



Agenda Report

Fullerton City Council

MEETING DATE: JUNE 2, 2020

TO: CITY COUNCIL / SUCCESSOR AGENCY

SUBMITTED BY: KENNETH A. DOMER, CITY MANAGER

PREPARED BY: KENNETH A. DOMER, CITY MANAGER

SUBJECT: EVICTION MORATORIUM EXTENSION REQUEST

SUMMARY

At the May 19, 2020 City Council meeting, Council Member Silva requested, supported by Council Member Zahra, City Council direction regarding extending the residential and commercial eviction moratorium timeline originally approved by City Council as an urgency ordinance on March 26, 2020.

RECOMMENDATION

Provide Staff direction regarding extension of eviction moratorium to include one or more of the following, but not limited to:

1. Direct Staff to return with an urgency ordinance at either a special meeting or the June 16, 2020 City Council meeting, extending Ordinance No. 3279 for a defined period of time.
2. Direct City Manager, in his capacity as Director of Disaster Services, to extend until June 30, 2020 the temporary moratorium adopted through Ordinance No. 3279 on eviction of residential or commercial tenants unable to pay rent because of COVID-19.
3. Provide Staff direction on other matters related to tenant and landlord financial difficulties arising from the COVID-19 public health crisis after discussion by City Council.

PRIORITY POLICY STATEMENT

This item matches the following Priority Policy Statement:

- Public Safety.

FISCAL IMPACT

Not applicable.

DISCUSSION

On March 26, 2020, the City Council approved an Urgency Ordinance No. 3279 on a 4 – vote (Opposed: Whitaker) that prohibited a landlord from initiating proceedings or otherwise taking 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 also applied to commercial tenants, such as a business or commercial enterprise renting or leasing a structure used for business purposes.

That ordinance required residential and commercial tenants, in order to take advantage of the protections 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. The urgency ordinance neither waived nor removed a tenant's obligation to pay back rent owed once the ordinance is no longer effective nor from making partial rent payments. Additionally, the ordinance, as directed by City Council, provided that a tenant will have up to six months after the expiration of the ordinance to pay its landlord unpaid rent. The ordinance included that no late fees, costs or other penalties would be assessed or due from the tenant based on the delay in paying rent as provided for in this ordinance. Most importantly, and specifically for the current discussion, the moratorium on residential and commercial eviction was set to remain in effect until the expiration of the Governor's Executive Order N-28-20, including any extensions. As of the development of this report, the Governor's Executive Order has not been extended.

The Governor's Executive Order, N-28-20, the first of two which dealt with evictions, was issued on March 16th and runs through May 31, 2020. The Second Order, N-37-20, was issued on March 27, 2020 and also runs through May 31, 2020. The primary difference between the First Order and the Second Order is that the First merely gave local jurisdictions the ability to enact a local ordinance for protections while the Second Order directly protected tenants based on the haphazard approach followed under the First Order.

Adding to the protections afforded tenants, the California Judicial Council enacted several emergency Rules of Court related to their proceedings on April 6, 2020. A rule prohibiting courts from processing nearly all unlawful detainers is in effect until 90 days after the Governor lifts the State of Emergency. Effectively, even if the State of Emergency were to cease on May 31, 2020, the Courts will not process an unlawful detainer (the primary means for evicting a tenant) until 90 days past that date. Hence, the Court's rule stops most of the potential evictions. (Evictions are still allowed for public health and safety issues.) During this additional 90 days, even if a landlord was seeking to evict a tenant for lack of payment, a Court is less likely to evict a tenant if there is evidence of repayment during this time. While the City's ordinance set up specific criteria to meet for not paying rent – and a time frame for repayment – a judge has discretion in such matters and may more easily fall in favor of a tenant during this time due to the circumstances.

Extending the eviction ordinance will require a 4/5ths vote due to its urgency status. Extending it without the Governor's extending the statewide moratorium potentially has risk impacts to the City as the City then would be solely relying on our own emergency

powers and police powers for the legal right to impose the eviction protection. This risk analysis can be better explained by the City Attorney's office.

Without extending the ordinance, tenants are still protected by the Judicial Rules in place to temporarily stop eviction (unlawful detainer) proceedings, which is to last 90 days after the lifting of the State of Emergency (which is a separate, and longer time frame than the termination of the eviction order). Coupled with the City's initial six month repayment schedule (which is more than other cities' 90 and 120 day timeline), tenants have a longer period of protections than they do in other jurisdictions.

However, if the City Council desires to extend the eviction moratorium, it would be required to do so on an urgency basis and for the City Council to direct that the item be brought back at either the next meeting, or at a special meeting with at least 24 hours' notice. While it requires only a majority to direct that the item be brought back with a prepared ordinance, an urgency ordinance requires 4/5th approval of the City Council to be adopted.

An additional option is to direct the City Manager, in his role as the Director of Disaster Services, to issue an emergency order extending the protections of Ordinance No. 3279 until June 30, 2020. Under Fullerton Municipal Code Chapter 2.08.060 (A)(8)(a), the Director is empowered to "Make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency...." The direction by a majority of the City Council would serve as the confirmation of this order. The City of Costa Mesa was challenged by a landlord for an initial action by the City Manager, acting in similar capacity for setting forth an eviction moratorium. However, in Fullerton, the City Council previously adopted Ordinance No. 3279. This action, if so directed, would be to extend it for less than 30 days given that the State of Emergency has not been lifted and it is reasonably expected that with the entering of Stage 2 of the Governor's Pandemic Roadmap, with more retail, offices, industrial, restaurants, hair salons and similar businesses being allowed to return to work, that the short extension will serve to protect tenants as the City and County re-open and income can once again be gained.

On May 12, 2020, the City Council of the City of Anaheim directed their Interim City Manager to utilize his powers to do a similar extension until June 30, 2020. Additionally, the Anaheim City Council directed the City Manager to seek federal and state legislative support for property owners dependent on rent payments lost due to the COVID-19 crisis.

Attachments:

- Attachment 1 – Ordinance No. 3279