REQUEST FOR COUNCIL ACTION

CITY COUNCIL MEETING DATE: MAY 5, 2020

TITLE:
DISCUSS EXECUTIVE ORDERS ISSUED PURSUANT TO DECLARATION OF LOCAL COVID-19 EMERGENCY RESOLUTION NO. 2020-016 AND CONSIDER AFFIRMING, AMENDING, EXTENDING OR RESCINDING ORDER RELATED TO TEMPORARY FREEZE ON RESIDENTIAL RENT INCREASES

/s/ Kristine Ridge
CITY MANAGER

RECOMMENDED ACTION
Review the City’s three Executive Orders adopted in response to the COVID-19 emergency and discuss whether to affirm, amend, extend or rescind that portion of Executive Order No. 2-2020, imposing a temporary prohibition on residential rent increases.

DISCUSSION
On April 23, 2020, an Orange County-based coalition of the California Apartment Association sent a letter to the City of Santa Ana asking the City Council to rescind sections of Executive Order No. 2-2020 (Exhibit 1).

Background
On March 4, 2020, California Governor Newsom declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19. On March 17, 2020, the City Council adopted Resolution No. 2020-016, proclaiming the existence of a local emergency to ensure the availability of mutual aid and an effective City response to the novel coronavirus ("COVID-19"). Resolution No 2020-016 granted broad administrative and legislative authority to the City’s Director of Emergency Services, the City Manager, to promulgate orders and regulations necessary for the protection of life and property and to implement preventative measures to protect and preserve the residents of the City. Acting upon this authority the City Manager has issued three Executive Orders as summarized below:

Summary of Executive Orders
The first Executive Order, Order No. 1-2020 (Order No.1) imposes a temporary moratorium on evictions for the non-payment of rent by residential and commercial tenants. Order No. 1 has been clarified through Frequently Asked Questions ("FAQs") to explain that it does not prohibit charging rent and it does not require the forgiveness of rent. Order No. 1 also imposes a temporary suspension on residential and commercial foreclosures, suspends the discontinuation of water service for those
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who cannot pay their water and sewer bills, prohibits late fees for non-payment and provides protections against certain parking violations. The effective periods for these regulations are set forth in Exhibit 2.

Executive Order No 2-2020 (Order No. 2) does the following: (1) extends the effective dates of various land use approvals, such as conditional use permits and temporary display permits; (2) extends administrative hearing dates and appeal deadlines; (3) authorizes relocation of business operations to accommodate homeless shelters or emergency housing facilities; and (4) prohibits rent increases for residential tenants. The effective periods for these regulations are set forth in Exhibit 2. The temporary rent freeze is effective through May 31, 2020 or to a later date if there are any statewide orders issued that place a freeze on rent increases for a longer period of time.

Executive Order No. 3-2020 (Order No. 3) requires employees to wear face coverings if they are providing essential services and it strongly encourages retail and business operators serving the public to require customers to wear face coverings. Order No. 3 is effective through May 31, 2020, unless extended by the City.

The City circulated public notices related to each Executive Order and has placed FAQs, sample letters, and information related to these Executive Orders on the City’s COVID-19 information website (www.santa-ana.org/covid19). Community Development Agency and Code Enforcement staff have also disseminated information on who to contact to answer questions or take complaints regarding violations of the regulations.

Summary of Temporary Measure to Prohibit Rent Increases on Residential Properties
Order No. 2 provides various protections to Santa Ana residents and businesses, including a temporary, residential rent freeze. Prior to issuing Order No. 2, staff researched whether other cities had adopted similar prohibitions. The research revealed that at the time, at least five cities had adopted rent freezes and several others were considering similar measures (Exhibit 3). While Santa Ana might be the only charter city without a rent control ordinance to impose the temporary rent freeze, Order No. 2 contained strong findings to support the protection of Santa Ana residents who pay rent to landlords. The temporary rent prohibition is not a rent control ordinance, it does not include any of the far-ranging regulations of a rent control ordinance, and it is temporary in nature. Furthermore, at the time it was issued, it was consistent with the California Apartment Association’s position as communicated to its members as advice not to increase rents through May 31, 2020:

CAA continues to urge property owners across the state to abide by its Safe at Home Guidelines by committing to the following through May 31, 2020:

Freeze rents on all residents & pledge to not issue any rent increases.
Halt evictions on renters affected by COVID-19, absent extraordinary circumstances.
Waive late fees for residents who pay rent after the rent due date because they have been affected by the COVID-19 pandemic and related government actions.
Offer flexible payment plans for residents who cannot pay rent by the due date.
Direct renters to available resources to assist with food, health, and financial assistance.
Communicate with residents proactively that you are available to assist them and want to work with them to ensure they remain housed.

California Apartment Association Communications Opposing Temporary Rent Increases

60A-2
Shortly after the issuance of Order No. 2, Victor Cao of the California Apartment Association contacted City officials asking for clarification in some cases and seeking a repeal of the prohibition in other cases. The Manufactured Housing Education Trust also contacted City staff with concerns about the prohibition would impact its members. On April 17, 2020, Mr. Cao indicated that he would work with his coalition group and ask everyone to be patient while staff provided clarification and tried to understand how Santa Ana businesses would be impacted. On April 20, 2020, the City Manager responded to the coalition with additional information and on April 22, 2020, shared the FAQS with the group. On April 23, 2020, the City received a letter calling the City’s temporary prohibition on rent increases a rent control measure and asking the City to revise it. The California Apartment Association’s website on the other hand suggests CAA is taking a more aggressive legal approach: “The California Apartment Association has challenged the city of Santa Ana and Contra Costa County for violating the Costa Hawkins Rental Housing Act” (April 23, 2020 CAA Website: https://caanet.org/CAA-challenges-local-governments-over-violating-costa-hawkins/).

The City Council, in responding to the letter, may consider one of the following two options:

Option No. 1: The City may maintain that its prohibition is a temporary measure only, valid until May 31, 2020, and that the extraordinary circumstances of COVID-19, together with the impacts in Santa Ana, require the measure. The intent was to impose the prohibition through May 31, 2020 and to extend it only if the State of California adopted a similar measure. The City Council might also ask the CAA and its coalition members to allow staff to speak to those property owners who intended to increase rents prior to May 31, 2020, so the City might better understand the consequences to specific property owners and how regulations might be balanced to protect renters and landlords alike.

Option No. 2: The City Council may rescind that portion of Order No. 2 pertaining to the temporary prohibition on rent increases.

STRATEGIC PLAN ALIGNMENT
Approval of this item supports the City’s effort to meet Goal #3 - Community Health, Livability, Engagement & Sustainability, Objective #4 (support neighborhood vitality and livability).

FISCAL IMPACT
There is no fiscal impact associated with this action.

Exhibits: 1. Letter from California Apartment Association Coalition  
2. Summary of Effective Periods of Executive Orders  
April 23, 2020

The Honorable Miguel Pulido
City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92701

RE: OPPOSITION TO RENT CONTROL EXECUTIVE ORDER

Mayor Pulido and Members of City Council:

On behalf of a coalition of business and property rights organizations, we request revisions to sections of City of Santa Ana Executive Order No. 2-2020 that affects rental housing providers. We recognize that the City is taking swift and bold action to contain COVID-19, however we are deeply concerned that city policy is being crafted hastily and without any regard to the consequences it has on taxpaying property owners. Throughout the COVID-19 crisis, our members worked to their best of ability to provide tenant relief programs, direct residents to community resources, and make charitable monetary and in-kind contributions to provide aid to those in need. The City’s actions are well-intended, but far from perfect having curtailed the rights of property owners and compromising the public process.

City Executive Order No. 2-2020 prohibits residential landlords from increasing rent for all tenants for the duration of the Governor’s Executive Order N-28-20, which is effectively rent control. We firmly believe that rent control is not the appropriate solution during the pandemic. In addition to ongoing expenses like mortgage payments, housing providers need the flexibility to have tenants who can pay their rent in order to subsidize tenants who are unable to pay rent. A consequence of the rent control, an entire rental community is in jeopardy of becoming insolvent and eventually foreclosed on.

There are several issues at hand such as the (1) cascading effect government regulation has on taxpaying property owners, (2) the City’s nonconformance with state law, and (3) lack of consistency with the City’s Charter. To be clear, we are challenging the city’s rent freeze and not the eviction moratorium. We
continue to work closely with state and local officials in keeping residents housed. As such, we request very specific remedies to our concerns.

1. GOVERNMENTS’ SHORT-TERM RESPONSE OF COVID-19 DOES NOT CONSIDER IMPACTS ON HOUSING PROVIDERS

There are several voluntary initiatives (Safe at Home guidelines) and existing regulations that provide stable pricing in the housing industry during this crisis. Unfortunately, hasty government responses to COVID-19 have resulted in prioritizing tenants and banks over taxpaying property owners. It is widely known that an overwhelming amount of rental housing providers are “mom and pop” (independent rental owners) and they do not have the cash nor credit to defer their expenses for more than a month. Rental housing providers remain ineligible for mortgage relief and federal aid (CARES Act), while they still have ongoing expenses with devastating consequences as shown below:

<table>
<thead>
<tr>
<th>Rental Housing Expenses</th>
<th>Consequences for Nonpayment</th>
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</thead>
<tbody>
<tr>
<td>Mortgage payments</td>
<td>Default and foreclosure of property</td>
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<tr>
<td>Property Taxes</td>
<td>Tax liens</td>
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<tr>
<td>Insurance</td>
<td>Loss of personal income and life savings</td>
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<td>Utilities</td>
<td>Tamished credit reports</td>
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<td>Employees and contractors</td>
<td>Deferral of capital improvements</td>
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<td>Maintenance and supplies</td>
<td>Inability to pay employees</td>
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<tr>
<td>Security</td>
<td>Breach of contract with contractors</td>
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</table>

The cascading effects of nonpayment of rent are further summarized by the LA Times Editorial Board: It’s not just renters. Landlords need help, too.¹

As written, the City’s rent freeze applies to all tenants regardless of their ability to pay (i.e. means-testing). Minor revenue balancing efforts within reason are needed to keep businesses solvent. While foreclosures are banned at the moment, there is little relief for rental housing providers. In fact, federal relief only applies to 27,000 rental housing properties out of approximately 22.7 million nationwide.² Many lenders continue to demand payment and foreclosures will only become an eventuality. We request that City Council revise the order to allow housing providers the reasonable flexibility to rebalance their property mix.

2. THE CITY’S RENT CONTROL ORDER VIOLATES STATE LAW

The City’s Executive Order 2-2020 is not in conformance with state law or executive orders issued by the Governor of California. The City cites the authority to enact rent control through Executive Order N-28-20. While it authorizes local government to impose substantive limitations on residential or commercial evictions, no such authority exists in the order to regulate rental rates.

The Costa-Hawkins Rental Housing Act (Cal. Civ. Code § 1954.50, et. seq.) limits the ability of local governments to regulate rents in the following ways:

- Single family homes, condominium units, and housing built after February 1, 1995 are exempt from local rent controls (see Cal. Civ. Code § 1954.52);
- Rental property owners have the right, known as vacancy de-control, to set the initial rent following vacancy (see Cal. Civ. Code § 1954.53).

In addition, the Mobilehome Residency Law (Cal. Civ. Code § 798, et seq.) restricts the ability of local governments to regulate space rents in the following ways:

- Mobilehome spaces initially held out for rent after January 1, 1990 are exempt from local rent controls (see Cal. Civ. Code § 798.45);
- Long term leases that meet specified criteria are exempt from local rent controls (see Cal. Civ. Code § 798.17);
- Specified fees must be permitted to be passed through (see Civ. Code § 798.49).

We strongly encourage the City to modify or clarify its executive order similar to cities across the state that have imposed rent freezes. All other California cities (e.g. Los Angeles, Glendale, Oakland, et al.) have narrowly tailored their rent freezes on eligible housing and continue to recognize a constitutional right to a fair return. In the case of Los Angeles, the “city attorney’s office...that such a sweeping ban would interfere with private contractual rights and was not likely to survive in court.” The City Attorney argued that “unless a California law known as Costa-Hawkins was suspended, the city couldn’t stop rent increases in apartments that aren’t covered by the Rent Stabilization Ordinance. If the city pushed forward anyway, [Assistant City Attorney] Michaelson wrote that the move would likely be enjoined by a court through a temporary restraining order.”

In all cases, eligible housing units are only those already subject to rent control. In contrast, the City’s guidance documents do not adequately address the conflicts with state law, makes arbitrary exemptions, and provides no legal justification for the adoption of the order.

3. THE MANNER OF APPROVAL VIOLATES CITY CHARTER AND PUBLIC OVERSIGHT

We contend that the rent control order is in breach of the City’s Charter and the manner of approval violates the principles of good governance. While the city manager has the authority to implement emergency orders, all orders are ultimately subject to ratification by the City Council. Our concern is that policymaking is hidden from public oversight and that housing providers may be unknowingly in violation because of the absence of public deliberation. It appears that city policy has been crafted and implemented without public oversight. The City’s haste has caused it to be in nonconformance with state law and in violation of its own policies and procedures.

Under existing city law, the city manager has the power, as the director of emergency services, to “make and issue rules, regulations, orders or directives on matters reasonably necessary to the protection of life and property as affected by such emergency.” However, that power is subject to the caveat that “provided such rules and regulations or suspensions are confirmed by the city council at the earliest practicable time” [emphasis added]. Section 700 of the Charter states, “the City Council by ordinance may assign additional functions or duties to offices, departments, or other agencies established by this charter, but shall not discontinue or assign to any other office, department, or other agency any function or duty assigned by this charter to a particular office, department, or agency.” Taken together with Section 407 of the Charter, which states “the determination of all matters of policy shall be vested in the City Council.” The Charter makes clear that policymaking is vested with the City Council and that responsibility cannot be delegated. We respectfully request that the public process be restored and for the City abide by its own procedures.

For these reasons, our coalition requests revisions to the City’s Executive Order 2-2020 at the earliest possible time. We also request that the City reach out and allow housing providers to participate in discussions related to housing policy.

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Sec. 2-402(C)(2)(B)(a)
Respectfully,

Victor Cao
Vice President of Public Affairs
California Apartment Association

Vickie Talley
Executive Director
Manufactured Housing Educational Trust

Adam Wood
Director of Government Affairs
Building Industry Association of Orange County

Rachel Rolnicki
Vice President, Government Affairs
Orange County Business Council

cc: Ms. Kristine Ridge, City Manager
Ms. Sonia Carvalho, City Attorney
<table>
<thead>
<tr>
<th>Emergency Measure</th>
<th>City Order or Resolution</th>
<th>Period of Effectiveness</th>
<th>Related Government or Other Measures</th>
<th>City Action Necessary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proclamation of Local Emergency</td>
<td>Resolution No. 2020-016</td>
<td>March 17 until termination by City Council</td>
<td>statewide emergency declared March 4; in effect until lifted</td>
<td>yes to lift at local level</td>
</tr>
<tr>
<td>Price Gouging Protection</td>
<td>Resolution No. 2020-016</td>
<td>March 17 to April 15 for consumer goods, subject to 30-day extensions by city</td>
<td>statewide price gouging protection in effect through September 4</td>
<td>yes before September 4</td>
</tr>
<tr>
<td>Eviction Moratorium (Residential)</td>
<td>Executive Order No. 1-2020</td>
<td>March 19 to May 31 or longer if extended by Governor</td>
<td>statewide ban on enforcement of residential eviction orders through May 31 for tenants affected by COVID-19; emergency court rule; effectively halting ALL unlawful detainer proceedings until 90 days after statewide emergency lifted</td>
<td>yes before May 31 if not extended by state</td>
</tr>
<tr>
<td>Eviction Moratorium (Commercial)</td>
<td>Executive Order No. 1-2020</td>
<td>March 19 to May 31 or longer if extended by Governor</td>
<td>emergency court rule effectively halting ALL unlawful detainer proceedings until 90 days after statewide emergency lifted</td>
<td>yes before May 31</td>
</tr>
<tr>
<td>Foreclosure Suspension (Residential and Commercial)</td>
<td>Executive Order No. 1-2020</td>
<td>March 19 to May 31 or longer if extended by Governor</td>
<td>statewide order &quot;requesting&quot; financial institutions to implement moratorium on foreclosures caused by COVID-19</td>
<td>yes before May 31</td>
</tr>
<tr>
<td>Water Shut-Off Suspension (Residential and Commercial)</td>
<td>Executive Order No. 1-2020</td>
<td>March 19 to May 18</td>
<td>statewide order restricting water shut-offs to homes and businesses while the state responds to the COVID-19 pandemic</td>
<td>no</td>
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<tr>
<td>Imposition of Late Penalties for Parking Violations</td>
<td>Executive Order No. 1-2020</td>
<td>March 19 to May 18</td>
<td>none</td>
<td>no</td>
</tr>
<tr>
<td>Land Use and Planning Approvals</td>
<td>Executive Order No. 2-2020</td>
<td>If not expired before April 15 but due to expire before October 1, extended for six months beyond expiration date</td>
<td>none; though statewide relief in these respects being urged by League</td>
<td>no</td>
</tr>
<tr>
<td>Temporary Banner and Special Event Display Permits</td>
<td>Executive Order No. 2-2020</td>
<td>If approved before March 17 and due to expire before October 1, extended for 90 days from the date local emergency is lifted</td>
<td>none</td>
<td>no</td>
</tr>
<tr>
<td>Administrative Hearing Dates and Appeal Deadlines</td>
<td>Executive Order No. 2-2020</td>
<td>Postponed until new date provided in writing</td>
<td>none</td>
<td>no; but need new dates</td>
</tr>
<tr>
<td>Residential Rent Freeze</td>
<td>Executive Order No. 2-2020</td>
<td>April 7 to May 31 but longer if related statewide order N-28-20 is extended</td>
<td>no statewide relief but city-by-city including L.A., Oakland</td>
<td>yes before May 31 if not extended by state</td>
</tr>
<tr>
<td>Face Masks for Employees of Essential Businesses</td>
<td>Executive Order No. 3-2020</td>
<td>April 13 to May 31 or longer if extended by City</td>
<td>prior recommendations by CDC, CDPH, and County Health Officer</td>
<td>yes if desired past May 31</td>
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<tr>
<td>City</td>
<td>Rent Freeze Provision</td>
<td>Applicability</td>
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<tr>
<td>City of Los Angeles</td>
<td>Property owners shall not increase rents on occupied rental units subject to the Los Angeles Rent Stabilization Ordinance. (Public Order Under City of Los Angeles Emergency Authority (Issue Date: March 30, 2020))</td>
<td>Only tenants subject to the City’s rent stabilization ordinance.</td>
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<tr>
<td>City of Glendale</td>
<td>In pertinent part, “To provide relief and protection to Glendale residents during this unprecedented emergency as intended by the Glendale City Council in its enactment of Resolution No. 20-33, a rent increase freeze is hereby issued, effective immediately, regardless of when the rent increase notice was served, whereby all rents for residential tenants will remain the same as the date of this Order, and during the pendency of the local emergency.” (Glendale Public Order No. 2020-05 Under City of Glendale Emergency Authority (Issue Date: March 25, 2020))</td>
<td>All residential tenants.</td>
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<tr>
<td>City of Oakland</td>
<td>For rental units regulated by Oakland Municipal Code 8.22.010 et seq., any notice of rent increase in excess of the CPI Rent Adjustment, as defined in Oakland Municipal Code Section 8.22.020; shall be void and unenforceable if the notice is served or has an effective date during the Local Emergency, unless required to provide a fair return. Any notice of rent increase served during the Local Emergency shall include the following statement in bold underlined 12-point font: “During the Local Emergency declared by the City of Oakland in response to the COVID-19 pandemic, your rent may not be increased in excess of the CPI Rent Adjustment (3.5% until June 30, 2020), unless required for the landlord to obtain a fair return. You may contact the Rent Adjustment Program at (310) 388-3722 for additional information and referrals.” (Village Moratorium Emergency Ordinance (Adopted March 25, 2020))</td>
<td>Only residential tenants regulated under the Oakland Just Cause for Eviction Ordinance and the Oakland Rent Adjustment Ordinance.</td>
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<tr>
<td>City of Concord</td>
<td>“Moratorium on Rent Increases; Affected Residential Tenants. During the term of this Ordinance, a Landlord shall not increase Rent for Affected Residential Tenants.” (Urgency Ordinance No. 20-3)</td>
<td>Only residential tenants with “substantial decrease in household or business income” related to COVID-19 and that have provided notice of inability to pay to landlord.</td>
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<tr>
<td>City of West Hollywood (Discussed April 6, 2020: Unclear if adopted)</td>
<td>&quot;Landlords shall not increase rents on occupied rental units subject to the West Hollywood Rent Stabilization Ordinance (WWMC Title 17) beginning on April 6, 2020 through sixty days after the expiration of the local emergency period. This ordinance suspends any conflicting provision of Title 17 of the West Hollywood Municipal Code. Any landlord seeking an exception to this rule may apply for an individual rent adjustment through the rent adjustment process set forth in WWMC Chapter 17.44 if necessary to provide a just and reasonable return and to maintain net operating income.” (Urgency Ordinance (see April 6, 2020 agenda))</td>
<td>Only residents subject to the City’s rent stabilization ordinance.</td>
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<tr>
<td>City of Eureka</td>
<td>&quot;Until after May 31, 2020, no landlord may endeavor to raise rent.&quot; (Emergency Ordinance (BILL NO. 978-C.S.))</td>
<td>All residential tenants.</td>
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