



**CITY OF ELK GROVE  
CITY COUNCIL STAFF REPORT**

**AGENDA TITLE:** Consider an Urgency (or non-urgency) Interim Ordinance Imposing a Temporary Moratorium on Residential and Commercial Evictions and Providing Relief for Utility Services in the City of Elk Grove (CEQA Exempt)

**MEETING DATE:** March 25, 2020

**PREPARED BY/** Jonathan P. Hobbs, City Attorney  
**DEPARTMENT HEAD:** Jason Behrmann, City Manager

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**RECOMMENDATION:**

Staff recommends that the City Council adopt an urgency ordinance imposing a temporary moratorium on evictions and providing City residents with relief from disconnection and late fees for utilities.

**BACKGROUND/DISCUSSION:**

On March 16, 2020, the Governor of the State of California issued an executive order authorizing local government agencies to impose limitations on evictions for persons and business impacted by COVID-19.

At a special meeting held on March 18, 2020, the City Council considered a proposed urgency ordinance imposing a moratorium on evictions pursuant to the Governor's executive order. The City Council declined to adopt the urgency ordinance at that meeting.

At a special meeting held on March 23, 2020, the City Council reconsidered its decision declining to adopt the eviction moratorium ordinance. At that meeting, the City Council directed staff to place the moratorium ordinance on the agenda for the special City Council meeting of March 25, 2020, for possible adoption. The City Council also requested that staff place a regular (non-urgency) ordinance imposing a moratorium on the same City Council agenda.

Based on comments received at the City Council meeting of March 23, 2020, staff revised the ordinance to include objective metrics for its application. Under the proposed ordinance, a loss of household income for residential tenants or business income for non-residential tenants of twenty percent (20%) or more would be considered substantial, entitling a tenant to protection under the ordinance. Similarly, medical expenses of twenty percent (20%) or more of a family's household income for residential tenants would be considered substantial, affording a tenant protection. The reduction would be substantiated by comparing the most recent month to the three-month average from December 2019 to February 2020, prior to local COVID-19 impacts.

If a residential or non-residential tenant is entitled to rent protection under the ordinance due to impacts from COVID-19, the tenant must still pay what rent the tenant can reasonably pay. If the tenant pays not less than fifty percent (50%) of the regular monthly rent, the tenant will be rebuttably presumed to have satisfied this requirement. The ordinance has been revised to expressly indicate that a tenant may raise application of the ordinance as a defense to any eviction (unlawful detainer) proceeding.

The proposed ordinance also provides that the City will not discontinue service or charge late charges for solid waste or drainage services within the City. Additionally, the City Manager is to encourage other utility providers within the City to refrain from discontinuing services and charging late fees.

Consistent with the Governor's executive order, and the City's police power, staff recommends that the City Council adopt the attached proposed urgency ordinance imposing a temporary moratorium on evictions and providing City residents with relief from disconnection and late fees for utilities.

As an urgency ordinance, a four-fifths (4/5ths) vote of the City Council is required for its passage, and the ordinance would be effective upon passage. Unless extended or earlier terminated, the ordinance would be in effect until May 31, 2020 (the date through which the Governor's executive order is effective).

**ENVIRONMENTAL REVIEW:**

The proposed ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably

foreseeable indirect physical change in the environment. The enactment of the ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act (“CEQA”), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c), (2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

**ALTERNATIVE:**

As an alternative to the adoption of the urgency ordinance, the City Council could adopt the attached regular (non-urgency) ordinance. Such ordinance would be subject to introduction at the March 25, 2020 City Council meeting, with second reading/passage at the next regular meeting of April 8, 2020, and the ordinance would then be effective 30 days later (May 8, 2020). The City Council could also take no action.

**FISCAL IMPACT:**

Staff does not anticipate a significant fiscal impact if the ordinance is passed. Implementation of the proposed ordinance would be undertaken by existing City staff, which is accommodated in the current budget.

**ATTACHMENT:**

1. Proposed Urgency Ordinance
2. Proposed (Non-Urgency) Ordinance

**AN URGENCY INTERIM ORDINANCE  
OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
ADOPTING A TEMPORARY MORATORIUM ON RESIDENTIAL AND COMMERCIAL  
EVICTIONS AND PROVIDING CITY RESIDENTS RELIEF FOR UTILITY SERVICES  
IN THE CITY OF ELK GROVE (CEQA EXEMPT)**

The City Council of the City of Elk Grove hereby does ordain as follows:

**Section 1: Purpose and Authority.**

In the interest of protecting the public peace, health, safety, and welfare of the residents in the City of Elk Grove, it is the purpose and intent of this ordinance to place a temporary moratorium on evictions and foreclosures in the City of Elk Grove and provide City residents relief concerning utility discontinuances and late fees. The City Council has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7 and Government Code section 36937.

**Section 2: Findings.**

- A. On March 4, 2020, the Governor of the State of California proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19.
- B. On March 12, 2020, the Governor of the State of California issued Executive Order N-25-20 providing certain guidance and direction concerning the threat of COVID-19, including, without limitation, suspension of certain components of the Ralph M. Brown Act, Government Code sections 54950 et seq.
- C. On March 13, 2020, the City Manager, acting as the Director of Emergency Services, issued a Resolution Proclaiming Existence of a Local Emergency in the City of Elk Grove, which proclamation was ratified by the City Council on March 18, 2020.
- D. On March 16, 2020, the Governor of the State of California issued Executive Order N-28-20 authorizing local government agencies to impose limitations on evictions within their jurisdiction.
- E. The findings of the above-referenced proclamations and executive orders identified at paragraphs A through D, inclusive, of this Section 2, are hereby incorporated into this ordinance by reference.
- F. This urgency ordinance is necessary to promote the immediate preservation of the peace, health, and safety of the public in an effort to preserve the City's housing security and stability and to mitigate the economic impacts of COVID-19 on the City residents and businesses.

**Section 3: Environmental Review/California Environmental Quality Act (CEQA).**

This ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this ordinance, therefore, does not

constitute the approval of a project under the California Environmental Quality Act (“CEQA”), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

#### **Section 4: Definitions.**

As used herein the following definition shall apply:

- A. “Person” shall mean any individual natural person, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, financial institution or any other group or combination acting as a unit.
- B. “Substantial decrease in household income” as concerns residential tenancies shall mean a decrease in gross household income of not less than twenty percent (20%) from the average gross monthly household income for the period from December 1, 2019 through February 29, 2020.
- C. “Substantial decrease in business income” as concerns commercial tenancies shall mean a decrease in gross business income of not less than twenty percent (20%) from the average gross monthly business income for the period from December 1, 2019 through February 29, 2020. “Commercial” tenancies shall include all non-residential tenancies in the City.
- D. “Substantial out-of-pocket medical expenses” shall mean total medical expenses for a single-family living in a single residential unit of not less than twenty percent (20%) of the family’s gross monthly income.

#### **Section 5: Moratorium on Evictions.**

- A. During the term of this ordinance, no person shall institute any eviction (unlawful detainer) proceedings, including, without limitation, service of a 3-day notice for nonpayment of rent, against any other person within the City of Elk Grove where:
  - 1. the basis of the eviction proceeding is nonpayment of rent or eviction following a foreclosure; and
  - 2. such nonpayment of rent or foreclosure proceeding was the result of a substantial decrease in household income for residential tenancies or a substantial decrease in business income for commercial tenancies (including, but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or a substantial decrease in business income caused by a reduction in opening hours or consumer demand) or substantial out-of-pocket medical expenses caused by COVID-19 or any government response thereto, all as documented with substantial evidence by the person subject to eviction.
- B. Nothing herein shall prohibit evictions for reasons other than those specified in paragraph A of this Section 5.

- C. This ordinance shall suspend an action for eviction (unlawful detainer), all as set forth herein, in order to provide persons temporary relief against such evictions. Nothing herein shall relieve any person from the obligation to pay rent or other monies owed, nor restrict any other person from seeking recovery of such rent or amounts due, plus any lawful interest, late fees, attorneys' fees, and/or any other lawful and proper collection charges.
- D. In order to take advantage of the protections afforded under this ordinance, a tenant must do all of the following:
1. Notify the property owner or landlord in writing before the day rent is due that the tenant has a covered reason for delayed payment;
  2. Provide the property owner or landlord with verifiable documentation to support the assertion of a covered reason for delayed payment;
  3. Pay the portion of rent that the tenant is reasonably able to pay, all subject to the following provisions:
    - a. For any person meeting the criteria for protection under this ordinance pursuant to Section 5.A., there shall be a rebuttable presumption that the person paid that portion of the rent that the tenant was reasonably able to pay if the tenant pays not less than fifty percent (50%) of the regular monthly rent due.
    - b. Nothing herein shall prevent the tenant and the property owner or landlord from entering into a mutually agreeable and enforceable rental agreement for the payment of current or past due rent.
- E. Any person or persons afforded eviction protection under this ordinance shall have up to one hundred twenty (120) days after the expiration of the ordinance, as may be extended by the City Council, to pay the property owner or landlord all unpaid rent due. The exact terms of the repayment plan agreement shall be subject to mutual agreement of the landlord and tenant. In the absence of a repayment plan agreement between the landlord and tenant, the total of all the delayed payments shall be repaid in four (4) equal payments to be paid in thirty (30) day intervals beginning the day after the expiration of this ordinance. A landlord may commence eviction (unlawful detainer) proceedings as to any person who fails to make the payments as provided herein.
- F. In addition to any other remedy available to the City or any other person, violation of Section 5.A. of this ordinance shall be punishable by a fine of up to \$1,000 per violation.
- G. Any person afforded eviction protection under this ordinance may raise application of this ordinance as a defense to any eviction (unlawful detainer) proceeding.

#### **Section 6: Utility Service; Discontinuance and Late Fees.**

During the term of this ordinance, the City shall not discontinue service or charge late charges for solid waste or drainage services within the City, and the City Manager or

designee shall take all reasonable measures to encourage other utility providers within the City, operated by public agencies within the City, to refrain from discontinuing or disconnecting services and/or charging late fees related to such utility services.

**Section 7: Term of Ordinance.**

This ordinance shall be in effect from the date of adoption through 11:59 p.m. (PST) on May 31, 2020, unless extended or earlier terminated.

**Section 8: No Mandatory Duty of Care.**

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

**Section 9: Severability.**

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

**Section 10: Effective Date.**

This ordinance, passed by at least a four-fifths vote of the City Council, is declared to be an urgency ordinance for preserving the public health, safety and welfare and shall take effect and be enforced immediately upon adoption.

ORDINANCE:  
ADOPTED:  
EFFECTIVE:

\_\_\_\_\_  
STEVE LY, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JASON LINDGREN,  
CITY CLERK

\_\_\_\_\_  
JONATHAN P. HOBBS,  
CITY ATTORNEY

Date signed: \_\_\_\_\_

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OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
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IN THE CITY OF ELK GROVE (CEQA EXEMPT)**

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- E. The findings of the above-referenced proclamations and executive orders identified at paragraphs A through D, inclusive, of this Section 2, are hereby incorporated into this ordinance by reference.
- F. This ordinance is necessary to promote the preservation of the peace, health, and safety of the public in an effort to preserve the City's housing security and stability and to mitigate the economic impacts of COVID-19 on the City residents and businesses.

**Section 3: Environmental Review/California Environmental Quality Act (CEQA).**

This ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act



("CEQA"), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

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- B. Nothing herein shall prohibit evictions for reasons other than those specified in paragraph A of this Section 5.
- C. This ordinance shall suspend an action for eviction (unlawful detainer), all as set forth herein, in order to provide persons temporary relief against such evictions.

Nothing herein shall relieve any person from the obligation to pay rent or other monies owed, nor restrict any other person from seeking recovery of such rent or amounts due, plus any lawful interest, late fees, attorneys' fees, and/or any other lawful and proper collection charges.

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1. Notify the property owner or landlord in writing before the day rent is due that the tenant has a covered reason for delayed payment;
  2. Provide the property owner or landlord with verifiable documentation to support the assertion of a covered reason for delayed payment;
  3. Pay the portion of rent that the tenant is reasonably able to pay, all subject to the following provisions:
    - a. For any person meeting the criteria for protection under this ordinance pursuant to Section 5.A., there shall be a rebuttable presumption that the person paid that portion of the rent that the tenant was reasonably able to pay if the tenant pays not less than fifty percent (50%) of the regular monthly rent due.
    - b. Nothing herein shall prevent the tenant and the property owner or landlord from entering into a mutually agreeable and enforceable rental agreement for the payment of current or past due rent.
- E. Any person or persons afforded eviction protection under this ordinance shall have up to one hundred twenty (120) days after the expiration of the ordinance, as may be extended by the City Council, to pay the property owner or landlord all unpaid rent due. The exact terms of the repayment plan agreement shall be subject to mutual agreement of the landlord and tenant. In the absence of a repayment plan agreement between the landlord and tenant, the total of all the delayed payments shall be repaid in four (4) equal payments to be paid in thirty (30) day intervals beginning the day after the expiration of this ordinance. A landlord may commence eviction (unlawful detainer) proceedings as to any person who fails to make the payments as provided herein.
- F. In addition to any other remedy available to the City or any other person, violation of Section 5.A. of this ordinance shall be punishable by a fine of up to \$1,000 per violation.
- G. Any person afforded eviction protection under this ordinance may raise application of this ordinance as a defense to any eviction (unlawful detainer) proceeding.

**Section 6: Utility Service; Discontinuance and Late Fees.**

- A. During the term of this ordinance, the City shall not discontinue service or charge late charges for solid waste or drainage services within the City, and the City Manager or designee shall take all reasonable measures to encourage other utility

providers within the City, operated by public agencies within the City, to refrain from discontinuing or disconnecting services and/or charging late fees related to such utility services.

**Section 7: Term of Ordinance.**

This ordinance shall be in effect from its effective date through 11:59 p.m. (PST) on May 31, 2020, unless extended or earlier terminated.

**Section 8: No Mandatory Duty of Care.**

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

**Section 9: Severability.**

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

**Section 10: Effective Date and Publication.**

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the Office of the City Clerk, pursuant to Government Code section 36933(c)(1).

ORDINANCE:  
ADOPTED:  
EFFECTIVE:

\_\_\_\_\_  
STEVE LY, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JASON LINDGREN,  
CITY CLERK

\_\_\_\_\_  
JONATHAN P. HOBBS,  
CITY ATTORNEY

Date signed: \_\_\_\_\_