

OPTIONS TO CONSIDER FOR PHASING OUT THE EVICTION MORATORIUM

On January 31, 2022 the Board will decide whether to extend the current COVID-19 Tenant Protections Resolution or allow the protections to expire. If lifted, these protections would impact both commercial and residential tenants as well as property owners. The following phase-out strategy was developed based on existing perceived and available data:

Figure 1: Proposed Options to Phase Out the County’s COVID-19 Tenant Protections

PHASE I January 31 – March 31, 2022	PHASE II April 1 – June 30, 2022	PHASE III July 1 – December 31, 2022
For commercial tenants, lift eviction protections for nonpayment of rent.		
For residential tenants, extend current eviction protections until March 31st.	<p>For residential tenants, retain some existing protections:</p> <ul style="list-style-type: none"> • Rent freeze for RSO properties in unincorporated County; • Nuisance protections. <p>Amend the Resolution to:</p> <ul style="list-style-type: none"> • Allow landlords to evict tenants to sell property; require relocation assistance; • Remove purchase date req. for owner move-ins; • Remove “impacted by COVID-19 req. for owner move-ins; • Remove protection for denying entry to landlord, except for harassment; • Remove protections for unauthorized occupants, pets. <p>Amend the Resolution to:</p> <ul style="list-style-type: none"> • Allow residential tenants 80% AMI or below to self-certify they qualify for rental assistance, as an affirmative defense for nonpayment of rent. 	For residential tenants, allow tenants 80% AMI or below to self-certify their qualification for rental assistance.

PHASE 1 (JANUARY 31 – MARCH 31, 2022)

Commercial Tenants

Lift eviction protections for nonpayment of rent for all commercial tenants

Rationale

Commercial tenants have been open for several months and have been able to start recouping lost incomes. In addition, the County is likely preempted from extending protections

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for nonpayment of rent to commercial tenants. Commercial tenants with 0-9 employees still have twelve (12) months following the expiration of these protections to repay back-owed rent and there is rental assistance available for struggling businesses.

According to County Counsel, the County may be preempted from enacting protections for commercial tenants, as the Governor's emergency order allowing local jurisdictions to adopt these types of protections expired on September 31, 2021. Additionally, State law prevents local jurisdictions from passing legislation that affects commercial leases, and eviction protections for nonpayment of rent could be interpreted as impacting the lease. If the Board wishes to adopt a phase-out for commercial tenants, and County Counsel affirms the legality, we believe this approach will be less controversial and raise less flags than tying commercial protections to available rent relief. This is because commercial rent relief is a new County policy, making it appear that we are enacting new commercial protections. Commercial tenants with 0-9 employees account for approximately ninety-one (91) percent of small businesses in unincorporated areas of the County, demonstrating a significant need for protections for these types of tenants. Additionally, the County would be able to perform the necessary outreach so that tenants are aware of what protections and resources are in place to help them remain in business.

Residential Tenants

Extend current eviction protections until March 31st

Maintain "status quo" of eviction protections found in the COVID-19 Tenant Protections Resolution (Resolution), including protections for: no-fault eviction reasons, denying entry to landlord, nuisance, unauthorized occupants or pets as well as the anti-harassment protections and rent freeze for rent stabilized units in unincorporated areas of the County.

Rationale

While the County cannot yet extend protections to residential tenants facing eviction for nonpayment of rent caused by COVID-19 financial hardship due to preemptions in the state's eviction protections, we recommend retaining all other protections currently offered to residential tenants under the Resolution. As outlined in the data on rental assistance, approximately 127,000 tenant households remain at risk of eviction, and nearly 85% of renters applying to the State's Rent Relief Program in the County report needing additional money to pay for rent and housing expenses. There is also increasing uncertainty about the Omicron variant of COVID-19 and the potential implications on infection rates and economic impacts. Additionally, while actions such as submitting a declaration of hardship and paying 25% of rent owed from September 1, 2020 – September 31, 2021 and filing for rent relief provide an affirmative defense in an unlawful detainer action, they do not protect residential tenants from other types of evictions. Therefore, *if we lift the available protections in the Resolution, a landlord may attempt to evict a tenant who has successfully applied for rent relief for another reason, such as nuisance or a no-fault reason.* We believe this protection is critical to a true phase-out of the Resolution and avoiding a tsunami of eviction actions once lifted.

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PHASE 2 (APRIL 1 - JUNE 30, 2022)

Residential Tenants

Retain the following existing protections:

- Rent freeze for rent stabilized properties in unincorporated LA County;
- Nuisance protections.

Amend the Resolution to include the following types of eviction actions:

- Allow landlords to evict tenants in order to sell a property, but require them to provide relocation assistance under County Rent Stabilization Ordinance or incorporated city requirements;
- Remove purchase date requirement for owner move-ins;
- Remove “impacted by COVID-19” requirement for owner move-ins, but retain similarly situated conditions;
- Remove protection for denying entry to landlord, except excessive entries that constitute harassment;
- Remove protections for unauthorized occupants or pets.

Amend the Resolution to include the following protection:

- Allow residential tenants with household income at 80% Area Median Income (AMI) or below to self-certify that they would qualify for rental assistance, even if they did not apply, as an affirmative defense in unlawful detainer actions for nonpayment of rent.

Rationale

As of April 1, 2022, the County will no longer be preempted from extending protections to residential tenants who are facing eviction for nonpayment of rent due to COVID-19 financial hardship. Therefore, we recommend providing an additional mechanism for tenants to demonstrate need and have an affirmative defense in unlawful detainer actions that would otherwise leave them vulnerable to eviction and even homelessness. While applying for rental assistance provides an affirmative defense for this type of eviction action, the state’s application will only remain open while there is available funding. Therefore, thousands of vulnerable tenants who are financially burdened by COVID-19 and income-qualifying may be unable to establish protections by applying for rental assistance. Allowing tenants to self-certify that they would qualify for rental assistance enables the County to continue to protect vulnerable communities and minimize the number of tenants who could fall into homelessness. Extending this protection would also allow the County to continue to develop expanded supportive services and funding for rental assistance, eviction defense, and mediation to help low-income renters. Additionally, the County would be able to perform the necessary outreach so that tenants are aware of what protections and resources are in place to help them remain housed. We also recognize that many landlords, especially smaller, mom and pop landlords, have been very vocal about their financial struggles and eagerness to have eviction protections lifted. By expanding the types of eviction actions permissible under the County’s Resolution, we are easing the burden on smaller landlords while still ensuring the most vulnerable tenants remain protected.

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PHASE 3 (JULY 1 – DECEMBER 31, 2022)

Residential Tenants:

Allow tenants to self-certify their qualification for rental assistance

Continue to allow tenants to self-certify that they would qualify for rental assistance, even if they did not apply, in order to establish an affirmative defense in an unlawful detainer action for nonpayment of rent; lift all other eviction protections for residential tenants.

Rationale

It will likely take years before we feel relief and stability following the financial, economic, and mental effects of the pandemic. Residential tenants, especially in low-income communities and communities of color will continue to need supportive services and time to apply for resources and repay back-owed rent. Additionally, there is still much uncertainty about COVID-19 variants and the risk of infection and re-infection. Allowing residential tenants to continue to self-certify as an affirmative defense will help prevent eviction actions for vulnerable tenants who are still struggling, help prevent homelessness, and minimize the spread of future COVID-19 variants. Lifting other types of protections will allow landlords to proceed with eviction actions that are causing undue duress or financial hardship to property owners.

While the economic and public health data shows a decline in unemployment and in daily COVID-19 cases, the recently identified Omicron variant may impact these numbers and any decision regarding emergency orders from now through the end of January 2022. Taking economic and public health data into consideration will be important as the Board decides when to phase out the COVID-19 Tenant Protections and/or enact policies while ensuring the most vulnerable renter households and small businesses in the County receive assistance.

CONSIDERATIONS FOR OUTREACH

On January 5, 2021, the Board adopted a motion directing the CEO, in conjunction with the DCBA and LACDA to: 1) convene a group of diverse stakeholders, made up of tenants and property owners and/or their advocates, to hold monthly discussions on the provisions of the eviction moratorium, until the County's eviction moratorium is lifted; and 2) report back to the Board on a quarterly basis with a summary of stakeholder feedback and policy options for consideration in conjunction with the evaluation of the County's eviction moratorium. Following the initial report on May 24, 2021, a second quarterly report provided observations from eight monthly eviction moratorium meetings, from February 2021 through September 2021. The feedback received from the series of roundtable meetings has been incorporated into the recommendations contained in this report and meets the purpose of the roundtables. Therefore, we recommend that the existing Stay Housed LA workshops provide opportunity for tenants to continue to stay updated on policy. Additionally, a separate forum for rental property owners is suggested.

METRICS AND BEST PRACTICES

The economic, housing, health, and programmatic data in the Appendix of the report may be tracked and considered in the Board's decision to remove or continue certain eviction

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protections. Additionally, a review of best practices from other jurisdictions could be informative. For example, jurisdictions such as Minnesota and Washington, D.C. decided to protect its most vulnerable tenants by setting limits on evictions tied to the rental assistance process that would last until 2022.

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