**#18B**

**Tenant Advocate Recommendations in Response to City Council Motion on March 17, 2020**

**Introduction**

These recommendations are submitted by tenant advocacy groups[[1]](#footnote-1) in response to HCID’s request for feedback to City Council's March 17, 2020 motion “to draft an emergency ordinance implementing a temporary moratorium on evictions and late fees until the emergency declaration is lifted.” We appreciate HCID giving us the opportunity to provide this input and the work that it is doing to ameliorate the impacts of the pandemic.

Before responding directly to HCID’s request, first it must be said that what the Mayor and City Council have proposed so far is not an eviction moratorium - rather, they are providing only a defense to an eviction for failure to pay rent that may be applicable when the tenant’s failure to pay was caused by the COVID-19 virus. In fact, landlords can still file eviction actions against tenants for all the reasons they normally could, including failure to pay rent; this only provides a defense if the tenant meets this narrow exception. Calling it an eviction moratorium is misleading tenants and the public to think that appropriate action has been taken to ensure tenants cannot be evicted during the crisis. Therefore, in addition to directly responding to HCID’s request for feedback on the current proposal, we have made recommendations (#’s 7 through 10, below) that are needed to ensure people are not unnecessarily displaced during this pandemic.

**Recommendations (Summary)**

1. Do not call the current action an eviction moratorium (see Introduction, above).
2. During the State of Emergency, the Court should presume that any failure to pay rent should be for lost income or an increase in expenses due to the COVID-19 virus. The burden should be on the landlord to show that the presumption is not warranted.
3. All unpaid rent should be forgiven during the time in which one’s income is reduced or expenses are increased as a result of the COVID-19 crisis. To the extent it is not forgiven, it should be considered consumer debt, the remedy for which should be a civil claim, and not the basis for an eviction.
4. To the extent that unpaid rent is not forgiven, tenants should have 24 months to repay rent that goes unpaid during or as a result of the State of Emergency. No late fees or interest can accrue for rent that can be repaid during the 24 months repayment period.
5. No late fees should be assessed, accrued or collected until 60 days after the State of Emergency ends.
6. Rental assistance program should be established to assist tenants and lowincome homeowners with missed rent and mortgage payments. Tenant advocates, landlords and the City should seek substantial State and Federal resources to substantially fund the costs.
7. Eviction protections need to extend beyond current proposals. The City needs to adopt a real moratorium that prohibits filing of evictions during the period of the State of Emergency (retroactive to March 4, 2020) and lasting for sixty after the end of the State of Emergency, with an exception for evictions where there is a threat of physical violence, such as where there is a restraining order related to domestic violence.
8. Enact a rent freeze, prohibiting any notices of rent increases for the duration of the emergency.
9. Support separate fund for assistance to low-income landlords and moratorium on foreclosures against low-income landlords.
10. Educate tenants about their rights and Impose real consequences for failure to inform tenants of their rights under the ordinance.

**Recommendations (Detailed Explanations)**

2. **During the State of Emergency, the Court should presume that any failure to pay rent should be for lost income or an increase in expenses due to the COVID-19 virus. The burden should be on the landlord to show that the presumption is not warranted.**

1. **COVID-19 will have impacted the incomes of the overwhelming majority of tenants.**

The pandemic is increasingly impacting everyone and everything. Almost everyone is losing income as a result. Some people are losing hours, some people are having their compensation reduced, some people are forced to reduce hours due to school closures, some people are being laid off and some people who were already unemployed are unable to find new jobs. It is clear that each day more and more people are being impacted. It is predictable that the impact on income will be pervasive. The number of renters whose incomes will be impacted will be many times more than the number of renters who are not impacted. As such, for rent due during the State of Emergency or the continuation of the social distancing protocols, whichever is longer, plus 60 days, the Court should presume that the defense applies to a tenant and that the burden be on the landlord to show that the presumption is not warranted.

1. **Documenting that income loss is due to COVID-19 will be difficult for most and impossible for some.**

It will be difficult and in many cases impossible for a tenant to document that the loss of income is due to COVID-19. The difficulties vary based on the circumstances. For people that have had their hours reduced, had their wages reduced or been laid off entirely, we are already hearing stories where the employer does not want to acknowledge that the action is connected to COVID-19.

For people who are or have been employed, there are many reasons that employers are unwilling to connect it to COVID-19. Many employers are reluctant to publicly acknowledge financial difficulties because: 1) for publicly-owned companies, because it would negatively impact their stock price; 2) for all employers, it would negatively impact their ability to secure financing or favorable financing terms; 3) admitting to layoffs could negatively impact the employer’s liability for unemployment tax payments. In addition, employers who employ undocumented workers will be reluctant to admit that the income of their undccumented workers has been impacted.

For people who are self-employed or independent contractors in service-sector or client-facing jobs, they may have chosen to implement social distancing measures at the expense of their income. For many of these people (house cleaners, movers, Uber drivers), they may have reduced income but no employer to verify as such.

For people who are currently unemployed, they are unable to get a job because of COVID-19. For these people, there is no employer who can document this impact.

Finally, the relationship should be presumed because anything else is likely to incentivize people continuing to attend work, risking spread of the infection. Specifically, consider that the U.S. Centers for Disease Control (CDC) is recommending that people who exhibit any symptoms should stay at home. At same time, the CDC discourages medical professionals from testing everyone with symptoms. If someone with mild symptoms loses income because they act responsibly by following the CDC's advice and stay at home but they never exhibit serious-enough symptoms to get tested, they would be unable to document the impact of COVID. They would be penalized for acting responsibly. The way the current affirmative defense is structured will cause people with symptoms to continue to go to work until their symptoms are serious enough to warrant testing. This is the opposite of physical distancing. The City should not adopt policies that discourage people from practicing proper public health measures or penalize anyone who did.

1. **Requiring each tenant to individually document that their loss of income is due to COVID-19 will be costly, time-consuming and expose people to COVID-19**

Not only is it difficult for tenants to document that their loss of income is due to COVID-19, the documentation process would take up valuable court time and resources, attorney time and resources, require additional hearing, etc. Also, the hearings would compromise social distancing and put more people at risk.

For all these reasons, failure to pay rent during or as a result of the State of Emergency should be presumed to be COVID-related.

1. **In the alternative, tenants should be able to self-declare that income loss is due to COVID-19.**

In the alternative, if all failures to pay rent are not presumed to be COVID-related, the ordinance should explicitly allow for the tenant to provide a self-declaration under penalty of perjury (essentially a tenant’s testimony, the same that would be made in court) as sufficient documentation for the defense to apply. In addition, the ordinance should make explicit that that any examples of types of evidence that are listed are merely examples and not an exhaustive list of sufficient types of evidence.

3. **All unpaid rent should be forgiven during the time in which one’s income is reduced or expenses are increased as a result of the COVID-19 crisis. To the extent it is not forgiven, it should be considered consumer debt, the remedy for which should be a civil claim, and not the basis for an eviction.**

This pandemic has triggered an economic crisis the degree to which we have not experienced in living memory. Only two weeks in and the Presidential Administrations economic advisors are predicting unemployment levels at 20%. Even for those who are able to retain jobs, it is anticipated that most people will experience a loss of income at least for several months and for many, for years. As a result, even after the immediate crisis subsides, it is unlikely that tenant incomes will recover to repay unpaid rent lost due to the pandemic. As such, unpaid rent should be forgiven during the time in which one’s income is reduced or expenses increased as a result of the COVID-19 crisis.

If not totally forgiven, rent not paid during or as a result of the crisis should be considered consumer debt, the remedy for which would be a civil claim. For amounts less than $10,000, the landlord could seek repayment via Small Claims Court and for amounts more than $10,000, through a Civil Court action. This would simply treat unpaid rent like all other allegations of money owing. To the extent that unpaid rent is not forgiven, the Statute of Limitations for commencing actions to ensure repayment of this debt would be tolled.

In no event, should rent not paid during or as a result of the crisis be used as the basis for an eviction. By passing eviction protections based on loss of income during the pandemic, the Mayor and City Council are acknowledging that it is utterly predictable that many if not most tenants will lose income that is due to no fault of their own. As such, it would be contrary to that purpose to evict for the very thing that the City is acknowledging. Therefore, because it is predictable that tenants will have substantially reduced income or increased expenses during the course of the pandemic, unpaid rent should not be the basis for an eviction. Specifically, the ordinance should read in part, “a owner shall not serve a notice to evict a tenant for nonpayment of rent that accrued during the period of the State of Emergency plus 90 days after.”

It is imperative that people be able to stay in their current homes to enable social distancing. Being evicted and all that it entails (court appearances, packing and moving belongings, searching for new housing, needing to access additional supportive services, potentially becoming homeless) all increases the likelihood of social contact and increases the likelihood of getting or spreading the virus. Rather, the unpaid rent should be considered as consumer debt, collectible via civil process such as through Small Claims Court but NOT result in eviction.

1. **To the extent that unpaid rent is not forgiven, tenants should have 24 months to repay rent that goes unpaid during or as a result of the State of Emergency. No late fees or interest can accrue for rent that can be repaid during the 24 months repayment period.**

Because the ability to repay unpaid rent is unpredictable for the majority of tenants for the foreseeable future, no specific time for repayment should be set. Any time period that is set should be flexible according to the tenant’s ability to pay, based on the tenant’s income. One way to achieve that is to cap the monthly amount that the tenant has to repay the unpaid rent to a percentage of the ongoing monthly rent. For instance, the monthly repayment should be capped at 10% of the ongoing monthly rent.

Under no circumstances should the failure to keep up with the re-payment of unpaid rent be a basis for eviction. Instead, the mechanism for collecting unpaid rent should be through civil proceedings seeking repayment. As stated above in Recommendation #3, any unpaid rent during or a result of the State of Emergency that must be repaid should be treated as consumer debt. Once the State of Emergency and its income impacts have receded, the remedy for recovery of the debt should be civil action, such as through small claims court.

In its March 17th motion, the City Council expressed its intention that late fees not accrue during this period (see Recommendation #5, below). To effectuate that intention, no late fees should be connected to any unforgiven rent or any other payments not made during the 24 month repayment period.

1. **No late fees should be assessed, accrued or collected until 60 days after the State of Emergency ends.**

Consistent with the City Council’s March 17, 2020 motion, the ordinance should make clear that no late fees[[2]](#footnote-2) should be assessed, accrue or be collected for any unpaid rent or any other payments during the State of Emergency plus sixty days after its ending. In addition, as discussed in Recommendation #4, no late fees should apply to any rent not forgiven during the 24-month repayment period.

1. **A rental assistance program should be established to assist tenants (and indirectly, low-income homeowners) with missed rent and mortgage payments.**

1. **There should be a rental assistance program.**

Tenants desperately need rental assistance to address lost income from the pandemic. That need will only increase in the next several weeks. The City should fund a rental assistance program for tenants.

1. **The rental assistance should be a grant rather than a loan.**

Given that the impacts of the pandemic are expected to be extended and long lasting, there is considerable uncertainty about whether tenants would be able to ever repay any assistance. Grants are less likely to result in displacement than loans when there is so much uncertainty about whether loans could ever be repaid. Moreover, the grants for rental assistance will also benefit landlords by guaranteeing their income stream. Tenants should not be held responsible for something that benefits both tenants and landlords. Therefore, because of the unlikelihood of being able to repay and because landlords benefit from the grants, all rental or financial assistance to tenants that is intended to address the impacts of the pandemic should be grants, not loans.

1. **Eligibility for rental assistance should be extended to tenants with incomes below 120% of Area Median Income but should prioritize people at the lowest incomes and those most vulnerable to displacement.** **Tenant advocates, landlords and the City should seek substantial State and Federal resources to substantially fund the program costs.**

During this pandemic, considering the dire consequences of losing one’s housing, anyone who documents a need for assistance should be able to get it. However, we recognize that resources are limited. Therefore, we recommend that eligibility be limited to tenant households with incomes at or below 120% of area-median income. However, the limited resources should prioritize those at the lowest income levels and those with conditions or circumstances that make them the most vulnerable, such as seniors, families with young children and people with serious underlying health conditions.

Recognizing the vast need and the limited City resources, we recommend a coordinated effort among tenant advocates, landlords and the City to seek substantial State and Federal resources to supplement any City assistance program.

The scale of government-financed assistance for tenants should be proportionate to the scale of the need and should be greater for people than anything being dedicated to assist corporations.

1. **Eligible tenants would provide documentation of their income.**

To be eligible for the rental assistance program, tenants would need to provide documentation of their income. Form of documentation should not be a barrier to eligibility, therefore the City should accept informal documentation such as: 1) for self-employed tenant, communications with clients that record specifics of payment; 2) bank statements; 3) printouts from mobile payment services such as Venmo, Cash App and Zelle; 4) monthly summary of earnings statements from companies such as Uber or Lyft; and more.

In the alternative, the City could implement a rental assistance program that would come online after the State of Emergency is lifted. Presuming a post-State of Emergency repayment period when tenants have a certain amount of time (we are recommending 24 months) to repay any rent that is not forgiven, the rental assistance program would be active we during this repayment period. During the State of Emergency, tenants could be evicted for nonpayment. After the State of Emergency is lifted, eligible tenants could then apply for relief grants to pay off their unforgiven debt. This could be combined with an immediate emergency loan program for landlords to pay operating costs during the state of emergency, under the assumption that landlords will be repaid (either by tenants directly or via a relief grant) during the repayment window and thus, the landlord would be able to pay off the emergency loan.

1. **Eviction protections need to extend beyond current proposals. The City needs to adopt a real moratorium that prohibits filing of evictions during the period of the State of Emergency (retroactive to March 4, 2020) and lasting for sixty after the end of the State of Emergency, with an exception for evictions where there is a threat of physical violence, such as where there is a restraining order related to domestic violence.**

The moratorium should cover *all* evictions, not just those based on nonpayment of rent, and with no requirement to prove a causal connection to COVID-19. This includes, but is not limited to, a moratorium on evictions based on failure to pay rent; breach of lease covenants; unauthorized occupants and/or pets; nuisance (such as noise caused by children who are now at home after the closure of their schools); and no-fault evictions.

The moratorium must address both the filing of cases, and create legal defenses:

○ Landlords must be barred from filing any and all unlawful detainer cases in the Los Angeles Superior Court system during and for a period following the moratorium.

○ Service by the landlord of any eviction notice during the moratorium period, as well as the filing of any unlawful detainer case during the moratorium period, must each be complete defenses to an unlawful detainer case.

The moratorium should be effective retroactive to the beginning of the State of Emergency on March 4, 2020 and continue through sixty days past the end of the State of Emergency.

1. **Enact a rent freeze, prohibiting any notices of rent increases for the duration of the emergency.**

It is common during national emergencies to adopt protections that prevent price gauging or exploitation of the emergency for financial gain. During this national emergency, housing is one of the most important resources to prevent the spread of the virus and so justifies protections to prevent financial exploitation. Therefore, the City should adopt an emergency rent freeze effective to March 4th, the beginning of the State of Emergency, lasting through the duration of the State of Emergency plus sixty days. The rent would be frozen even in the event of a vacancy. [[3]](#footnote-3)

1. **Support separate fund for assistance to low-income landlords and moratorium on foreclosures against low-income landlords.**

Protect low-income homeowners at risk of default and financial distress due to the spread of COVID-19 through assistance programs that achieve the following:

* Work with the State and financial institutions to continue suspending mortgage payments for homeowners and landlords, and pursue options to forgive rent obligations for any tenant in the home for the duration of the crisis, including a recovery period after the state of emergency is lifted.
* Provide resources to homeowners to determine whether they are eligible for a suspension on mortgage payments.
* Establish a mortgage assistance fund for all low-income homeowners who are not eligible for mortgage suspension.
* Establish a moratorium on trustee’s sales, recordation of notices of default, and evictions of people who are post-trustee’s sale of their homes, but have yet to move out.
* Work with State and County agencies to suspend collection from low-income homeowners of property tax assessments made through the Property Assessed Clean Energy” (PACE) loans and other home improvement and clean energy loan programs.

**10. Educate tenants about their rights and Impose real consequences for failure to inform tenants of their rights under the ordinance.**

However well-intended, rights are not meaningful unless tenants know about them and are able to assert them. The City shall also fund outreach by community-based organizations to tenants, and provide a complaint hotline to tenants. The City shall fund sufficient staffing to ensure timely enforcement of tenants’ rights.

HCID, in coordination with the City Attorney, shall impose penalties if landlords do not inform tenants of their rights under these provisions. Penalties for landlord noncompliance with any of these emergency restrictions should be the basis for punitive action by the City or affected tenants, with a statute of limitations sufficient to allow enforcement after the state of emergency is over.

1. Including Bet Tzedek Legal Services, Coalition of Economic Survival, HEART LA, Housing Rights

Center, Inner City Law Center, Legal Aid Foundation of Los Angeles, Los Angeles Community Action Network, Los Angeles Tenants Union, Public Counsel, Neighborhood Legal Services of LA County and Strategic Actions for Just Economy. [↑](#footnote-ref-1)
2. This exclusion need not include liquidated damages because liquidated damages are already a legally unenforceable and illegal remedy. [↑](#footnote-ref-2)
3. This may require abrogating Costa Hawkins, which is justified given the State of Emergency. [↑](#footnote-ref-3)