



## CITY OF GLENDALE, CALIFORNIA REPORT TO THE CITY COUNCIL

### AGENDA ITEM

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Report: Discussion of Commercial Eviction Moratorium

1. Motion Providing Direction to Director of Emergency Services Regarding Implementation of an Emergency Order Pertaining to Commercial Evictions

### COUNCIL ACTION

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**Item Type:** Action Item

**Approved for** December 15, 2020 **calendar**

### ADMINISTRATIVE ACTION

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**Approved by:**

Roubik Golanian, Interim City Manager

## **RECOMMENDATION**

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It is recommended that the Council provide direction to the Director of Emergency Services (Interim City Manager) on whether to reenact the Commercial Eviction Moratorium that expired on June 30, 2020

## **BACKGROUND/ANALYSIS**

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Since the City declared a state of emergency on March 16, 2020 in response to the unprecedented COVID-19 pandemic, the City has undertaken a number of actions to protect life, property and public health and safety, including regulatory actions, economic development efforts, and tenant protection and assistance efforts to help residents and businesses. The regulatory actions included:

- Declaration of State of Emergency.
- Imposition of a moratorium on residential evictions, which expired on August 31, 2020 by virtue of AB 3088.
- Imposition of a moratorium on commercial evictions, effective through June 30, 2020.
- An emergency public order requiring individuals to wear face coverings when leaving their residences or place of employment.

Additionally, the City Council has moved forward with several economic development efforts intended to provide resources or financial assistance to local businesses negatively impacted by the economic fallout associated with COVID-19. The City Council directed the inclusion of funding of several economic development and recovery programs into the fiscal year 2020-21 budget from Measure S funding, including small business recovery and assistance programs, Personal Protective Equipment (PPE) grants, Support the Arts programming, child care support, and Enhancing Access to Emergency Recovery. These programs include grant programs totaling \$4,222,500 in COVID-19 recovery funds for businesses and workers:

(1) Low-Income Small Business Grant Program (\$572,500 from CDBG-CV) which will provide up to 114 non-essential businesses and restaurants affected by COVID-19 a \$5,000 grant to assist with business expenses, and;

(2) Small Business Recovery Grant (\$2,250,000 from Glendale Measure S) which will assist 450 businesses who have 500 or fewer employees with a \$5,000 grant.

(3) Al Fresco Glendale (\$300,000 from Glendale Measure S) which will assist at least 100 restaurants, and limited retailers, gyms and salons, move operations outside.

(4) Support the Arts Grant (\$200,000 from Glendale Measure S) to support up to 20 local arts organizations and institutions.

(5) Personal Protective Equipment (PPE) Program & Grants – (\$500,000 from Glendale Measure S) to assist in providing nearly 1,000 businesses with direct access to PPE and/or \$500 grants.

(6) Business Associations Grant (\$150,000 from Glendale Measure S) to support nearly 10 business organizations, Chambers of Commerce's and local business associations to develop programs or provide additional training to assist businesses in accessing other critical funding sources

(7) Childcare Support (\$250,000 from Glendale Measure S) to support working Glendale families by providing low/no cost child care program options.

#### Commercial Eviction Moratorium

The City Council requested a report to consider reenacting the moratorium on commercial evictions. The City enacted and extended a moratorium on the eviction of commercial tenants ("Commercial Eviction Moratorium" or "Moratorium") in the following manner:

- On March 18, 2020, the Director of Emergency imposed a temporary moratorium on residential and commercial evictions, which order was ratified by the City Council by adoption of Resolution No. 20-33.
- The Commercial Eviction Moratorium was modified, extended or expanded by various orders of the City Council on April 14, 2020, May 12, 2020, June 2, 2020 and June 9, 2020. The Commercial Eviction Moratorium expired on June 30, 2020

In its final form, the Commercial Eviction Moratorium prohibited the eviction of commercial tenants for nonpayment of rent if nonpayment was based on a COVID-related reason such as loss of business income associated with compliance with County Health Orders. The Moratorium required repayment of unpaid rent within 6 months of the expiration of the Moratorium for Qualifying Businesses and 3 months for Non-Qualifying Businesses. Qualifying Businesses are businesses that have 99 or fewer employees, fewer than 11 locations worldwide, and are not publicly traded companies. In addition to having to repay unpaid rent within 3 months of the expiration of the Moratorium, Non-Qualifying Businesses were also required to pay back unpaid rent in 1/3 increments each month.

In adopting a policy on commercial tenant evictions related to COVID-19, Council sought to give relief on the repayment of rent to small business that may not have the resources to weather the loss of income over a prolonged period of time by granting them a six-month "safe harbor" to repay rent. This would allow small business to negotiate rent repayment arrangements and or look for commercial financing to fund back-rent and reopening costs. Conversely, larger companies would be expected to use existing reserve resources to make landlords whole by beginning to pay back-rent as soon as the emergency was over; the policy calls for a large business in arrears to repay at least 33% of the amount owed each month to be fully repaid in three months. The Council may

desire to consider re-enactment of the Commercial Eviction Moratorium in light of the recent surge in COVID-19 cases in Los Angeles County and the resultant tightening of State and County Health Orders that restrict business activity such as the renewed prohibition on outdoor dining.

### State Actions

In April of 2020, the California Judicial Council issued an emergency rule prohibiting the issuance of summons for unlawful detainer actions in all Superior Courts, which had the effect of prohibiting both residential and eviction proceedings. The California Judicial Council rescinded the emergency rule, effective September 1, 2020.

In the fall, the Legislature adopted AB 3088 which imposed a statewide moratorium on residential evictions through January 31, 2021. AB 3088 does not apply to commercial evictions. The State Legislature is considering extensions and amendments to AB 3088 related to residential evictions but staff is not aware of any further legislative activity related to commercial evictions.

### Los Angeles County Commercial Eviction Moratorium

On March 19, 2020, Los Angeles County imposed and has subsequently extended a temporary moratorium on certain types of commercial evictions for nonpayment of rent associated with financial impacts associated with COVID-19. The County's Commercial eviction moratorium extends through January 31, 2021. The County's commercial eviction moratorium allows commercial tenants with 9 or fewer employees to repay unpaid rent within 12 months after expiration of the moratorium. Employers with more than 9 but fewer than 100 employees will have up to 6 months to repay back rent. The County's commercial eviction moratorium does not apply to employers of 100 employees or more.

The County states that its moratorium applies in all incorporated cities unless a city has enacted its own moratorium. The County states that its moratorium is a "baseline" for city moratoria, meaning cities can impose greater tenant protections than the County's moratorium but cannot be less protective. The County contends that it has the authority to impose its moratorium in incorporated cities by virtue of its emergency power authorities under the California Emergency Services Act, an Attorney General opinion interpreting a County's authority under that Act, and the Governor's executive orders authorizing local agencies to enact eviction moratoriums. It is the City Attorney's opinion that the County's authority to act in emergencies under CESA is related to health and safety matters within its purview, such as the County health orders, and not economic orders. In addition, the Governor's orders granting local agencies, including cities, to enact eviction moratoriums, meaning the cities have jurisdiction within their borders on the issues of evictions.

That said, the law is not settled and there is no controlling legal authority. The State, County and local eviction moratoriums are laws that regulate private economic activity between landlords and tenants. As such, the City does not enforce the County orders

and does not dictate its applicability. As with any law regulating the landlord-tenant relationship, commercial tenants can seek redress in the courts to secure whatever rights the County moratorium may grant them.

If the Council desires to re-institute a temporary moratorium on evictions, the Council can provide direction to the Director of Emergency Services regarding implementation of a new Emergency Order. Council should provide direction on the period/length of the Moratorium, its applicability (e.g. Qualifying vs. Non-Qualifying Tenants), repayment period, and whether or not it applies to evictions for unpaid rent accrued between the expiration of the Moratorium on June 30, 2020 and the date of a new Emergency Order.

### **FISCAL IMPACT**

There is no fiscal impact associated with this item.

### **ALTERNATIVES**

1. The Council can provide direction to the Director of Emergency Services to reenact a Commercial Eviction Moratorium.'
2. The Council can choose not to direct the Director of Emergency Services to reenact the Commercial Eviction Moratorium.
3. The Council can choose an alternative not identified by staff.

### **CAMPAIGN DISCLOSURE**

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Not applicable.

### **EXHIBITS**

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