



STAFF REPORT
3/27/2020

TO: Honorable Mayor and City Council Members

FROM: Best Best & Krieger LLP, City Attorney

SUBJECT: Ordinance No. 1158, an Urgency Ordinance of the City of Coachella Imposing a Temporary Moratorium on Evictions for Nonpayment of Rent During COVID-19 Pandemic

STAFF RECOMMENDATION:

Approval of the Urgency Ordinance Imposing a Temporary Moratorium on Evictions for Nonpayment of Rent during COVID-19 Pandemic.

DISCUSSION/ANALYSIS:

The Center for Disease Control and Prevention (“CDC”) has been monitoring the outbreak of a respiratory illness caused by a novel coronavirus (“2019-nCoV”) that was initially detected in December 2019. The virus has been named “SARS-CoV-2” and the disease it causes has been named “corona virus disease 2019” (abbreviated COVID-19).

Governments worldwide are responding to the outbreak of COVID-19 which according to John Hopkins University has affected over 175 counties/regions with over 510,000 confirmed cases worldwide. In the US there are over 75,000 confirmed cases with over 1,000 confirmed deaths. On March 4, 2020, the Governor of the State of California declared a state of emergency in the State of California as a result of the threat of COVID-19. On March 8, 2020, the Riverside County Health Officer declared a local and public health state of emergency in response to the increased spread of COVID-19, the disease caused by the novel coronavirus. On March 19, 2020, the City Manager, as the City’s Emergency Services Director, proclaimed the existence of a local emergency. As of March 25, 2020, there are at least 8 confirmed deaths in Riverside, with at least 7 in the Coachella Valley, due to COVID-19.

In response to the global pandemic, experts are urging all individuals — even those who are not displaying symptoms — to practice social distancing, which refers to avoiding close contact with other individuals in order to avoid catching the virus yourself and to avoid passing it on to others. The Centers for Disease Control and Prevention recommends that people who are mildly ill with COVID-19 or other similar illnesses self-isolate to avoid interacting in public. Public and private schools in the region have closed in order to try to slow the spread of the virus. On March 19, 2020, the State of California imposed a “shelter in place” order, which required all persons to stay at home, unless they are essential workers.

While these measures are necessary to fight the global pandemic, they can have extreme economic impacts. Fear of the widening public health crisis has impacted consumer behavior. Bars, restaurants and gyms have been ordered closed, and restaurants may now only provide drive through or pick-up service. All non-essential stores have been ordered closed. This has also reduced non-essential travel. As a result of these emergency measures, tenants within our community may see their incomes reduced or may have to take time off work to care for their health or the health of family members. In the face of this uncertainty, people may need to make difficult financial decisions and may be unable to pay rent due to reduced income.

On March 16, 2020, Governor Newsom issued Executive Order N-28-20, which among other things, suspended any state law that would preempt cities' exercise of their police power to impose substantive limitations on residential or commercial evictions, if the basis for the eviction is nonpayment of rent, or a foreclosure, arising out of a substantial decrease in household or business income, or substantial out-of-pocket medical expenses. In addition, under Executive Order N-28-20, the decrease in household or business income or medical expenses would have to have been documented and caused by the COVID-19 pandemic or any government response to COVID-19.

On March 19, 2020, the Governor of the State of California, also issued Executive Order N-33-20, an Order of the State Public Health Officer ordering all individuals living in California to stay home or at their place of residence except as needed to maintain continuity of operations of outlined federal critical infrastructure sectors.

This urgency ordinance proposes a moratorium on evictions for failure to pay rent during this emergency period, if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19. Under the proposed ordinance, a landlord knows of a tenant's inability to pay rent for the covered reasons if the tenant, within 30 days after the date that rent is due, notifies the landlord in writing of lost income and inability to pay full rent due to financial impacts related to COVID-19, and provides documentation to support the claim. Notification "in writing" includes email or text communications to a landlord or the landlord's representative with whom the tenant has previously corresponded by email or text. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim.

For purposes of this ordinance "financial impacts related to COVID-19" include, but are not limited to, tenant lost household income as a result of any of the following: (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (2) lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19; (3) compliance with a recommendation from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (4) extraordinary out-of-pocket medical expenses; or (5) child care needs arising from school closures related to COVID-19.

Notably, the ordinance does *not* relieve the tenant from eventually paying the rent to the landlord. Instead, the ordinance provides that the tenant must pay any unpaid rent within six months after the expiration of the local emergency. However, the landlord may not charge a late fee on the rent.

The ordinance is intended to be narrow and no other legal remedies available to landlord are affected by this ordinance.

If approved, the ordinance will go into effect immediately upon adoption and will remain in effect for sixty days, and authorizes the City Manager (Director Emergency Services) to further extend the ordinance during the period of local emergency. In order to prevent inconsistencies in the law, the City Manager may also suspend the local ordinance if a similar federal or state law is adopted.

As of the writing of this staff report, other cities in California, including San Jose, Hayward, Oakland, Sacramento, Los Angeles, San Diego, and Santa Monica have approved, or are considering, similar urgency measures.

California State Senator Scott Wiener and Assembly Member Phil Ting have called on California and the federal government to immediately place an emergency moratorium on evictions — for both renters and businesses — as well as home foreclosures. Any legislation introduced would need a supermajority vote (two-thirds of the Legislature) in both houses of the Legislature to take effect immediately. The City Attorney's Office and staff will continue to track and monitor these proposals at the state level to determine how it may impact Coachella residents and businesses.

During a state of emergency, it is a crime for a landlord to take advantage of the situation by evicting a tenant and then raising the rent above the existing tenant's rent under Penal Code s. 396(f). This ordinance will provide additional protections to tenants. In addition to the City's general police power under article XI, section 5 of the California Constitution, during a local emergency, Government Code, § 8634 and the City's Municipal Code also authorize the City to promulgate orders and regulations necessary to provide for the protection of life and property. The coronavirus outbreak presents a health and financial crisis to all and this situation is unprecedented and constantly evolving.

This urgency measure will provide protections to those who have had unforeseen financial impacts due to COVID-19. Displacement through eviction creates undue hardship for tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing, and lack of moving services and supplies as stores and businesses close. During the COVID-19 pandemic outbreak, affected tenants who have lost income due to impact on the economy or their employment may be at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted. People experiencing homelessness are especially vulnerable to the spread of COVID-19 due to an inability to practice social distancing and a lack of access to health care.

The Governor has ordered the State to take extraordinary measures to secure shelter for homeless populations during this emergency to limit exposure to and spreading of COVID-19. Widespread evictions of tenants vulnerable to eviction due to financial hardship occurring due to COVID-19 would exacerbate the challenge of sheltering the homeless during this emergency, and increase the risk of spread of COVID-19.

This situation is unprecedented and the circumstances are changing hourly. The situation is evolving so rapidly that it is hard to capture the full scale of the closures. However, City residents

will be unable to work at any non-essential job that requires physical presence. Businesses are expected to see a sharp drop in revenue, making it difficult to pay workers. Wages are expected to drop sharply and this ordinance will allow individuals to follow the national, state and local directives to stay home without fear of losing their home or business during this emergency.

ALTERNATIVES:

1. Do not adopt the Urgency Ordinance.
2. Provide additional direction.

FISCAL IMPACT:

None Anticipated.

RECOMMENDED ALTERNATIVE(S):

None.