



City Council Agenda Report

Agenda
Item No.
4.

DATE: April 7, 2020

TO: Honorable Mayor and Members of the City Council

APPROVED BY: Rachel Barbosa, City Manager

APPROVED AS TO FORM: Anthony R. Taylor, City Attorney

SUBMITTED BY: Anthony R. Taylor, City Attorney

SUBJECT: CONSIDERATION OF URGENCY ORDINANCE
NO. 1244-U ENACTING COMMERCIAL EVICTION
PROTECTIONS AND RESIDENTIAL RENT DEFERRALS
RELATED TO THE COVID-19 PANDEMIC

SUMMARY: Loss of income and revenue, and an increase in expenses, as a result of the COVID-19 pandemic, may inhibit City residents and businesses from fulfilling their financial obligations, including paying rent, leaving tenants vulnerable to eviction. In order to protect the health, safety, and welfare of the residents and businesses of the City of South El Monte, City staff has prepared the proposed Urgency Ordinance ("Ordinance") to establish protections against evictions of businesses from commercial property and residential rent deferrals during the current declared state of emergency related to the COVID-19 pandemic.

RECOMMENDATION: Staff recommends that the City Council adopt Urgency Ordinance No. 1244-U, enacting commercial eviction protections and residential rent deferrals related to the COVID-19 Pandemic.

FISCAL IMPACT: The Ordinance would prohibit landlords in the City from evicting commercial tenants from any property based on failure to pay rent, if the failure to pay rent is due to the COVID-19 pandemic and is documented, at least until May 31, 2020. The proposed Ordinance would also establish a process for rent deferrals for residential properties.

DISCUSSION: A novel coronavirus (COVID-19) was detected in Wuhan City, Hubei Province, in China in December 2019. On January 30, 2020, the World Health Organization declared COVID-19 a public health emergency of international concern. The

United States, the State of California, and the City of South El Monte have all declared states of emergency arising from the COVID-19 pandemic.

As a result of the public health emergency and the precautions recommended by health authorities, residents and businesses in South El Monte have experienced or expect soon to experience sudden and unexpected income loss and may experience unexpected increased medical expenses. City businesses have also suffered loss of revenue due to the need for employees to work from home, the need to reduce business hours, legal requirements for certain kinds of businesses to close, and a decrease in consumer demand.

Loss of income and revenue, and an increase in expenses, as a result of COVID-19, may inhibit City residents and businesses from fulfilling their financial obligations, including paying rent, leaving tenants vulnerable to eviction.

On March 16, 2020, the Governor issued Executive Order N-28-20, which waived any provisions of State law that would preempt or otherwise restrict a local government's exercise of its police power to impose substantive limitations on residential or commercial evictions until May 31, 2020, unless extended.

On March 27, 2020, the Governor issued Executive Order N-37-20, which prohibits the execution of a writ of possession to evict a residential tenant who:

- (1) paid rent due up through March 26, 2020;
- (2) gave the landlord notice no later than seven days after rent was due of the tenant's inability to pay rent due to (a) missing work due to the COVID-19 related illness of the tenant or the tenant's family member, (b) a lay-off, loss of hours, or other income reduction due to COVID-19, or (c) missing work to care for child whose school was closed due to COVID-19; and
- (3) can verify these facts with documentation, which may be provided to the landlord up until the time that the tenant pays back-due rent.

Executive Order N-37-20 also give tenants an additional 60 days to respond to a complaint filed by their landlord for unlawful detainer. This Order is effective until May 31, 2020 and does not apply to commercial tenants.

However, Executive Order N-37-20 does not prevent residential renters from paying rent in full if they are able to pay all or some rent, nor does it relieve residential renters from having to eventually pay rent owed. Further, it does not provide a period in which residential renters may avoid eviction upon expiration of Executive Order N-37-20 by paying lawfully charged rent to their landlords

In response to the imminent threat of eviction facing many City residents and businesses, as well as the Governors' Executive Order N-28-20, the Ordinance would temporarily enact protections against commercial evictions within the City for failure to pay rent, or

due to foreclosure, caused by the COVID-19 pandemic. The Ordinance provides protections against evictions when the tenant cannot pay rent due to workplace closures, owner or employee sicknesses, increased childcare costs, or reasonable expenditures related to government orders related to COVID-19. The tenant must provide notice of their inability to pay prior to the rent being due, as well as documentation related to their reasons for non-payment.

The Ordinance does not forgive or excuse the payment of rent, or prohibit landlords from seeking to recover rent by means other than eviction. The Ordinance also does not prohibit eviction for reasons other than nonpayment of rent, or due to foreclosure, nor does it prohibit eviction for nonpayment of rent that preceded or is unrelated to the COVID-19 pandemic. Once the Ordinance expires, commercial tenants will have 180 days to re-pay deferred rent payments.

The Ordinance provides for a period up to 180-day in which a residents can repay deferred rental payments following the expiration of Executive Order N-37-20.

The Ordinance would remain in place until the termination of the local emergency proclaimed by the Mayor on March 12, 2020, and ratified by the City Council on March 17, 2020.

The Ordinance would take effect immediately upon adoption by a four-fifths (4/5) vote pursuant to Government Code section 36937(b), which applies to ordinances "[f]or the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency."

The proposed Urgency Ordinance would also promote income stability for employees, ensure that necessary commercial services remain available, and otherwise mitigate the economic impacts of COVID-19, all of which will preserve public peace, health, and safety.

ATTACHMENTS: Urgency Ordinance No. 1244-U

URGENCY ORDINANCE NO. 1244-U

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH EL MONTE, CALIFORNIA, ENACTING COMMERCIAL EVICTION PROTECTIONS AND RESIDENTIAL RENT DEFERRALS RELATED TO THE COVID-19 PANDEMIC

WHEREAS, pursuant to Government Code Section 36937(b), any ordinance for the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the City Council, shall take effect immediately upon its adoption; and

WHEREAS, in December, 2019, an outbreak of respiratory illness due to a novel coronavirus (COVID-19) was first identified in Wuhan City, Hubei Province, China; and

WHEREAS, the Center for Disease Control and Prevention (CDC) considers COVID-19 to be a very serious public health threat with outcomes ranging from very mild (including some with no reported symptoms) to severe, including illness resulting in death; and

WHEREAS, according to the CDC, there is no vaccine to prevent COVID-19 and there is no specific antiviral treatment recommended for COVID-19 at this time; and

WHEREAS, on January 30, 2020, the World Health Organization declared a Public Health Emergency of International Concern over the global spread of COVID-19; and

WHEREAS, on January 31, 2020, Health and Human Services declared a Public Health Emergency for the United States to aid the nation's healthcare community in responding to COVID-19; and

WHEREAS, the California Department of Public Health (CDPH) has activated its Medical and Health Coordination Center, and the Office of Emergency Services recently activated the State Operations Center to provide support and guide actions to preserve public health; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a State of Emergency for the State of California; and

WHEREAS, on March 11, 2020, the World Health Organization characterized COVID-19 as a "pandemic"; and

WHEREAS, on March 12, 2020, Governor Newsom issued Executive Order N-25-20 regarding COVID-19 further enhancing State and local government's ability to respond to the COVID-19 pandemic; and

WHEREAS, on March 12, 2020, the Mayor of the City of South El Monte, pursuant to Section 2.60.060 of the South El Monte Municipal Code, signed a proclamation which proclaimed the existence of a local emergency based on COVID-19 ("Proclamation"); and

WHEREAS, on March 13, 2020, President Trump declared a National State of Emergency in response to increased spread of COVID-19; and

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-20, in response to the COVID-19 pandemic, which permits, but does not require, cities and counties to adopt measures against evictions; and

WHEREAS, on March 17, 2020, the City Council of the City of South El Monte ratified the Proclamation; and

WHEREAS, on March 19, 2020, Governor Newsom issued Order N-33-20 requiring all individuals, except those performing essential services as defined by the order, living in California to stay home or at their place of residence in order to combat the COVID-19; and

WHEREAS, on March 23, 2020, the Chief Justice of the Supreme Court of California issued an order generally suspending and continuing all jury trials for a period of 60 days; extending the time period for holding a criminal trial by 60 days from the date of the order; extending the time period for the holding of a civil trial by 60 days; and further allow affected courts to enact rule amendments to address the impacts of COVID-19; and

WHEREAS, on March 27, 2020, Governor Newsom issued Executive Order N-37-20, which effectively enacted a moratorium on residential evictions by giving renters 60 days to respond to an eviction complaint filed in court and by banning enforcement of evictions orders through May 31, 2020 (“Executive Order N-37-20”). In order to qualify for such protections, residential renters must do the following:

(1) Prior to March 27, 2020, residential renters must have paid their landlord rent that is due and be current on their rent.

(2) Notify their landlord in writing no later than 7 days after rent is due that they need to delay all or some of their rent payment for COVID-19 reasons, such as the following:

(i) They were sick with suspected/confirmed COVID-19 or were caring for a household/family member sick with suspected/confirmed COVID-19; or

(ii) They experienced a lay-off, loss of hours, or other income reduction due to COVID-19, the state of emergency, or related governmental response; or

(iii) They missed work to care for a child whose school was closed due to COVID-19.

(3) Retain verifiable documentation of the above and provide it to their landlord no later than the time upon payment of back-due rent. Examples of documentation include termination notices, payroll checks, pay stubs, bank statements,

medical bills, or signed letters or statements from an employer/supervisor explaining your changed financial circumstances.

However, Executive Order N-37-20 does not prevent residential renters from paying rent in full if they are able to pay all or some rent, nor does it relieve residential renters from having to eventually pay rent owed; and

WHEREAS, Executive Order N-37-20 does not provide a period in which residential renters may avoid eviction upon expiration of Executive Order N-37-20 by paying lawfully charged rent to their landlords; and

WHEREAS, there are currently no similar eviction protections for businesses renting commercial property provided by Executive Order N-37-20 even though such businesses may have suffered a decrease in business income due to COVID-19, including impacts that reduce operational hours and reduce customer demand for a business' services; and

WHEREAS, on April 6, 2020, the California Judicial Council adopted Emergency Rule 1, which provides the following:

(1) Prohibits courts from issuing a summons on a complaint for unlawful detainer (except for public health & safety reasons).

(2) Prohibits courts from entering a default or default judgment for restitution in an unlawful detainer action for failure of a defendant to appear (unless the action is necessary for public health & safety reasons and the defendant has not appeared in the action within the time provided by law, including any applicable executive order)

(3) If a defendant has appeared in the action, a court may not set a trial date earlier than 60 days after a request for trial is made unless the court finds that an earlier trial date is necessary to protect public health and safety. Any trial set in an unlawful detainer proceeding as of April 6, 2020 must be continued at least 60 days from the initial date of trial; and

WHEREAS, individuals currently part of a long-term stay at a hotel, motel, or similar are not covered by the residential eviction protections provided by Executive Order N-37-20, although these individuals are equally vulnerable to COVID-19; and

WHEREAS, based on the foregoing, the City Council seeks and intends to protect health, safety, and welfare of the residents and businesses of the City of South El Monte by enacting protections against evictions of such businesses from commercial property during the current declared state of emergency related to the COVID-19 pandemic.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH EL MONTE, CALIFORNIA DOES ORDAIN AS FOLLOWS:

SECTION 1. **Recitals.** The foregoing recitals are true and correct, and are incorporated herein by reference as findings of fact.

SECTION 2. Urgency and Emergency Findings. The City Council finds that there is a current and immediate threat to public health, safety, and welfare posed by COVID-19, and there is an immediate need for the preservation of public peace, health or safety of the residents and community, including the businesses, of the City.

Businesses in the City may experience sudden reduction in business income due to decreased operational hours and customer demand relating to the impacts of COVID-19 and governmental responses to COVID-19. This sudden decrease in business income jeopardizes the City's businesses' ability to pay rent to their landlords and, consequently, will negatively impact such businesses' ability to provide critical services and income to the City's community such that it jeopardizes public health, safety, and welfare. This is of particular concern during the COVID-19 pandemic as the City's businesses provide critical services and supplies to the City's residents.

Additionally, Executive Order N-37-20 currently does not provide residential renters in the City protections from evictions, including the opportunity for residential renters to pay lawfully charged rent, after its expiration. Without these protections, the public health, safety, and welfare is jeopardized in that there may be a sudden increase in evictions after Executive Order N-37-20 expires and the COVID-19 pandemic is over, which can result in a sudden increase in homelessness in the City and could lead to the re-establishment of COVID-19 in the City.

SECTION 3. Commercial Eviction Protections.

A. Restrictions on Commercial Evictions.

(1) No person, business, or other entity ("landlord") shall initiate proceedings or otherwise act to evict a commercial tenant. This prohibition shall only be imposed upon no-fault evictions and/or evictions in which all of the following circumstances exist:

(i) The basis for eviction is nonpayment of rent arising out of circumstances related to the COVID-19 pandemic. These circumstances include, but is not limited to, any of the following:

(a) a loss of business income due to a COVID-19 related workplace closure; the owner, management personnel, or key employees of the commercial tenant were/are sick with COVID-19 or caring for household or family members who were/are sick with COVID-19; the commercial tenant experienced income reduction resulting from COVID-19 or a governmental response to COVID-19; the commercial tenant's compliance with an order or recommendation from a government agency to close, reduce service, or limit contact between members of the public and its personnel/employees; or key employee(s) of the commercial tenant need to miss work to care for a home-bound school-age child.

(b) increased child care expenditures due to school closures or healthcare expenses related to being ill with COVID-19.

(c) reasonable expenditures that stem from government-ordered or recommended emergency measures.

(ii) The commercial tenant retains verifiable documentation supporting that at least one of the reasons described in Section 3(A)(1)(i) exists in order to support the commercial tenant's assertion of an inability to pay rent. This documentation shall be provided to the landlord no later than 14 days after the date that rent is originally due.

(iii) The commercial tenant has complied with the requirements of this Ordinance, including, but not limited to, Section 3(B).

(2) It shall not be a violation of this Ordinance for a landlord to evict a commercial tenant based on an eviction process that was lawfully begun prior to the Effective Date of this Ordinance.

(3) It is not the City Council's intent, nor shall anything in this Ordinance be construed to mean that a commercial tenant is free from the obligation to pay lawfully charged rent.

B. Procedures

(1) Notice to Landlord. In order to take advantage of the protections under this Ordinance, a commercial tenant shall do all of the following:

(i) Notify the landlord in writing before the day rent is originally due that the commercial tenant is unable to pay rent due to at least one of the reasons provided in Section 3(A)(1)(i). For purposes of this Ordinance, "in writing" includes, but is not limited to, email or text communications to a landlord or the landlord's representative with whom the commercial tenant has previously corresponded by email or text communication, as well as traditional written communication. Any medical or financial information provided to the landlord, or the landlord's representative, shall be held in confidence and may only be used for evaluating the commercial tenant's pursuant to Section 3(A)(1).

(ii) Provide the landlord with the verifiable documentation described in Section 3(A)(1)(ii).

(iii) Pay the portion of the rent that the commercial tenant is able to pay.

(2) If a commercial tenant complies with the requirements of this Ordinance, a landlord shall not take steps to evict the commercial tenant for nonpayment of rent.

C. 180-Day Payback Period

(1) A commercial tenant afforded eviction protection under this Ordinance, or any executive order of the Governor, shall have up to one hundred eighty (180) days after the expiration of this Ordinance, or, if the Governor issues an executive order providing commercial tenants eviction protection, the expiration of such executive order, to pay its landlord unpaid rent. The terms of the repayment plan are to be agreed upon between the landlord and commercial tenant, provided that, if no agreement is reached between the landlord and commercial tenant, the back/past rent due shall be repaid in six (6) equal installments to be paid in monthly intervals beginning thirty (30) days after the date the rent becomes due pursuant to the terms of this Ordinance. No late fees, costs or other penalties shall be assessed or due from the commercial tenant based on the delay in paying rent as provided for in this Ordinance or any applicable executive order of the Governor. During this 180-day period, the protections against eviction set forth in this Ordinance or any applicable executive order of the Governor shall apply to such commercial tenants.

(2) The date upon which a delayed payment comes due for the purposes of Code of Civil Procedure Section 1161(2) shall be the date agreed upon by the landlord and commercial tenant in a repayment plan, or, if no agreement is reached, as specified in Section 3(C)(1) above.

SECTION 4. 180-Day Deferral of Residential Rent Due Date

A. A residential tenant afforded eviction protection under Executive Order N-37-20, as it may be amended or extended, shall have up to one hundred eighty (180) days after the expiration of Executive Order N-37-20, as it may be amended or extended, to pay their landlord unpaid rent. The terms of the repayment plan are to be agreed upon between the landlord and residential tenant, provided that, if no agreement is reached between the landlord and residential tenant, the back/past rent due shall be repaid in six (6) equal installments to be paid in monthly intervals beginning thirty (30) days after the date the rent becomes due pursuant to the terms of this Ordinance. No late fees, costs or other penalties shall be assessed or due from the residential tenant based on the delay in paying rent as provided for in Executive Order N-37-20, as it may be amended or extended, or this Ordinance. During this 180-day period, the protections against eviction set forth in Executive Order N-37-20, as it may be amended or extended, shall apply to such residential tenants.

B. The date upon which a delayed payment comes due for the purposes of Code of Civil Procedure Section 1161(2) shall be the date agreed upon by the landlord and commercial tenant in a repayment plan, or, if no agreement is reached, as specified in Section 4(A) above.

C. Nothing in this Ordinance shall be construed to mean that a residential tenant will still not be obligated to pay lawfully charged rent.

SECTION 5. Long-Term Stay Eviction Protections. The protections and procedures of Executive Order N-37-20 apply to individuals who currently reside in a long-term stay at a hotel, motel, or similar establishment. “Long-term Stay” includes a stay which began one week prior to March 17, 2020. No individual currently in a long-term stay at a hotel, motel, or similar establishment shall be evicted if the notice is provided to the hotel, motel, or similar establishment as required by Executive Order N-37-20.

SECTION 6. Judicial Council’s April 6, 2020, Order. Nothing herein shall modify a landlord's ability to use the eviction procedures approved by the Judicial Council on April 6, 2020, as provided in Emergency Rule 1, which is incorporated herein by reference and attached hereto as Exhibit 1.

SECTION 7. Adoption and Effective Date. Pursuant Government Code Section 36937, this ordinance shall take effective immediately upon approval of the same by a four-fifths (4/5) affirmative vote of the City Council. The City Council finds and determines that the same is necessary to the preservation of the public peace, health or safety, in that adoption of the same will help prevent commercial evictions and control residential rent issues that may arise during declared states of emergency.

SECTION 8. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or circumstances, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the application of any other section, subsection, sentence, clause, phrase, or portion of this Ordinance, and to this end the invalid or unconstitutional section, subsection, sentence, clause, phrase of this ordinance are declared to be severable. The South El Monte City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

SECTION 9. Expiration Date. This Ordinance shall automatically expire upon the termination of the City’s local emergency proclaimed by the Mayor on March 12, 2020, and ratified by the City Council on March 17, 2020, pursuant to Chapter 2.60 of the South El Monte Municipal Code.

SECTION 10. Certification. The City Clerk shall certify to the adoption of this Ordinance, and shall cause the same to be posted and codified in the manner required by law.

PASSED, APPROVED and ADOPTED by a four-fifths (4/5) vote at a special meeting of the South El Monte City Council on this 7th day of April, 2020.

Gloria Olmos, Mayor

ATTEST:

Rose Juarez, City Clerk

APPROVED AS TO FORM:

Anthony R. Taylor, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF SOUTH EL MONTE)

I, Rose Juarez, City Clerk of the City of South El Monte, do hereby certify that the foregoing Ordinance, being Ordinance No. 1244-U, was duly passed and approved by the City Council of the City of South El Monte at a special meeting of said Council held on the 7th day of April, 2020, and that said Ordinance was adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Rose Juarez, City Clerk

Exhibit 1

Emergency Rule 1 of the California Rules of Court adopted by the Judicial Council and effective on April 6, 2020

Emergency Rule 1. Unlawful detainers

(a) Application

Notwithstanding any other law, including Code of Civil Procedure sections 1166, 1167, 1169, and 1170.5, this rule applies to all actions for unlawful detainer.

(b) Issuance of summons

A court may not issue a summons on a complaint for unlawful detainer unless the court finds, in its discretion and on the record, that the action is necessary to protect public health and safety.

(c) Entry of default

A court may not enter a default or a default judgment for restitution in an unlawful detainer action for failure of defendant to appear unless the court finds both of the following:

(1) The action is necessary to protect public health and safety;
and

(2) The defendant has not appeared in the action within the time provided by law, including by any applicable executive order.

(d) Time for trial

If a defendant has appeared in the action, the court may not set a trial date earlier than 60 days after a request for trial is made unless the court finds that an earlier trial date is necessary to protect public health and safety. Any trial set in an unlawful detainer proceeding as of April 6, 2020 must be continued at least 60 days from the initial date of trial.

(e) Sunset of rule

This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.