



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 20-0093
MAR 25 2020

REPORT RE:

**DRAFT ORDINANCE ADDING ARTICLE 14.6 TO THE LOS ANGELES
MUNICIPAL CODE AFFORDING TENANT PROTECTIONS DURING
CORONAVIRUS COVID-19 EMERGENCY DECLARATION**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 20-0147-S19

Honorable Members:

On Tuesday March 17, 2020, the City Council adopted 48 motions related to the COVID-19 pandemic. Motion 72N addressed concerns over COVID-19's financial impacts on residential and commercial tenants. The motion included a number of actions that requested our Office, with the assistance of the Housing and Community Investment Department (HCID), to draft ordinances to:

1. Protect residential and small business tenants from eviction due to an inability to pay rent caused by COVID-19;
2. Require residential landlords and mortgage holders to allow tenants to pay past due rent up to six months after the conclusion of the declared emergency (for rent not paid during the emergency due to COVID-19 reasons); and
3. Require all residential landlords to extend expiring leases for at least three months after the end date of the emergency declaration.

The motion also directed HCID, with coordination from our Office, to impose a penalty on a landlord who fails to inform their tenant of the right to defer, during the emergency, the payment of rent due to COVID-19 reasons.

Enclosed is a draft ordinance, approved as to form and legality, adding Article 14.6 to the Los Angeles Municipal Code to afford protections to residential and commercial tenants due to the COVID-19 pandemic. The draft ordinance prohibits a landlord from evicting a residential or commercial tenant during the emergency if the tenant is financially unable to pay rent due to financial impacts caused by the COVID-19 pandemic, and gives a residential tenant up to six months to pay the deferred rent and a commercial tenant three months to pay from the end of the declared emergency. The draft ordinance also provides no-fault eviction protection for a residential tenant in certain circumstances related to the COVID-19 pandemic, and temporarily halts an owner from terminating a tenancy under the Ellis Act until 60 days after the expiration of the local emergency period.

Background

On March 15, 2020, the Mayor issued his first public order using the extensive powers afforded him during the declared local emergency. That order included protections for residential tenants due to COVID-19. On March 17, 2020, after City Council adopted Motion 72N, the Mayor issued another public order that extended the City's eviction protection to all commercial tenants. The Mayor's more recent public order, issued on March 23, 2020, added no-fault eviction protection in certain circumstances, and also temporarily halted evictions related to the Ellis Act.

The Mayor's orders already legally prevent any landlord from evicting a residential or commercial tenant during the pendency of the emergency if the tenant is unable to pay rent due to a broad array of circumstances related to COVID-19. The orders arm a tenant to defend against an unlawful detainer action brought by a landlord by providing a tenant with an affirmative defense. This affords any tenant the legal right to remain in possession of the property unless a landlord first brings an unlawful detainer action against the tenant and the landlord successfully convinces the judge that the tenant has no basis to claim an inability to pay rent due to COVID-19. The Mayor's orders also legally obligate a landlord to allow a residential tenant to repay the past owed rent for up to six months after the end of the emergency, and up to three months for commercial tenants.

The Mayor's orders go beyond the City Council's request with respect to a commercial tenant, because Motion 72N only sought to protect small businesses and offered no opportunity to repay over a period of time after the emergency ends. The enclosed draft ordinance is responsive to the City Council's direction but weaves in additional protections afforded by the Mayor's orders.

There are some aspects of the motion that are not encompassed by the Mayor's orders. Those include: (1) an unspecified direction to obligate mortgage holders to offer homeowners a payment plan presumably for monthly mortgage payments that cannot be paid timely due to COVID-19; and (2) requiring residential landlords to extend expiring leases for at least three months after the end of the emergency.

With respect to the first request, there are legal concerns associated with a local municipality seeking to regulate mortgage lenders. We understand, however, that the federal government already is ordering relief for Freddie/Fannie mortgages for the next 12 months, which includes requiring loan servicers to offer a reduced payment plan, waiving late fees, and loan modifications. We understand that Freddie/Fannie mortgages account for more than half of all residential loans in Los Angeles. We also understand that other lending institutions are already offering substantial relief to homeowners impacted by COVID-19. We included this protection in the draft ordinance.

With respect to the second request, legal concerns exist for any government to try and compel a private landlord to enter into a contract or to rewrite an existing contract. However, the Mayor's most recent order requires a landlord to demonstrate "just cause" before seeking to evict a residential tenant during the local emergency period if the tenant or any member of the household is ill, in isolation, or under quarantine due to COVID-19. That provision is included in the draft ordinance.

Finally, Motion 72N directs HCID to impose a penalty on a landlord who fails to inform their tenant of the right to defer, during the emergency, the payment of rent due to COVID-19 reasons. There is currently no law that imposes an obligation on a landlord to provide such notice to a tenant, and the motion does not request an ordinance to do so. Furthermore, if the City created a new law imposing that obligation and also a penalty for failing to abide by the obligation, constitutional due process rights would require HCID to create an appeals mechanism. As an alternative, the City Council could consult with HCID as to whether HCID could mail a notice to all tenants. We understand that HCID has the address of residential rental properties in the City, and on occasion provides information to residential tenants.

If you have questions regarding this matter, please contact Assistant City Attorney Craig Takenaka at (213) 922-7715. He or another member of this Office will be available when you consider this matter to answer questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON
Chief Assistant City Attorney

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Transmittal