-related nonpayment of rent.
 - **Statewide Consistency and a Pause on Local Measures**
 - Existing local ordinances can remain in place until they expire and future local action cannot undermine this Act's framework.
 - Requires ordinances that provide a repayment schedule to begin repayment no later than March 1, 2021.
 - Clarifies that nothing in the Act affects a local jurisdiction's ability to adopt an ordinance that requires just cause, consistent with state law, provided it does not affect rental payments before January 31, 2021.
 - **Protections for Small Landlords**
 - Extends the Homeowners' Bill of Rights' anti-foreclosure protections to small landlords, 1-4 units, non-owner occupied.
 - Provides new accountability and transparency provisions to protect small landlord borrowers who request CARES-compliant forbearance, and provides the borrower who is harmed by a material violation with a cause of action.
 - **Significantly Increases Penalties on Landlords Who Do Not Follow Court Evictions Process**
 - Increases penalties on landlords who resort to self-help (i.e., locking the tenant out, throwing property out onto the curb, shutting off utilities) to evict a tenant, rather than going through the required court process.

AB 3088 specifically preempts local jurisdictions per California Code of Civil Procedure (CCP) Section 1179.05(e), which provides: "The Legislature finds and declares that this section addresses a matter of statewide concern rather than a municipal affair...Therefore, this section applies to all

cities, including charter cities.”

Under AB 3088 [CCP Sections 11709.05(a)(1), (a)(2)(b) and (a)(2)(c)]:

- The City’s Residential Tenant Eviction Moratorium will remain in effect until its current expiration date of September 30, 2020.
- Any extension or modification would not become effective until February 1, 2021.
- The RTEM’s grace period for payment of back rent that accrued through September 30, 2020 would not begin until March 1, 2021 and may not extend beyond March 1, 2022.

Federal Orders

On September 4, 2020, the federal Centers for Disease Control and Prevention issued an order placing a temporary halt on residential evictions to prevent the further spread of COVID-19; however, this Order has no effect in jurisdictions that have imposed restrictions on residential evictions that are more protective of the public health, which would apparently include California, now that AB 3088 has been enacted.

City Council Direction

On August 3, 2020, the City Council discussed and directed the extension of both the RTEM and CTEM to September 30, 2020. In addition, City Council directed staff to agendize a comprehensive discussion on the Eviction Moratoria and what the future holds for landlords and tenants during these unprecedented times.

DISCUSSION:

City’s Authority in Light of AB 3088

RTEM: As noted above, under AB 3088, the City’s Residential Tenant Eviction Moratorium will remain in effect until its current expiration date of September 30, 2020. However, any extension or modification would not become effective until February 1, 2021. Further, the RTEM’s 12-month period for the repayment of back rent that accrued through September 30, 2020 would not begin until March 1, 2021 and may not be extended beyond March 1, 2022.

Given AB 3088, there are not many options for the City Council to consider with regard to the Residential Tenant Eviction Moratorium. Enforcement of a residential tenant’s rights under AB 3088 would take the form of a civil action, including raising AB 3088 as a defense in an unlawful detainer action.

However, some possible steps the City can take to assist residential tenants with navigating AB 3088 include:

- Preparation of FAQs explaining AB 3088;
- Referral of residential tenants to Bet Tzedek legal aid for advice, which the City has contracted with to provide dedicated resources to Culver City residents;
- Increase the contract amount for Bet Tzedek, assuming there will be an increase in referrals in light of the new state law;
- Continue to implement and enforce the City’s Residential Tenant Eviction Moratorium and

RTEM Implementation Measures through September 30th.

- Enforce the RTEM's 12-month grace period beginning March 1, 2021.

CTEM: AB 3088 does not apply to commercial tenants; therefore, the City would not be precluded from extending or modifying the Commercial Tenant Eviction Moratorium.

The following is a sampling of other cities and their respective expiration dates for their commercial moratoria:

- **Beverly Hills:** no longer in effect
- **Burbank:** September 30, 2020
- **Glendale:** no longer in effect
- **Los Angeles City:** end of local emergency
- **Los Angeles County:** September 30, 2020
- **Pasadena:** end of local emergency
- **Santa Monica:** no longer in effect
- **West Hollywood:** September 30, 2020

For the listed cities that continue to have commercial tenant eviction moratoria in place, such moratoria exclude certain types of commercial tenants from the protections of the moratoria (i.e. multi-national or publicly traded companies and businesses of a certain size). Culver City has implemented similar exemptions.

Next Steps

Staff recommends the City Council discuss the Residential and Commercial Tenant Eviction Moratoria and direct the City Manager as deemed appropriate. If the City Council provides direction to further extend and/or otherwise regulate the Eviction Moratoria, the City Manager will issue a supplemental public order consistent with such direction in light of the limitations imposed by AB 3088. 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. 2020-09-14_ATT 1_March 27 Second Supplement to Public Order
2. 2020-08-03_ATT 2_May 19 Twelfth Supplement to Public Order
3. 2020-09-14_ATT 3_August 4 Twenty-Second Supplement to Public Order
4. 2020-09-14_ATT 4_March 20 First Supplement to Public Order
5. 2020-08-03_ATT 5_RTEM Fifth Amended Implementation Measures
6. 2020-05-18_ATT 6_CTEM Fifth Amended Implementation Measures

MOTION

That the City Council:

1. Discuss the Residential and Commercial Tenant Eviction Moratoria; and
2. Provide direction to the City Manager as deemed appropriate.