



## Legislation Text

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**File #:** 21-0380, **Version:** 1

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**TO:**

Honorable Mayor and Members of the City Council

**THROUGH:**

Bruce Moe, City Manager

**FROM:**

Quinn Barrow, City Attorney

**SUBJECT:**

Consideration of Eviction Protections During the COVID-19 Pandemic (City Attorney Barrow).

**DISCUSS AND PROVIDE DIRECTION**

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**RECOMMENDATION:**

Staff recommends that the City Council discuss and provide direction regarding the potential repeal or modification of the City's eviction protections for residential and commercial tenants.

**EXECUTIVE SUMMARY:**

The City Council may repeal or make modifications to the City's emergency eviction protections for residential and commercial tenants. If the City's Ordinance is repealed, the following emergency eviction protections would remain intact:

- The County's eviction protections: "residential and commercial tenants, including mobile home space renters, may not be evicted for COVID-19 related nonpayment of rent as well as no-fault reasons, denying entry to a landlord, nuisance, or unauthorized occupants or pets - if related to COVID-19." Please note County regulations of residential tenants facing eviction *for nonpayment of rent due to COVID-19 related financial hardship* are preempted by state law until April 1, 2022.
- Assembly Bill (AB) 832's additional restrictions on unlawful detainer actions: which - among other things - prohibit a court from issuing a summons for an unlawful detainer complaint based on nonpayment of rent coming due from March 1, 2020, until March 31, 2022, unless a landlord demonstrates that appropriate efforts were made to obtain government rental assistance. These restrictions remain in effect until March 31, 2022.

Parsing and reconciling the different eviction restriction threads resulting from the COVID-19 pandemic are not easy tasks. Nevertheless, this report summarizes recent developments and their impact, if any, upon the City.

**BACKGROUND:**

Pursuant to the Brown Act, the City Council cannot discuss items not on an agenda except under limited circumstances. The City Council has developed a process to allow individual Councilmembers

to request, with the support of another Councilmember, that items be placed on a future agenda for City Council discussion. At that future meeting, the item is identified on the agenda in full compliance with the Brown Act. Discussion allows an opportunity to the public to provide input and the City Council, as a body, to decide whether additional City resources (staff time, City Attorney time, etc.) should be incurred.

Accordingly, individual Councilmembers can initiate future agenda items by following the following three-step process:

**STEP ONE:**

During “Future Agenda Items,” a Councilmember may request that an item be placed on the agenda. If another Councilmember concurs with placing the item on the agenda, the item is placed on a future agenda. At the meeting on October 19, 2021, Councilmembers Hadley and Montgomery requested to agendize the City’s eviction regulations adopted during the COVID-19 pandemic.

**STEP TWO:**

The item is placed on the agenda. After reviewing the rest of this staff report and discussion, the City Council has the following options:

- (a) Receive and File the report.
- (b) Provide direction.
- (c) Continue the item to a future date.

**STEP THREE:**

If City Council chooses option (b) in Step Two above, the item is placed on a future City Council meeting agenda for action.

**DISCUSSION:**

*Update on Eviction Protections Adopted During the COVID-19 Pandemic:*

Manhattan Beach’s Local Regulations

On March 17, 2020, the City Council adopted Urgency Ordinance No. 20-0012-U, an urgency ordinance to provide temporary eviction protections to commercial and residential tenants in the City during the COVID-19 pandemic local emergency, and subsequently amended Ordinance No. 20-0012-U (hereinafter, Ordinance No. 20-0012, and its amendments, are referred to as the “Ordinance”). The Ordinance generally prohibits a landlord from evicting a residential or commercial tenant in either of the following situations:

1. for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19; or
2. for a no-fault eviction unless immediately necessary for the health and safety because of the existence of a hazardous condition affecting other tenants, neighbors, or the landlord.

The Ordinance does not relieve tenants of liability for unpaid rent that became due during the effective period of the Ordinance. The Ordinance will remain in effect for the duration of the local emergency unless it is amended or repealed.

Recent Developments

There are five recent developments concerning emergency eviction moratoria enacted in response to

the COVID-19 pandemic:

1. Expiration of Governor Newsom's Executive Order that facilitated local commercial eviction bans.
2. Various changes to the State Legislature's eviction protections for residential tenants, including the expiration of the state eviction ban.
3. Los Angeles County's extension of certain eviction protections until January 31, 2022.
4. A recent Ninth Circuit Court of Appeals decision that upheld the residential eviction moratorium enacted by the City of Los Angeles ("LA").
5. A recent U.S. Supreme Court decision ending the federal eviction ban established by the Centers for Disease Control and Prevention ("CDC").

As noted below, some of the developments may impact the City and its residents.

1. Expiration of Executive Order that Facilitated Local Commercial Eviction Bans

The second paragraph of Governor Newsom's Executive Order N-28-20 (as repeatedly extended with modifications), which purported to authorize local governments to impose **commercial** eviction moratoria by suspending any conflicting provisions of state law, expired on September 30, 2021.

2. Modifications to State Eviction Protections

- A. Expiration of State Eviction Ban

On October 1, 2021, the statewide eviction ban for **residential** tenants who were negatively impacted by COVID-19 expired. This ban protected residential tenants from eviction for nonpayment of rent that came due between March 1, 2020, and September 30, 2021, if tenants demonstrated COVID-19 related financial distress by complying with certain procedures. In addition, for rent that came due between September 1, 2020, and September 30, 2021, tenants were required to pay at least 25 percent of the total rent on or before September 30, 2021. If tenants complied with these requirements, their unpaid rental debt was converted into consumer debt, and landlords could not evict tenants for nonpayment of rent that came due between March 1, 2020, and September 30, 2021. As described in Section B below, while the state eviction ban is no longer in effect, the state enacted other eviction restrictions to protect residential tenants for a six-month period following the expiration of the state eviction ban.

- B. Current State Eviction Restrictions

The current state eviction restrictions governing the eviction process are in effect from October 1, 2021, until March 31, 2022. These restrictions - among other things - prohibit a court from issuing a summons on an unlawful detainer complaint based on nonpayment of rent coming due from March 1, 2020, until March 31, 2022, unless a landlord demonstrates that appropriate efforts were made to obtain government rental assistance.

- C. Effect on the City's Residential Eviction Regulations

The expiration of the state eviction ban will not impact the City's residential eviction regulations. For

the most part, State law did not preempt local eviction bans adopted before August 19, 2020, that were designed to protect COVID-19-impacted **residential** tenants from eviction, such as the City's eviction ban. AB 3088, as modified by Senate Bill (SB) 91 and AB 832, provided that any new local residential eviction ban – or extension, expansion, renewal, or reenactment of an existing ban adopted after August 19, 2020 – will have no effect until April 1, 2022. These restrictions continue to apply. In addition, the following limitations on existing local eviction bans that provide a specific period of time in which tenants must repay COVID-19 rental debt that came due between March 1, 2020, and September 30, 2021, are still in effect:

- The repayment period must commence no later than May 1, 2022. However, if the local ban provides for a commencement date that is earlier than May 1, 2022, that date cannot be extended.
- The repayment period must end by the date established by the local ban. In addition, the repayment period cannot extend beyond May 31, 2023.

### 3. County Eviction Regulations

On September 28, 2021, the Los Angeles County Board of Supervisors adopted the Los Angeles County COVID-19 Tenant Protections Resolution (the "Resolution"), which extended certain County evictions protections until January 31, 2022. The Board of Supervisors established the County's eviction protections as "the baseline" for all incorporated cities within the County, including cities – such as Manhattan Beach – with their own local eviction moratoria. The Resolution does not "preclude any incorporated city within the County from imposing, or continuing to impose, greater local protections than are imposed by this Moratorium if the protections are not inconsistent with this Moratorium and are not preempted by State or federal regulations."

Under the Resolution, "residential and commercial tenants, including mobilehome space renters may not be evicted for COVID-19 related nonpayment of rent as well as no-fault reasons, denying entry to a landlord, nuisance, or unauthorized occupants or pets - if related to COVID-19." (Los Angeles Co. Dept. of Consumer & Business Affairs, About L.A. County's COVID-19 Tenant Protections Resolution (available at <https://dcba.lacounty.gov/noevictions/>)). However, the County's eviction protections do not currently apply to residential tenants facing eviction *for nonpayment of rent due to COVID-19 related financial hardship* because these specific protections are preempted by state law until April 1, 2022. The County's restrictions on other residential evictions related to COVID-19; including no-fault reasons, denying entry to a landlord, nuisance, or unauthorized occupants or pets, do not appear to be preempted by state law at this time.

### 4. Ninth Circuit Decision: Upholding Local Eviction Ban

In *Apartment Association v. City of Los Angeles*, a trade association of landlords challenged LA's residential eviction ban as violating the Contracts Clause of the U.S. Constitution and sought a preliminary injunction to prohibit LA from enforcing key provisions of its eviction moratorium. The Contracts Clause prohibits states and municipalities from passing laws that impair contractual obligations. A law is unconstitutional under the Contracts Clause if: (1) the law substantially impairs a contractual relationship; and (2) the law is not drawn in an "appropriate" and "reasonable" way to "advance a significant and legitimate public purpose." The landlord association argued LA's eviction ban impaired the contracts between landlords and residential tenants when it protected tenants against eviction if they were unable to pay rent due to financial hardships from COVID-19.

The federal trial court held that the landlord association is unlikely to succeed on its Contracts Clause claim because any impairment of landlords' contractual rights appears to be "eminently reasonable under the extraordinary circumstances" of the pandemic. A panel of the Ninth Circuit Court of Appeals affirmed the federal trial court's decision and ruled that the landlord association is unlikely to prevail on its claim that LA's eviction ban violates the Contracts Clause. The Ninth Circuit did not decide whether the eviction ban substantially impaired contractual relations between landlords and tenants. Instead, the court held that the eviction moratorium's challenged provisions are likely appropriate and reasonable measures to ensure housing security and promote public health during the COVID-19 pandemic.

The court emphasized that deference should be provided to local officials when assessing a potential violation of the Contracts Clause. LA tied its eviction moratorium to the goals of preventing housing displacement and promoting public health during the pandemic. The court explained that it must "refuse to second-guess" LA's determination that the eviction moratorium is the most appropriate way to advance these goals. The Ninth Circuit's decision likely supports Manhattan Beach's residential eviction ban because it furthers the same goals.

#### 5. Supreme Court Decision: Ending Federal Eviction Ban

In *Alabama Association of Realtors v. Department of Health and Human Services*, realtor associations and rental property managers challenged the CDC's federal eviction ban. In September 2020, the CDC first issued an emergency order to temporarily prevent landlords across the country from evicting qualifying residential tenants for nonpayment of rent. The order, which was repeatedly extended with minor modifications, did not preclude states and localities from imposing additional requirements that "provide greater public-health protection and are more restrictive than the requirements of this Order." The initial federal eviction ban expired on July 31, 2021. On August 3, 2021, the CDC issued a new federal eviction ban to prevent residential evictions in communities with substantial or high levels of community transmission of COVID-19.

The Supreme Court ruled that the CDC exceeded its power in issuing and extending the federal eviction ban. The Court explained that the statute the CDC relied on as its authority for issuing the federal eviction ban applies to measures that *directly* relate to preventing the interstate spread of disease, such as fumigation, disinfection, sanitation, and pest extermination. The federal eviction ban, in contrast, relates to such prevention "far more indirectly." "If a federally imposed eviction moratorium is to continue," the court concluded, "Congress must specifically authorize it."

The Supreme Court decision does not affect the City's Ordinance.

#### **CONCLUSION:**

In sum, with the possible exception of the expiration of Governor Newsom's Executive Order facilitating local commercial eviction bans, these recent developments will generally have little, if any, direct impact on a city's eviction regulations for the following reasons:

- The holding in the Supreme Court decision ending the CDC's federal eviction ban is narrowly drawn as the CDC exceeding its authority, and the decision has no impact on local eviction bans.

- The Ninth Circuit's decision upholding LA's residential eviction ban has no direct bearing on other cities' eviction bans, but this decision indicates that the Ninth Circuit would likely show deference to other cities' residential eviction bans that further the same goals expressed by LA.
- The County's eviction protections do not "preclude any incorporated city within the County from imposing, or continuing to impose, greater local protections than are imposed by this Moratorium if the protections are not inconsistent with this Moratorium and are not preempted by State or federal regulations."
- The expiration of the state residential eviction ban does not impact local residential eviction bans.

Staff recommends that the City Council discuss and provide direction to staff regarding the City's eviction protections for residential and commercial tenants. If the City's Ordinance is repealed, the only emergency eviction protections that would remain intact are:

- The County's eviction protections, although County regulations of residential tenants facing eviction *for nonpayment of rent due to COVID-19 related financial hardship* are preempted by state law until April 1, 2022.
- AB 832's additional restrictions on unlawful detainer actions, which - among other things - prohibit a court from issuing a summons on an unlawful detainer complaint based on nonpayment of rent coming due from March 1, 2020, until March 31, 2022, unless a landlord demonstrates that appropriate efforts were made to obtain government rental assistance. These restrictions remain in effect until March 31, 2022.

#### **ENVIRONMENTAL REVIEW:**

The City has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA. Thus, no environmental review is necessary.