



Eviction Moratorium

Considerations Prior to Adoption



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Summary of Presentation

- Federal CARES Act Eviction Moratorium and Executive Order
- State Eviction Moratorium
 - CA Assembly Bill 1436
 - CA Senate Bill 1410
- California Judicial Council Eviction Moratorium
- Imperial County Eviction Moratorium
- Proposed Urgency Ordinance for Calexico
- Eviction Moratoria in Other Jurisdictions
- Potential Challenges to Local Eviction Moratoria
- Comments



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Federal Eviction Moratorium and Executive Order

- CARES Act moratorium on evictions began on March 27th and expired on July 24th.
- 8/8/20 Executive Order: Secretary of HHS and Director CDC are to “consider measures temporarily halting residential evictions of any tenants for failure to pay rent” if they deem those measures to be “reasonably necessary to prevent the further spread of COVID-19.”
- Executive Order expected to be challenged in court by landlord associations.



State Eviction Moratorium

- Governor Newsom first allowed cities and counties to enact their own tenant protections (3/16/20 Executive Order N-28-20), then enacted a statewide ban on enforcement of eviction orders through May 31, 2020 (3/27/20 Executive Order N-37-20), and then allowed cities and counties to extend those protections through 9/30/20 if they choose to do so. (6/30/20 Executive Order N-71-20)



CA Assembly Bill 1436

- Assembly Bill 1436 would extend the eviction moratorium until 90 days after the COVID-19 emergency ends, then give tenants 12 additional months to make any missed payments before their landlord could sue for the unpaid rent. The landlord could not evict a tenant for unpaid rent accumulated during the COVID-19 emergency.



CA Senate Bill 1410

- A proposal to assist landlords is Senate Bill 1410, which would give landlords tax credits if they agree to forgive missed rent payments from tenants who had COVID-related financial hardship. Landlords could sell the tax credits for cash immediately. Tenants would have to repay their rent debt to the state starting in 2024.
- But, SB 1410 could cost \$10 billion over the life of the program, so may not be financially feasible.



Eviction Moratorium in CA Courts

- As of April 6th, California Judicial Council declared that, unless necessary to protect public health and safety, no eviction case may proceed either while the Governor's state of emergency remains effective or for 90 days after it ends-even if the eviction is not COVID-19 related.
- The Judicial Council has determined to lift the eviction moratorium on September 1, 2020.



Imperial County Eviction Moratorium

- 3/31/20 – Imperial County Board of Supervisors initiated a temporary prohibition on COVID-19 related evictions in unincorporated areas.
- 7/7/20 – The temporary prohibition was extended through September 30.



Imperial County Cities

- No Imperial County cities have adopted an eviction moratorium.
- El Centro considered adopting one in early April, but determined that they needed more information and tabled any action.



Proposed Urgency Ordinance

- Applicable to both residential and commercial tenant evictions.
- During the local emergency, no landlord shall try to evict a residential or commercial tenant for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19.



Proposed Urgency Ordinance – Residential Regulations

- Tenant must notify landlord in writing of lost income and inability to pay full rent due to financial impacts related to COVID-19 and provide documentation to support the claim by the time of payment of back-due rent.
- “In writing” can include email or text communications.
- Any provided medical or financial information shall be held in confidence, and only used for evaluating the tenant’s claim.



Proposed Urgency Ordinance – Residential Regulations (Con't)

- “Financial impacts related to COVID-19” include, but are not limited to, tenant lost household or business income as a result of any of the following:
 - (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19;
 - (2) lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19;



Proposed Urgency Ordinance – Residential Regulations (Con't)

- (3) compliance with a recommendation from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency;
- (4) extraordinary out-of-pocket medical expenses; or
- (5) child care needs arising from school closures related to COVID-19.



Proposed Urgency Ordinance – Residential Regulations (Con't)

- Violation of this Ordinance shall be punishable as set forth in Calexico Municipal Code Chapters
 - 1.24 – violation is a misdemeanor and punishable by fines of \$100, \$200, \$500;
 - 1.26 – administrative remedies, e.g. compliance orders, administrative orders and fines
 - 1.27 – administrative citations and fines
 - 1.28 – cost recovery, e.g. attorney fees
 - Section 2.36.120 – misdemeanor (\$500 fine; up to 6 months in jail)
 - The Ordinance itself is a defense to an eviction action.



Proposed Urgency Ordinance – Residential Regulations (Con't)

- Tenants are still responsible for unpaid rent.
- Landlords may seek unpaid rent after expiration of local emergency.
- Tenants must pay within six months after expiration of local emergency.
- Landlords may not charge interest on delayed rent.
- Landlords may not seek delayed rent through the eviction process.



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Proposed Urgency Ordinance – Residential Regulations (Con't)

- No other legal remedies available to landlords are affected by this Ordinance, e.g. a civil suit for damages.



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Proposed Urgency Ordinance – Commercial Regulations

- Commercial landlords are prohibited from evicting commercial tenants for nonpayment of rent with respect to tenants whose businesses are subject to State and County orders or are otherwise limited or closed (voluntarily or by mandate) and who demonstrate lost income and inability to pay rent as a result.



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Proposed Urgency Ordinance – Commercial Regulations (Con't)

- Tenant must notify landlord in writing of inability to pay rent within 30 days after rent is due.
- Tenant must provide documentation to support the claim.
- “In writing” includes email or text communications
- Landlord will keep medical and financial information confidential.



Proposed Urgency Ordinance – Commercial Regulations (Con't)

- If a tenant suffers only a partial loss of income, the tenant shall pay the pro-rated share of their rent that corresponds to the income they generated during the period of loss.



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Proposed Urgency Ordinance – Commercial Regulations (Con't)

- This Ordinance grants a defense in the event that an unlawful detainer action is commenced in violation of this order.
- Violation of this Ordinance shall be punishable as set forth in the Calexico Municipal Code.



Proposed Urgency Ordinance – Commercial Regulations (Con't)

- As in the residential regulations,
 - Tenants are still responsible for unpaid rent.
 - Landlords may seek unpaid rent after expiration of local emergency.
 - Tenants must pay within six months after expiration of local emergency.
 - Landlords may not charge interest on delayed rent.
 - Landlords may not seek delayed rent through the eviction process.
 - No other legal remedies available to landlord are affected by this Ordinance.



Proposed Urgency Ordinance

- Would remain in effect through September 30, 2020, unless extended by the City Council or the City's Director of Emergency Services.
- To prevent inconsistencies, the Director of Emergency Services may suspend the effectiveness of this Ordinance in the event that the President of the United States, Congress, Governor of the State of California, or California State Legislature adopts an order or legislation that similarly prohibits evictions for failure to pay rent by individuals impacted by the COVID-19 crisis.



Eviction Moratoria in Other Jurisdictions

- Jurisdictions that have already enacted eviction moratorium have generally been extending them on an incremental basis (every 30-60 days).



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Eviction Moratoria Extending Beyond State Order

- Moratoria that extend beyond September 30th (the date the Governor's executive order is set to expire) are not likely preempted because state laws do not prevent cities from creating substantive defenses to eviction, so long as it does not substantially interfere with summary eviction proceedings.



Eviction Moratoria Extending Beyond State Order

- Of course, landlords still may sue and the moratorium would not shield cities from constitutional challenges (Takings, Contracts Clause, Due Process, etc.). Given cities' police powers coupled with the California Emergency Services Act and case precedent decided during emergency settings, plaintiffs are unlikely to prevail on constitutional claims. The likelihood of successfully defending a moratorium will be fact specific and always subject to some risk.



Comments from Imperial Valley Equity & Justice Coalition

- Looming National Eviction Crisis
 - Millions could face evictions; Homelessness; Households already missing payments; Increase credit card usage to pay rent; Latinos most likely to be hurt by econ. impacts of COVID-19
- Why Calexico Residents and Small Businesses are at High Risk of Eviction
 - 46% of City households are renters; Housing affordability; Incomes below Federal Poverty Line; Latino small businesses lack cash buffers; PPP for businesses does allow for rent payments as basis for loan forgiveness





Questions and Comments



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