



**SUBMITTAL TO THE CITY COUNCIL
CITY OF INDIO, CALIFORNIA
April 15, 2020**

FROM: City Attorney and City Manager

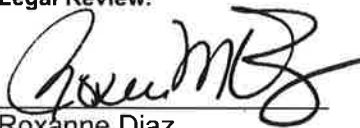

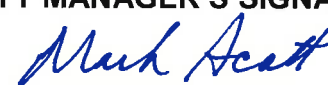
SUBJECT: Report and Discussion on Tenant Eviction Processes During COVID-19

RECOMMENDED MOTION: Receive the report and provide direction to Staff.

SUMMARY: Governments worldwide are responding to an outbreak of respiratory disease caused by a novel (new) coronavirus that was first detected in China and which has now been detected in almost over 100 countries, including in the United States. The virus has been named "SARS-CoV-2" and the disease it causes has been named "coronavirus disease 2019" (abbreviated "COVID-19"). As a result of COVID-19, the State of California is under a "Stay at Home" order, which requires all Californians to stay home unless necessary to engage in essential activities. As a result of this order and those at the County level, residents and businesses have seen their income reduced and may be unable to pay for certain necessities such as rent. In the last month, both the Governor and the judicial system have issued orders to address evictions in order to keep persons in their homes. This report provides an overview of the eviction process and the various orders from all levels of government and contains a discussion of the variety of "eviction moratorium" ordinances that are being adopted at the local level.



Prepared by Roxanne Diaz, City Attorney

FINANCIAL DATA	Cost associated with this action:	\$ 0	In current year budget:	N/A
	Current F.Y. general fund cost:	\$ 0	Budget adjustment:	N/A
	Future F.Y. cost:	\$ 0	For fiscal year:	N/A
Source of funds: N/A		Current account balance: N/A		
Account number: N/A		Balance remaining if approved: N/A		
Legal Review:	Department Head Review:	Financial Review:		
 Roxanne Diaz City Attorney	 Mark Scott City Manager	N/A Rob Rockwell Assistant City Manager/ Finance Director		
CITY MANAGER'S RECOMMENDATION: APPROVE		CITY MANAGER'S SIGNATURE: 		

BACKGROUND/ANALYSIS: In response to the global outbreak of a novel coronavirus, also known as COVID-19, city, county, state, and federal officials have taken decisive actions in the last several weeks in order to minimize the spread of COVID-19. On March 4, 2020, Governor Newsom declared a State of Emergency to help prepare California for the broader spread of COVID-19. Subsequently, on March 13, 2020, the President of the United States declared a national emergency. During that time period various city and county governments were enacting orders that varied across the state to limit group gatherings in order to stem the spread of COVID-19. On March 19, 2020, Governor Newsom's issued Executive Order N-33-20 directing all individuals in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of essential services.

Although necessary to protect the health and safety from spread of COVID-19, the measures have created significant economic impacts, which in turn threaten the housing security for many in California. Even further economic impacts are anticipated, leaving tenants vulnerable to eviction.

In the early weeks of March, a number of cities such as San Francisco and Santa Monica adopted what are known as "eviction moratoriums" to prevent the eviction of tenants for the nonpayment of rent based on income loss due to COVID-19. These provisions were adopted pursuant to a local government's police power. Subsequently, Governor Newsom adopted two Executive Orders regarding evictions which have been publicized as "eviction bans." However, when you read the details, the orders are not "eviction bans" but instead suspend certain provision of state law that would otherwise preempt or restrict a city's exercise of its police powers to impose limitations on residential or commercial evictions. The orders also extended deadlines related to certain legal statutes regarding the time in which a residential tenant must respond to an eviction lawsuit. Also, at the same time, the court system adopted their own orders which also had an effect on the processing of unlawful detainer actions and had the practical effect of making it difficult if not impossible for a landlord to evict a tenant for the non-payment of rent.

The purpose of this report is to provide the City Council with a comprehensive report that outlines the various orders, both the Governor's orders and the Judicial orders, so the City Council understands the impact of those orders on persons who have not paid their rent. However, in order to truly understand the technical aspects of the orders, this report first provides the City Council with an overview of the legal process for evicting residential tenants. We believe this background information is important because it provides the basis for understanding the Governor's orders as well as the various actions taken by the California Court system. With that background, this report will analyze the interplay of those orders with ordinances being adopted at the local level regarding evictions and various protection for renters. Last, the report will discuss the federal programs that are available to landlord and impact renters as a result of the COVID-19 pandemic.

I. OVERVIEW OF THE EVICTION PROCESS IN CALIFORNIA

California law provides a process that landlords must follow to legally evict a tenant. This overview will focus on the eviction process for non-payment of rent. Before evicting a tenant, a landlord must legally terminate the tenancy, by following a series of steps to legally evict a tenant. It is important to note that it is against the law for a landlord to evict tenants on their own, without going to court and without getting a court order directing the tenants to move out. Even if a tenant is behind on their rent, without a court order the landlord cannot physically remove a tenant, cannot change their locks and cannot cut off their utilities. The steps for processing an eviction are as follows:

Step 1: Notice. The first step is to give the tenant written notice as required by law. The notice must specify the reason for the eviction and provide the tenant with an opportunity to respond (either pay rent or cure the lease violation). This is commonly known as the “Three-Day Notice to Pay Rent.” If a tenant does not pay rent when it is due, the landlord can give the tenant a three-day notice to pay rent or quit. This notice informs the tenant that the tenant has three days to pay rent in full. During that notice period, the tenant can comply and pay the rent. In such case, the landlord cannot evict the tenant. However, if the tenant does not pay rent, then the landlord can file an eviction lawsuit, known as an “unlawful detainer,” with the court at the end of the three days. When counting the three days in the notice period, the first day is the day after the notice is served then you count every day on the calendar except for Saturdays, Sundays or court holidays.

Step 2: Fill Out the Eviction Forms. If the tenant did not pay their rent during the three-day period, then the landlord can start the unlawful detainer action by filling out the required court documents known as the “summons” and the “unlawful detainer complaint.” In completing these documents, the landlord usually lists the tenant on the lease that lives at the rental unit but they may also try to list all of the adults living at the rental unit.

Step 3: File in Court. Once the landlord fills out the summons and complaint, the landlord must file two copies of the summons and complaint with the courthouse in the county where the property is located and pay the court filing fee. The court clerk will stamp the documents as “Filed” and give the landlord the two file-stamped copies of the summons and complaint. The landlord keeps one copy and the other copy is for the tenant. At this point the unlawful detainer complaint is referred to as “filed” and now can be served on the tenant.

Step 4: Serve the Summons and Complaint on the Tenant. The landlord must now serve the tenant (i.e. the defendant) with the summons and complaint. The landlord cannot serve the documents--he or she must hire a process server or a third party to serve the complaint. The documents are required to be served by personal service-- the process server gives the tenant the summons and complaint in person. Alternatively, if the tenant is not home, the process server may give a competent member of the household where the tenant lives or works. The process server must also mail a copy of the summons and complaint to the tenant and service is considered complete on the 10th day after mailing the papers to the tenant. The process, however,

cannot be used until the landlord has tried to personally serve the tenant personally a few times. It is important to note that every person named in the complaint must be served.

Step 5: The Tenant Responds to the Complaint. Once a tenant or tenants are served, the tenant is provided with an opportunity to respond to the complaint. The tenant can choose not to respond at all, respond with an “answer” or respond by filing in court some other legally valid document. Whether the tenant responds or not, determines the landlord’s next step in the process. If the tenant was served in person, the tenant has 5 days from the date of service to respond to the complaint. The court does not count Saturdays, Sundays or court holidays in determining the 5-day period. If the tenant was served by substituted service as described above, the tenant has 15 days after the date the server mailed the court papers to file a response. The date of mailing is the postmark date. Once the 10th passes, you count five court days (which do not include Saturday, Sunday or court holidays) to determine the date the tenant has to respond to the complaint.

Step 6 Option A: Default Judgment If Tenant Does Not Respond to the Complaint. If the tenant does not file a response within 5 court days, the landlord can still proceed to evict the tenant without the tenant having a say in the matter. This is called a “default judgment,” which is a legal proceeding where the landlord will ask a judge to make an order in the landlord’s favor. In such a case, the tenant will not be able to fight the case in court. A default judgment also impacts the tenant’s ability to rent in the future because they will have an “eviction” on their record and if the tenant owes money for back rent and the tenant did not answer the complaint, the landlord may be able to take that money from the tenant’s paycheck or bank account. In order to obtain a default judgment, the landlord will need to file additional legal document requesting the entry of default as well as a judgment. In addition, the landlord will file documents seeking possession of the rental as well as obtain a “writ of execution” which is the document that the landlord needed to give to the Sheriff to evict the tenant.

Step 6 Option B: Tenant Moves Out and Tenant Does Not Respond to the Complaint. If the landlord determines that the tenant has moved out of the property without notice during the eviction case, then in general the landlord can either dismiss the case or ask the court to convert the case to a regular civil case for damages to collect back rent in the amount requested in the unlawful detainer complaint.

Step 6 Option C: Tenant Files an Answer and Trial Date is Set. If the tenant files an answer or other pleading, the landlord will then request a trial date. Either party can request a jury trial. A week after the request for trial is made, a trial date is set usually within 20 days. At trial, both sides present evidence and witnesses. If the judge or jury decides that the landlord has the right to evict the tenant, the judge will grant the landlord a “Judgment of Possession” and may also order the tenant to pay back rent, damages and costs. With the Judgment of Possession, the landlord can then file to have a “writ of execution” which is then given to the Sheriff. The Sheriff will serve the tenant with a notice to vacate the property. This gives the tenant 5 days to move. If the tenant does not move, the Sheriff can remove the tenant from the rental unit and lock him or her out of the unit. Under California law, the landlord cannot remove the

tenant. If property was left behind in the unit, there are processes for the landlord to follow before the landlord can dispose of it. Typically this is a 20 day process.

Step 7: After Judgment. Once the judge makes a decision at the trial, either side can appeal the decision if they are not happy with any part of it. Either party can also file a motion to set-aside (i.e. cancel) the judge's order. Filing an appeal does not mean that the tenant can stay in the rental unit. The only way for the tenant to delay or stop the eviction is to ask for a stay of execution. This needs to be filed as soon as the tenant receives notice from the Sheriff giving them 5 days to leave. The tenant could also ask for additional time to move out and if the landlord does not agree, the tenant must file a request to stay the eviction. Most courts never grant stays and if they do, the tenant must pay rent.

II. TIMELINE AND OVERVIEW OF STATE AND JUDICIAL ORDERS RELATED TO EVICTIONS

The following are the orders issued by the Governor and the Courts related to the eviction process. Each is summarized further below.

- March 16, 2020, Governor Newsom issues Executive Order N-28-20
- March 16, 2020, Riverside County Superior Court Issues Administrative Order
- March 27, 2020, Governor Newsom issues Executive Order N-37-20
- April 6, 2020, Judicial Council Adopts Emergency Rules for Evictions and Foreclosures

Executive Order N-28-20. Executive Order N-28-20 recognized that many Californians are struggling to pay their rents or mortgages during the COVID-19 pandemic, however, it did not impose any statewide restrictions on evictions. Instead, the order states that issues regarding residential and commercial evictions should be addressed by "local jurisdictions, based on their particular needs." Therefore, the Governor left the matter to each city to decide.

Specifically, the order allowed cities to impose limitations on residential and/or commercial evictions by suspending any conflicting provisions of state law. However, the Order's suspension of state law is limited to evictions caused by the pandemic. Specifically, the suspension applies ***only*** when ***both of the following conditions are met***:

- The basis for the eviction is the tenant or owner's failure to pay their rent or mortgage payment due to a substantial decrease in household or business income, or substantial out-of-pocket medical expenses; ***and***

- The decrease in household or business income or substantial out-of-pocket medical expenses were caused by the COVID-19 pandemic, including decreases resulting from any government response to the pandemic.

The Order specifies that the tenant or owner's financial difficulties (either decrease in household or business income or out-of-pocket medical expenses) must be **documented** in order to qualify for eviction relief. The Order also states that tenants will still have to pay any rent payments that are deferred during the COVID-19 pandemic, and that landlords will be able to recover past due rent after the state of emergency expires.

Recognizing that a number of local jurisdictions had already adopted local ordinances regarding evictions, the order stated that it was not to be construed to invalidate any limitation on evictions enacted by a local jurisdiction between March 4, 2020 and the date of Executive Order N-28-20. The order was to remain in place until May 31, 2020.

Riverside County Superior Court Administrative Order. The State's judicial system was also struggling with how to best comply with the measures to curb the spread of COVID-19 at the courthouses but yet continue to be open for business. On March 16, 2020, the Presiding Judge of the Riverside Superior Court issued an administrative order that among other things, postponed unlawful detainer matter for 60 days. Granted, this applied to those unlawful detainer actions that were already filed and likely in Step 6 of the process and practically had no impact on any new filings because April rent had not yet been due. Nevertheless, a few days later the Presiding Judge effectively closed most of the courthouses in Riverside County and only limited emergency matters would be heard. So while the courts were still accepting and filing summons and complaints, if a person's rent was due on April 1, the first realistic day of when those documents could be filed by a landlord would have been April 7th after providing the statutory 3-day notice and accounting for the weekend which are not counted as court days.

Executive Order N-37-20. On March 27th, Governor Newsom issued a new Executive Order, No. N-37-20, addressing residential evictions more directly than his first order by mandating certain protections for those financially affected by COVID-19. While this new order was described as an order prohibiting "landlords from evicting tenants for nonpayment of rent and prohibits enforcement of evictions by law enforcement or courts," the order was less expansive. Nevertheless, from a practical perspective given what was occurring with the court system and the detailed process required for the filing of unlawful detainers, this order did provide relief for those unable to pay their rent due to the impacts of COVID-19.

Executive Order No. N-37-20 has two basic provisions that will remain in effect through May 31, 2020. The first concerns the response deadline for a residential tenant who is impacted by COVID-19 and is served with an eviction lawsuit for nonpayment of rent (this is **Step 5** of the unlawful detainer process). Now, instead of the 5-day deadline imposed by statute for a tenant to respond to a complaint, this order gives such a tenant 65 days to respond to the lawsuit if the following three requirements are satisfied:

1. Prior to March 27, 2020, the tenant had paid the landlord all rent that was due.
2. The tenant notifies the landlord in writing before rent is due, or within 7 days of the due date, that the tenant needs to delay all or some payment of rent due to reasons related to COVID-19. Those reasons can include, but are not limited to:
 - a. The tenant could not work because the tenant was sick with a suspected or confirmed case of COVID-19, or had to care for a household or family member who was sick with a suspected or confirmed case of COVID-19.
 - b. The tenant was laid-off, lost work hours, or had reduced income because of COVID-19, the state of emergency, or related government response.
 - c. The tenant missed work to care for a child whose school was closed in response to COVID-19.
3. The tenant retains verifiable documentation (termination notices, payroll checks, pay stubs, bank statements, medical bills, etc.) that supports the tenant's assertion of an inability to pay. This documentation must be provided to the landlord no later than the time when the back-due rent is paid.

Accordingly, Executive Order N-37-20, specifically addressed tenants whose rents were coming due in April and provided them a means to inform their landlords regarding their inability to pay April rent and provided such tenants relief due to the impacts of COVID-19 if the tenant notified the landlord within 7 days after their rent was due. To assist those in the community, we provided a simple checkbox form (both in English and Spanish) to be used as the notice to landlords required in the order.

We understand that some tenant groups believed that other action was necessary because landlords were attempting to evict their tenants. While there are likely unscrupulous landlords everywhere, as described above, the onset of an unlawful detainer action (Step 1 through 3) would take at best five to seven days and this does not take into account that the landlords were no longer able to walk into court and received the stamped filed summons and complaint instantaneously. Also the serving the summons and complaint (Step 4) could also take some time to accomplish. So while this Executive Order did not stop a landlord from filing a summons and complaint, it did effectively delay the process for the tenant to respond until the end of May (Step 5) and provided tenants relief from the payment of rent.

Executive Order N-37-20 also had a second important provision that serves as a backstop in the process for evicting a tenant. As explained above in Step 6 Option C of the unlawful detainer process, if the landlord is successful at trial, the landlord must obtain a "writ of execution" to enforce the eviction. This is the document that is given to the Sheriff's Department who will then remove the tenant. The writ of execution must be served on the tenant and the tenant is given 5 days to move. Executive Order No. N-37-20 included a provision to prohibit the enforcement of a court order to evict a tenant from a residence or dwelling for nonpayment of rent. This prohibition only applies with respect to tenants who satisfy the three requirements listed above. While it

is unclear exactly what this provision means as to court orders already in effect, it would seem that a pre-existing court order evicting a tenant means that the tenant had failed to pay rent prior to the issuance of Executive Order No. N-37-20 and most importantly prior to the impacts of COVID-19 as this would have been rent for the month of March presumably due on March 1st.

What the order does not address is when rent is due. Also, the order is effective only through May 31st (however, the Judicial Emergency Order extends further than May 31) Accordingly, a tenant must have provided notice above for rent due in April.¹ As the Stay-at-Home orders are unlikely to be lifted this month, a tenant would be advised to give the same notice when May rent becomes due.

The effect of Executive Order No. N-37-20 on local eviction bans is not entirely clear. It does not expressly preempt local eviction bans that were issued under cities' police power and the authority conferred by the Governor in Executive Order N-28-20 on March 16, 2020. Executive Order No. N-37-020 says that it "supersedes Executive Order N-28-20 to the extent that there is any conflict with that Order." This is not much of a concern for any city that did not adopt a local eviction moratorium. However, we believe that any local eviction ban that was adopted is still valid and enforceable to the extent they are at least consistent with Executive Order No. N-28-20.

As for those jurisdictions that have not adopted a local eviction moratorium, Executive Order No. N-37-20 states that it does not "in any way restrict state or local governmental authority to order any quarantine, isolation, or other public health measure that may compel an individual to remain physically present in a particular residential property." We believe that a local eviction moratorium falls within the "other public health measure" category because such a ban compels a landlord to allow a tenant to remain housed in a particular residence during the emergency, even if the tenant is temporarily unable to pay rent.

That said, Order N-37-20 does provide relief to tenants statewide even in cities that did not adopt an eviction moratorium as this was the point of the order--to provide some statewide consistency. I understand that there have been media reports of members of the State Legislature that have said they will introduce legislation to address the matter of evictions because of COVID-19. The reason why there has been no legislative response is that the legislature is currently on "recess" because of COVID-19. They were to return on April 13th but this has been extended to May 3rd. I suspect at that time there will be emergency legislation introduced so that protection is provided to tenants beyond the May 31st date of when the Governor's order expires. If not, I suspect that the Governor will extend the order if the State is still under the Stay-at-Home order.

¹ Even if a tenant in Indio did not give their landlord the 7-day notice, the Judicial Council Emergency Rules makes it improbable that the tenant will be evicted because a summons (Step 3) cannot be issued by the court. Such tenant, however, should give notice for May and should maintain documentation about their inability to pay April and May rent due to COVID-19.

April 6, 2020, Judicial Council Emergency Rules for Evictions and Foreclosures. On April 6, the Judicial Council of California held an emergency meeting. The Judicial Council is the policymaking body of the California courts. Under the leadership of the Chief Justice of the California Supreme Court and in accordance with the California Constitution, the Judicial Council is responsible for ensuring the consistent, independent, impartial, and accessible administration of justice.

At their meeting, the Judicial Council adopted emergency rules addressing evictions and foreclosures during the statewide emergency caused by the COVID-19 pandemic. Emergency Rule 1 effectively suspends all residential and commercial evictions throughout California during the emergency. The rule allows landlords to file lawsuits to evict their tenants, but delays most eviction proceedings for at least sixty days. The rule applies to all courts and to all eviction cases, regardless of the grounds for the eviction. Emergency Rule 2 prohibits banks and other noteholders from filing lawsuits to foreclose on homeowners that fall behind on their mortgage payments during the emergency. These rules in some ways offer broader protections than state and local emergency measures, however, there are areas that are not addressed and this is where local eviction rules may help assist in filling in those gaps.

Summary of Emergency Rule 1. Emergency Rule 1 has three basic provisions that will remain in effect **until 90 days after the Governor terminates the statewide emergency** caused by the COVID-19 pandemic, unless the rule is amended or repealed earlier by the Judicial Council. As stated above, this rule applies to all eviction lawsuits (or “unlawful detainers”) throughout the state regardless of whether it was related to the impacts from COVID-19.

First, the rule prohibits courts from issuing a summons to compel a tenant to appear in court to defend themselves from an unlawful detainer, unless the court finds that the lawsuit is necessary to protect public health and safety. This is Step 3 in the unlawful detainer process. Also, as discussed above, the summons is the document that is submitted by the landlord to the court for “filing” which is then served on the tenant and it starts the eviction process. Under this emergency rule, landlords are effectively blocked from even beginning the process to evict a tenant for non-payment of rent and together with the Governor’s order, this effectively suspends all pending residential and commercial evictions throughout California for 60 days and prevents any new eviction actions for the duration of the emergency plus a period of 90 days thereafter.

Second, the rule bans default judgments for landlords who file an unlawful detainer. This is Step 6 Option B of the unlawful detainer process described above. Ordinarily, a landlord would be able to win an eviction lawsuit by default—and get a court order for payment of past due rent—if the tenant failed to appear in court. Because Emergency Rule 1 excuses most tenants from appearing in court during the COVID-19 pandemic, it also prevents landlords from obtaining these default judgments in most situations. A court may issue a default judgment if it finds that the lawsuit is necessary to protect public health and safety and the defendant has not appeared in court within the time provided by law. The time provided by law includes any extensions granted by the Governor’s Executive Orders regarding evictions.

Third, the rule prohibits courts from setting a trial date for an eviction lawsuit earlier than 60 days from the date on which a trial is requested. A court may only set an early trial date if it finds that an earlier trial is necessary to protect public health and safety. Any trial that was scheduled prior to April 6, 2020, will be continued for at least sixty days from the original trial date. This would affect only those cases that are in Step 6 of the unlawful detainer process and would likely have an effect on those persons who had already defaulted on their rent payment in March.

Emergency Rule 1 does not relieve a tenant from liability for unpaid rent, nor does it prevent a tenant from paying all or some of rent due if the tenant is able to do so in a timely manner.

Summary of Emergency Rule 2. Emergency Rule 2 contains similar protections to Emergency Rule 1, but for homeowners who may be at risk of foreclosure during the COVID-19 emergency. The rule stays all foreclosure lawsuits, and prohibits courts from making any decision or judgment in a foreclosure proceeding unless the court finds that the lawsuit is necessary to protect public health and safety. The time limitation for a bank or other mortgage holder to file a foreclosure action is extended until the COVID-19 emergency is over. A homeowner's rights to stop a foreclosure sale, including their right to redeem a mortgage, is also extended. Like Emergency Rule 1, the rule remains in effect until 90 days after the Governor terminates the statewide emergency caused by the COVID-19 pandemic, unless the rule is amended or repealed earlier by the Judicial Council.

Impact on Local Eviction Bans. While Indio did not adopt a local eviction ban, these emergency rules do not conflict with local eviction bans that were issued under cities' police power and the authority conferred by the Governor in Executive Order N-28-20 on March 16, 2020. Indeed, local eviction bans will likely be relevant in that it will fill in the gaps that remain open under the Governor's Orders and the Emergency Rules. Local eviction bans can establish requirements for tenants to notify their landlords of their inability to pay, and establish timeframes and mechanisms for repayment of past due rent once the state of emergency caused by the pandemic is over.

III. SUMMARY OF ORDINANCES ENACTING EVICTION MORATORIUM OR BANS

After the Governor declared a State of Emergency on March 4th, some cities throughout the State began to address the issues related to a shutdown of various sectors of the economy which resulted in many Californians being laid off, furloughed or their jobs terminated. One outcome of this was the inability of not being able to pay April rent. Cities such as Santa Monica and San Francisco adopted the first ordinances or orders related to evictions prohibiting landlords from evicting tenants for non-payment of rent related to COVID-19. These local government ordinances or orders occurred prior to the Governor's first order on March 16th and continued even after the Governor's second order on March 27th and prior to the Judicial Council's sweeping order of April 6th. In the Coachella Valley, the following cities have adopted eviction moratoriums:

- Coachella--March 30
- Cathedral City-- March 25
- Desert Hot Springs-- March 27
- Indian Wells-- March 25
- Palm Springs-- March 29 and revised April 2
- Rancho Mirage--March 23

As stated above, while the Governor’s orders and the Judicial Council orders certainly put in place provisions to prevent landlords from legally moving forward on unlawful detainer actions, there are some gaps that have been addressed by the local eviction moratorium ordinances or orders. The following is a summary of the most common provisions and how the issue is treated by the various orders and local jurisdictions.

PROHIBITS EVICTION OF TENANT FOR NON-PAYMENT OF RENT		
Provision	State/Court Order	City Ordinance/Orders
Prevents Landlord from Serving a 3-day Notice to Pay Rent	No	Yes (landlords shall not serve notice pursuant to CCP 1161(2))
Prevents Court from Issuing a summons to compel tenant to appear in court	Yes- Judicial Order Exception is if action necessary to protect public health and safety	No
Extends the time period for a tenant to respond to a 3-day Notice to Pay Rent	Yes-Gov. Order	No
Prevents Court from Entering a Default Judgment against Tenant	Yes-Judicial Order Exception if necessary to protect public health and safety	No
Prevents Court from setting a trial date earlier than 60 days from the date the trial is requested (applies to pending unlawful detainer actions)	Yes-Judicial Order	No

PROHIBITS NO FAULT EVICTIONS AND COMMERCIAL EVICTIONS		
Provision	State/Court Order	City Ordinance/Orders
Prevents No-fault Evictions or Commercial Evictions	The Judicial Order does not distinguish among types of evictions	Varies among cities-not widely included among Coachella Valley cities

REQUIRES NOTICE OF INABILITY TO PAY RENT TO LANDLORD		
Provision	State/Court Order	City Ordinances/Orders
Requires Tenant to notify Landlord in Writing of Inability to Pay Rent Due to Financial Impacts Related to COVID-19	Yes-Governor Order requires written notice	Yes- all of ordinances reviewed require written notification Some ordinances make a distinction between rent or “full rent” so as to encourage partial payment of rent; Cathedral City requires tenant to pay portion of rent that tenant able to pay;
Specifies time period that Tenant Notifies Landlord	Yes-Gov. Order- Before rent is due or within 7 days after rent become due Gov. Order also requires that tenant be current on their March rent	The time period ranges: <ul style="list-style-type: none"> ▪ generally within 30 days after rent due ▪ within 5 days after rent due (Cathedral City) ▪ within 10 days after rent is due (DHS) ▪ within 15 days after rent is due (PS) ▪ within 90 day after rent due (Rancho Mirage)
Specifies the kind of documentation needed to show it is COVID-19 related	Yes-Gov. Order	Yes-all the ordinances are along the lines of the Governor’s orders
Specifies or describes the “writing” for purposes of the notice to the landlord	No- Governor’s order does not mention this other than to say it must	Yes and definition varies: <ul style="list-style-type: none"> ▪ emails and text messages if they have previously corresponded by

	be in writing	<p>email or text</p> <ul style="list-style-type: none"> ▪ emails, text message or other forms of electronic communications without reference to previous correspondence
Specifies the timeframe of when the Landlord is to receive the documentation	<p>Yes-Governor's order states documentation may be provided no later than the time upon payment of back-due-rent due. There is no time-frame for payment of rent due</p>	<p>Yes-but the timeframe varies or no timeframe provided</p> <ul style="list-style-type: none"> ▪ 10 days after rent is due (DHS) ▪ 30 days after rent is due (Indian Wells, Coachella) ▪ 90 days after rent is due (Rancho Mirage) ▪ If landlord requests within 10 days of tenant's notice, then provide within 30 days (Palm Springs)
PROVISIONS REGARDING TIMEFRAME WHEN BACK-RENT IS DUE		
Provision	State/Court Order	City Ordinance/Orders
Requires the payment of back-rent within a specific time-frame	No-Governor order does not address the time-frame	<p>Varies among jurisdictions. Not all ordinances provide a time-frame of when rent is due.</p> <ul style="list-style-type: none"> ▪ 6 months following expiration of the local emergency (Indian Wells, Coachella, Palm Springs) ▪ 6 months following expiration of the State Emergency (DHS, Rancho Mirage) ▪ 60 days following termination of local emergency or authorization in Executive Order N-28-20 terminates, whichever is first (Cathedral City) ▪ Provides that tenant and

		landlord may prior to the expiration of the local emergency or within 90 days of the first missed rent payment, whichever is first, mutually agree to a plan for repayment from options provided by the City (Palm Springs).
Prohibits the imposition or collection of late fees, interest on any unpaid rent	No-Governor Order does not address this	<p>The time period ranges:</p> <ul style="list-style-type: none"> ▪ generally within 30 days after rent due ▪ within 5 days after rent due (Cathedral City) ▪ within 10 days after rent is due (DHS) ▪ within 15 days after rent is due (PS) ▪ within 90 day after rent due (Rancho Mirage)

While it is clear that the Judicial Council Emergency Orders have essentially suspended residential and commercial evictions in California, as depicted by the charts above, there are some areas where there is no state guidance particularly in the following areas:

- Description of what is a “writing” for purposes of the notice to the landlord
- Provide a date of when the documentation is due to the landlord
- Provide a date of when the back-rent is due
- Indicate whether the landlord can seek interest or late fees on back-rent
- Adopt provisions for commercial tenants or address no-fault evictions

There are other areas where the Executive or Judicial Orders have provided guidance, but cities have chosen to either adopt similar provisions as required in the Executive Orders and/or broaden the existing provisions. These areas are as follows:

- Prohibiting the service of a 3-day Notice to Pay Rent
- Provisions as to whether partial rent should be paid

- Time period in which to provide the landlord notice²
- More specificity as to the documentation required

The charts above provide the City Council with the provisions that other cities in the region have adopted as a benchmark if the Council desires to provide direction in these areas.

IV. SUMMARY OF FEDERAL RELIEF PACKAGES RELATED TO EVICTIONS AND SMALL BUSINESSES

At the federal level and as part of the Coronavirus Aid, Relief and Economic Security Act (“CARES”), there are provisions that place a temporary moratorium on eviction filings for residential properties that are financed by federally backed mortgage loans or participate in federal affordable housing programs as well as forbearance programs. In addition, there is also stimulus monies and various small business loans available that may be able to assist owners of residential and commercial real estate.

Section 4022 to 4024 of Title IV of Division A of the CARES Act, contain provisions that pertain to: (i) a foreclosure moratorium for federally backed mortgage loans for certain residential properties, (ii) forbearance of federally backed mortgage loans for certain residential properties, and (iii) a moratorium on eviction filings for dwelling properties that have been assisted with federally backed mortgage loans or federal subsidies. Each is further discussed below.

Section 4022: Foreclosure Moratorium and Consumer Right to Request Forbearance for Federally backed Mortgage Loans - Residential Properties Designed for Occupancy of One to Four Families. This provision provides relief to owners of residential properties *designed principally for occupancy of one to four families* (including individual units of condominiums and cooperatives), with federally backed mortgage loans. Federally backed mortgage loans include loans under the National Housing Act and those backed by the FHA, the VA, the USDA, Freddie Mac or Fannie Mae. Under Section 4022, until May 17, 2020, the servicer of a federally backed mortgage loan may not initiate any foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale, except for a vacant or abandoned property,

During the “covered period” (likely between March 27, 2020 and December 31, 2020 or when the national emergency ceases), the borrower of a federally backed mortgage loan

² Executive Order N-37-20 provides that the tenant must give written notice to the landlord before the rent is due or within 7 days after the rent is due. Some cities have adopted ordinances which provide for a longer period of time in which to provide notice. While the Governor’s order does not prevent the ability of cities enacting their own provisions, such provisions should be consistent with the order. There is a split among attorneys as to whether the 7-day time period can be extended. I do not recommend providing a longer period of time in that a tenant already likely knows that he or she will be unable to pay rent. An extended period of time provides no real protection or additional protection to the tenant. Furthermore, a number of the ordinances and the Governor’s order do not require the documentation regarding one’s inability to pay until the rent is due.

(regardless of delinquency status) may submit a forbearance³ request to the loan servicer, and affirm that the borrower is experiencing a financial hardship during the period of national emergency declared by the President (“COVID-19”). The forbearance will be granted for up to 180 days and will be extended for an additional 180 days at the borrower’s request. No fees, penalties or interest will accrue beyond the amounts scheduled or calculated as if the borrowed made all contractual payments on time.

Section 4023: Forbearance of Residential Mortgage Loan Payments with Federally Backed Loans for Multifamily Properties Designed for Occupancy by Five or More Families. Section 4023 is a similar provision except that it provides relief to owners of multifamily properties *designed for occupancy of five or more families* with federally backed multifamily mortgage loans, but requires the owners who receive such relief to not take any tenant eviction actions. Federally backed multifamily mortgage loans include loans that are issued or supported, in whole or in part, by a federal agency or are backed by Fannie Mae or FHLMC. A federally backed multifamily mortgage loan does not include any temporary financing such as a construction loan.

During the covered period (i.e., the period between March 27, 2020 and the sooner of: (i) the termination of the COVID-19 Emergency, or (ii) December 31, 2020), the borrower of a federally backed multifamily mortgage loan, who is current on the loan payments as of February 1, 2020, may submit a forbearance request to the loan servicer and affirm that the borrower is experiencing a financial hardship during the COVID-19 Emergency. The forbearance will be granted for up to 30 days and may be extended for up to two additional 30-day periods, if the borrower makes the extension request during the covered period and at least 15 days before the end of the first 30-day forbearance period.

During the forbearance period, the borrower may not evict or initiate eviction of a tenant on the related property solely for the non-payment of rent (or other fees or charges), or impose charges for the late payment. In addition, the borrower may not issue any notice to vacate to a tenant until the forbearance has expired and may not require a tenant to vacate without giving a 30-day advance notice.

Section 4024: Moratorium on Eviction Filings for Properties with Federally Backed Loans or Receive Federal Subsidies. This provision provides relief to renters. For 120 days after the enactment of the CARES Act (which period will end on July 25, 2020), the landlord of any “covered property” (discussed below) may not initiate legal action to evict a tenant from a dwelling for nonpayment of rent (or other fees or charges), or impose charges for the nonpayment. In addition, during that period, the lessor may not issue any notice to vacate to a tenant and may not require a tenant to vacate without giving a 30-day advance notice.

A “covered property” means a property that is secured by a federally backed mortgage loan or a federally backed multifamily mortgage loan or receives federal subsidies from

³ A forbearance is an agreement for temporarily reduced or paused payments on a loan for a specified period of time. As part of the agreement, after the forbearance, the mortgagee is responsible for paying the amounts of the loan that were reduced or suspended, in addition to resuming their regular payments.

programs such as public housing, Section 8 assistance, USDA rural housing programs or the low income housing tax credit program.

A criticism of what has been referred to as the “federal eviction moratorium” is that tenants do not know whether their landlord’s rental property has federally backed mortgage loans. So while the above described programs assist the owner of rental units, tenants may still believe they can be evicted because they have no knowledge with respect to how their rental unit is financed. A landlord, however, could be proactive and inform the tenant of their situation.

Section 1102 of CARES establishes “The Paycheck Protection Program (“Program” or “PPP”) and amends Section 7(a) of the Small Business Act to provide up to \$349 billion in 100% federally-guaranteed loans for an expanded array of eligible businesses. A summary is set forth below.

Section 1102 Paycheck Protection Program. During the covered period of February 15, 2020 through June 30, 2020, in addition to small businesses, any business, non-profit organization, veterans organization or Tribal business is eligible to receive a Program loan if these businesses employ no more than the greater of 500 employees or, if applicable, the size standard in number of employees established by the Small Business Administration (“Administration”) for the industry in which the business operates. In addition, individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals are also eligible for a Program loan. Such individuals will need to provide documentation of their status, as determined by the Administrator and Secretary of the Treasury. Businesses that employ no more than 500 employees per physical location and that are assigned a North American Industry Classification System (NAICS) code beginning with 72 are also eligible for a Program loan. Lastly, affiliation regulations are waived for (i) businesses that employ no more than 500 employees per physical location and that are assigned a NAICS code beginning with 72; (ii) businesses operating as a franchise that are assigned a franchise identifier code by the Administration; and (iii) businesses that receive financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958.

There are certain conditions to apply for the program loan. The Administration has delegated authority to approved lenders to make Program loans without further Administration approval, subject to the requirements of the Program. An eligible business must show that it was in operation on February 15, 2020, and either had employees for whom it paid salaries and payroll taxes, or paid independent contractors. An eligible business applying for a Program loan must also make a good faith certification of the following:

- (i) that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the business;
- (ii) acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;

(iii) that the eligible business does not have an application pending for a Program, or any other 7(a) loan, for the same purpose and duplicative of amounts applied for or received under a Program loan; and

(iv) during the period beginning on February 15, 2020 and ending on December 31, 2020, that the business has not received amounts under this Program, or any other 7(a) loan, for the same purpose and duplicative of amounts applied for or received under a Program loan.

Certain borrower requirements typical of small business loans have been waived. Under the Program, the Administration will not collect any fees. Additionally, eligible businesses will not be required to show that they could not obtain credit elsewhere. Finally, no personal guarantee or collateral will be required for Program loans. The Administrator has no recourse against any individual shareholder, member, or partner of a business that receives a Program loan for nonpayment of any Program loan, except to the extent that such shareholder, member, or partner uses the Program loan proceeds for a purpose not authorized under the Program.

The maximum loan amount available under the Program is the lesser of the sum of the average total monthly payments by the business for payroll costs incurred during the one-year period before the date on which the loan is made, multiplied by 2.5 *plus* the outstanding amount of any Economic Injury Disaster Loan that was made during the period beginning on January 31, 2020 and ending on the date on which Program loans are made available to be refinanced under the Program loan; or \$10,000,000.

As it relates to landlords and based on the articles I have reviewed, while the Program is an extremely helpful option for small businesses to stay afloat right now, most landlords do not have many, if any, employees on payroll, which means they will not be eligible for aid under the Program. In addition, being a “landlord” is a passive business and passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved are not eligible businesses under the Paycheck Protection Act. As of last week, the National Multifamily Housing Council and National Apartment Association were lobbying the Small Business Administration to include multifamily housing businesses as a business that qualifies under the Program.

Section 1110 Emergency Economic Injury Disaster Loans Program (EIDL). Section 1110 of the CARES Act expands the list of businesses eligible for Economic Injury Disaster Loans (“EIDL”) and relaxes some of the EIDL loan requirements for EIDLs in response to COVID–19. It also establishes an EIDL Grant program. The SBA is required to deem that each state or subdivision has sufficient economic damage to small businesses to qualify for assistance under the EIDL program.

From January 31, 2020 through December 31, 2020 (the covered period), the following businesses will now be eligible for an EIDL: (i) a business with no more than 500 employees; (ii) any individual who operates under a sole proprietorship, with or without employees, or as an independent contractor; (iii) a cooperative with not more than 500 employees; (iv) an employee stock ownership plan (“ESOP”) with not more than 500 employees; or (v) a tribal small business with not more than 500 employees.

During the covered period certain requirements for obtaining an EIDL are waived, including: (i) any rules related to the personal guarantee on advances and loans of not more than \$200,000 during the covered period; (ii) the requirement that a business needs to be in business for the 1-year period before the disaster (except it must have been in operation on January 31, 2020); and (iii) the requirement that a business is unable to obtain credit elsewhere. Additionally, the SBA may approve a small-dollar EIDL for a business based solely on the credit score or use alternative appropriate methods to determine the business's ability to repay the loan.

Also, during the covered period, an eligible business that applies for an EIDL in response to COVID-19 may request that the SBA provide an advance of not more than \$10,000 to such business within three days after the SBA receives the application. The business must self-certify that it is eligible. The advance may be used for any allowable purpose for an EIDL including (i) providing paid sick leave to employees unable to work due to the direct effect of COVID-19; (ii) maintaining payroll to retain employees during business disruptions or substantial slowdowns; (iii) meeting increased costs to obtain materials unavailable from the business's original source due to interrupted supply chains; (iv) making rent or mortgage payments; and (v) repaying obligations that cannot be met due to revenue losses.

Importantly, a business is not be required to repay any amounts of an advance, even if subsequently denied an EIDL. However, if a business receives a loan under the Paycheck Protection Program, the advance amount shall be reduced from the loan forgiveness amount for a loan for payroll costs.

Groups that assist and are advising landlords have written that the EIDL is likely the most advantageous programs for landlords to help them make mortgage payments and other operating expenses.

FINANCIAL ANALYSIS: There is no financial impact to the City.

ALTERNATIVES: None.

ATTACHMENTS: None.