

Agenda Report

April 11, 2022

TO: Honorable Mayor and City Council

FROM: Department of Housing

SUBJECT: **SUNSET THE LOCAL MORATORIUM ON EVICTION OF RESIDENTIAL AND COMMERCIAL TENANTS IMPACTED BY THE COVID-19 PANDEMIC**

RECOMMENDATION:

It is recommended that the City Council:

- 1) Find that the recommended action is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines per Section 15061(b) (3), the common sense exemption that CEQA only applies to projects that may have an effect on the environment;
- 2) Direct the City Attorney to prepare and return within 30 days with an ordinance that sunsets the COVID-19 eviction moratorium, Ordinance No. 7359: (a) for commercial properties at the time of adoption (anticipated to be in or around the middle of May, 2022); and (b) for residential properties on June 30, 2022.

BACKGROUND:

In response to the outbreak of the respiratory disease COVID-19, the Health Officer, on 3/4/20, declared the existence of a local health emergency in Pasadena, and the declaration was ratified by the City Council on 3/9/20. State of emergency declarations related to COVID-19 were made by the State of California and the County of Los Angeles on 3/4/20, and by the federal government on 3/13/20.

On 3/16/20, the City Manager declared the existence of a local emergency, allowing the City to address the COVID-19 pandemic. This declaration was ratified by the City Council on 3/17/20. As a second supplement to the City Manager's declaration of a local emergency, the City Council, on 3/17/20, ratified an eviction moratorium to protect tenants experiencing financial impacts from the COVID-19 pandemic, with the ratified moratorium residing as uncodified Ordinance No. 7359; hence, a local eviction moratorium has been in place as of 3/17/20. This moratorium was further

amended by City Council on 5/18/20 as an uncodified ordinance (not a local emergency supplement) (as amended, the "Moratorium"). A list of administrative (non-Health Officer) emergency orders related to the COVID pandemic is provided in Attachment "A" of this agenda report.

Key provisions of the Moratorium include the following:

- Landlords are prohibited from evicting residential tenants for (a) non-payment of rent if the tenant is unable to pay rent due to the financial impacts of COVID-19, or (b) a no-fault eviction unless necessary for health and safety reasons.
- Landlords are prohibited from evicting commercial tenants for non-payment of rent if the tenant is unable to pay rent due to the financial impacts of COVID-19.
- The moratorium applies to all residential and commercial tenants regardless of the type of lease or rental agreement (e.g., month-to-month, annual, long-term).
- The moratorium covers all types of units rented for more than 30 days, including, but not limited to, multi-family units, duplex units, room rentals, single-family residences, condominiums, and spaces in self-storage facilities, regardless as to when the rental unit was built. Guests of hotels and short-term rentals are not covered by the moratorium.
- A tenant experiencing an inability to pay rent due to financial impacts of COVID-19 shall contact their landlord and provide documentation to support their claim.
- If a landlord has been notified by the tenant of their inability to pay rent due to financial impacts of the COVID-19 pandemic, the landlord cannot serve an eviction notice, file or prosecute an unlawful detainer action based on a three-day pay or quit notice, or otherwise endeavor to evict the tenant for nonpayment of rent. A tenant may use the Pasadena moratorium as an affirmative defense in an unlawful detainer or other action brought by landlord to recover possession of the rental unit.
- Tenants are required to repay any back-rent within six (6) months of the expiration of the local emergency period.
- During the moratorium, a landlord may not impose or seek to recover late fees, pass-throughs, or interest for rent that is delayed or unpaid due to the financial impacts of the COVID-19 pandemic.
- Landlords are prohibited from harassing or intimidating tenants who exercise their protections under the moratorium.
- If not sunsetted by the Council at an earlier date (which is proposed by staff through this Agenda Report), the moratorium will end upon the City Council's sunseting of the local emergency relating to the COVID-19 pandemic.

FEDERAL, STATE, AND LOCAL COVID-19 EVICTION MORATORIA

Federal, state and local governments enacted emergency tenant protection measures in response to the COVID-19 pandemic. Many of these protections have expired.

Federal

On 9/4/20, the CDC issued a number of nationwide orders banning the eviction of residential tenants. However, on 8/27/21, the U.S. Supreme Court struck down the nationwide moratorium, ruling that the CDC lacked the authority to issue these types of orders. The government-backed mortgage buyers Freddie Mac and Fannie Mae (FHFA) temporarily prohibited certain multifamily property owners from evicting tenants, but this mortgage-based eviction moratorium ended on 9/30/21. Currently, no Federal eviction restrictions remain.

State of California

The COVID-19 Tenant Relief Act of 2020 (AB 3088), which took effect on 8/31/20, prohibits landlords from filing evictions against residential tenants for non-payment of rent caused by COVID-19. Furthermore, on 1/28/21, the COVID-19 Rental Housing Recovery Act (SB 91) was enacted to extend and strengthen a number of the eviction prohibition provisions under AB 3088, and added Federal stimulus money for rental assistance. On 6/30/21, the COVID-19 Rental Housing Recovery Act (AB 832) went into effect, extending the state eviction moratorium through 9/30/21. Commercial tenants were not covered under the statewide acts. Residential tenants were able to apply for rent assistance under the state Housing Is Key program through 3/31/22. Finally, the recent passage of AB 2179 extends, through 6/30/22, eviction protections for tenants who applied for Housing Is Key rent relief on or before the 3/31/22 program deadline. AB 2179 also ends local eviction protections that were passed on or after 8/19/20, and bans local jurisdictions from enacting new COVID-19 eviction moratoria until 7/1/22. The City's Moratorium (adopted on 5/18/20) is not affected by AB 2179.

Local Jurisdictions

Staff reviewed data for local jurisdictions that enacted COVID-19 eviction moratoria, with much of the information sourced from the Nolo website (updated as of 4/6/22). The Nolo data includes summaries of 52 city and county jurisdictions in California that had enacted emergency eviction moratoria in response to the COVID-19 pandemic. Based on this data, and information from other sources, eviction moratoria for residential tenants have expired in 10 (or 20%) of the 51 jurisdictions. With respect to commercial tenants, 32 of the 51 jurisdictions had eviction moratoria protections of which 18 (56%) have expired.

Most local jurisdictions that currently have COVID tenant protections in effect have set the expiration of their eviction moratoria to coincide with the anticipated lifting of their local emergency. Other jurisdictions will sunset their eviction moratoria within a specified period (ranging from 30 days to 12 months) after the local emergency is lifted. Pasadena, as a charter city, has the authority to sunset its own eviction protections, independent of what other local jurisdictions may do.

For the purpose of comparison, the table below summarizes the current status of eviction moratoria for a number of local jurisdictions.

Jurisdiction	Residential Tenant Eviction Moratorium	Commercial Tenant Eviction Moratorium
Beverly Hills	In effect through local emergency	Expired 7/31/20
Burbank	Expired 9/30/21	Expired 9/30/21
Glendale	Expired 9/30/21	Expired 9/30/21
Los Angeles County	In effect through 5/31/22 (moderate income), and 12/31/22 (low income)	Expired 1/31/22
Monrovia	In effect through local emergency	Expired 9/7/21
Pasadena	In effect through local emergency *	In effect through local emergency *
Santa Monica	Same as Los Angeles County	Expired 9/30/21
So. Pasadena	In effect through local emergency	Same as Residential Tenant
West Hollywood	In effect through 12/31/22	Expired 9/30/21

* Ordinance No. 7363, adopted May 18, 2020

Commercial Tenants in Pasadena

The Office of the City Manager contacted several commercial real estate brokers (both office and retail) and their overall observation is that lifting the City's eviction moratorium will have minimal impact. By now, tenants that were struggling financially have either filed for bankruptcy, stopped paying rent, and/or have moved out. Property owners, in weighing the cost of retaining an existing tenant vs. recruiting a new tenant, have done some of the following: extended current leases; provided rent relief; blended costs; offered up-front concessions to renew; reduced square footage of the commercial space; or agreed to other terms. In general, the brokers contacted felt that property owners and tenants have worked out their issues over the last two years and that there is not expected to be a significant impact should the eviction moratorium be lifted.

Residential Tenants in Pasadena

The City contracts with the Housing Rights Center ("HRC") to provide information and consultation to tenants and landlords on matters concerning fair housing, tenant-landlord issues, and compliance with the City's Tenant Protection Ordinance and COVID eviction moratorium. Demand for HRC services increased during the COVID pandemic, resulting in an approximately 23% increase in Pasadena callers from 2020 to 2021. During the period January 2020 through December 2021, HRC responded to 1,614 Pasadena requests for assistance. HRC maintains an office at the Jackie Robinson Center and can be contacted by calling (626) 831-9732.

Rent assistance has been provided to Pasadena landlords and tenants impacted by the COVID-19 pandemic.

- The City's Emergency Rental Assistance Program ("ERAP") provided \$1M in federal Community Development Block Grant Coronavirus (CDBG-CV) funds to assist 275 Pasadena renter households with past due rent relief. This program was completed in December 2020.
- A program similar to the City's ERAP was administered by the County of Los Angeles. The County's COVID-19 Rent Relief program was completed in June 2021, with \$3M in assistance provided to 356 Pasadena renter households.
- The State of California provided COVID-19 rent and utilities payment relief through the Housing Is Key program. Applications were accepted through March 31, 2022. To date, 1,422 Pasadena Households have been assisted with over \$17.1M paid out. Program information and application status can be obtained online at: https://housing.ca.gov/covid_rr/

SUNSETTING OF THE CITY EVICTION MORATORIUM

Staff recommends that City Council direct the City Attorney to prepare and return within 30 days with an ordinance that sunsets the COVID-19 eviction moratorium, Ordinance No. 7359: (a) for commercial properties at the time of adoption (anticipated to be in or around the middle of May, 2022); and (b) for residential properties on June 30, 2022.

It is anticipated that, after residential tenant protections in the City are lifted, landlords may commence to file for eviction for non-payment of rent. While the number of evictions that may ensue cannot be estimated, there may be a surge in eviction actions after two years of prohibitions on evictions where tenants had experienced financial impacts due to the COVID-19 pandemic. According to data from the Housing Rights Center, eviction filings in Los Angeles County increased substantially after the state eviction moratorium was lifted on 9/30/21. During the month of September 2021 (the final month that the state moratorium was in effect) 1,059 eviction cases were filed. In the following three-month period October through December 2021, a total of 4,078 cases were filed, averaging 1,358 cases per month. This represents a 28% increase in eviction filings per month after the cessation of the state moratorium.

To mitigate the impacts of these actions after the City Moratorium is sunsetted, a number of programs are being planned to assist impacted tenants. They include additional funding for the Housing Rights Center to provide limited legal services, emergency rental assistance, and tenant based rental assistance. All of these resources are targeted and limited, and could be quickly exhausted if there is a large wave of evictions.

The proposed sunseting of the City Moratorium can be accomplished, without regard to jeopardizing the underlying factual basis for the City Manager's declaration of local emergency, as well as the Health Officer's declaration of local health emergency, both of which were ratified by resolutions of the City Council in March 2020.

Two other options were considered by staff with respect to the residential tenant protections, but are not part of staff's recommendation here:

1. Lifting the residential in addition to the commercial tenant protections to be effective immediately upon adoption of a sunseting ordinance (in or around the middle of May, 2022). This option is not recommended because it would not allow adequate time to put in place the impact mitigation programs that are being planned. Furthermore, it is known that while a significant amount of the state's Housing Is Key funds have been awarded, they are still in the process of being disbursed to landlords.
2. Extending the residential tenant protections through 12/31/22 (similar to the action taken by the County of Los Angeles). This option is not recommended because it is unclear that a six-month extension of the moratorium is necessary. For example, the City of Burbank experienced only a slight uptick in eviction cases after their eviction order expired on 9/30/21. The rent relief assistance provided by the state through the Housing Is Key program has likely helped in stemming evictions.

COUNCIL POLICY CONSIDERATION:

The proposed action is consistent with the City's General Plan - Housing Element and the Five-Year Consolidated Plan. The proposed action supports and promotes the quality of life and the local economy, a goal of the City Council's strategic plan.


ENVIRONMENTAL ANALYSIS:

The action proposed herein is exempt from the California Environmental Quality Act (CEQA), pursuant to State CEQA Guidelines Section 15061(b)(3), the common sense exemption. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The recommended action resulting in the lifting of tenant protections will not have a significant effect on the environment and, hence, is not subject to CEQA.


FISCAL IMPACT:

Approval of the staff recommendation will have no direct fiscal impact on the City's General Fund.

Respectfully submitted,


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Attachment "A": Administrative (non-Health Officer) Emergency Orders Related to the Pandemic