


REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: April 13, 2022

TO: Honorable Members of the City Council

FROM: Sharon M. Tso 
Chief Legislative Analyst

Council File No. 21-1332
Assignment No. 22-03-0163

Transition to Normal Operations - Recommendations to Retain Certain Emergency Ordinances

SUMMARY

On March 23, 2022, the City Council adopted a Chief Legislative Analyst (CLA) report that recommended repealing or rescinding five emergency period actions related to the COVID-19 pandemic (Council File 21-1332). The City Council also adopted an amending Motion (Blumenfield - Rodriguez) to instruct the City Administrative Officer (CAO) and CLA, with the assistance of the City Attorney, to report on the City's legal authority to continue the commercial eviction moratorium and, if not, options for conforming to State law.

This report addresses an additional six COVID-19 related ordinances that are recommended to be retained as they have continued relevance in the case of a potential future surge of COVID-19 or during a future state of emergency. These ordinances include:

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|-------------------------------------------------|--------------------------|
| • No. 186594 - Excessive Price Increases | Council File: 20-0451 |
| • No. 186809 - Requiring a Face Covering | Council File: 20-0930 |
| • No. 187096 - Zoning and Land Use Requirements | Council File: 20-0380-S1 |
| • No. 186637 - Contracting Authority | Council File: 20-0433 |
| • No. 186588 - Contracting Threshold | Council File: 20-0347 |
| • No. 186636 - One Year Contract Extension | Council File: 20-0432 |

The balance of the emergency policies and actions identified in this report under Attachment A will require further analysis and will be addressed in a future report(s). Our Office will also continue to review whether additional COVID-19 policies or ordinances were not reflected in the initial CAO report from February 18, 2022. If so, staff will add these issues in a future report for consideration.

To address the City Council's request to clarify the City's legal authority relative to the commercial eviction moratorium, the City Attorney's Office now advises that as the Governor's Executive Order on this matter expired on September 30, 2021, the provisions in Ordinance No. 186606 concerning the protection of commercial tenants from eviction due to COVID-19 related financial impacts are no longer legally effective. This issue is further addressed in the Discussion section of this report.

RECOMMENDATIONS

That the City Council:

1. Request the City Attorney to prepare and present an amended Ordinance No. 186588 - Contracting Threshold - to invoke the provisions in the ordinance upon the adoption of a City Council resolution, and which will also allow the City Council, at its discretion, to terminate its application before the end of a declared emergency if it is no longer needed.
2. Authorize the Chief Legislative Analyst (CLA) to make any technical corrections or clarifications to this report as necessary to implement the intent of the Council's actions.
3. Direct the CLA, with the assistance of the City Administrative Officer and City Attorney, to report in 30 days on additional policies listed in Attachment A of this report.

FISCAL IMPACT

There is no impact on the General Fund.

BACKGROUND

On December 7, 2021, the City Council directed the CAO to report on all emergency orders, ordinances, policies, and revenues that are contingent upon the City Council's continued ratification of the Mayor's State of Emergency declaration. On February 18, 2022, the CAO transmitted a report with a list of related Council Files in response to the City Council's direction. The City Council considered this report at its March 8, 2022 meeting and further instructed the CLA, CAO, and the City Attorney to provide recommendations on a plan for phasing out temporary COVID-19 policies and programs, addressing the ongoing needs of City residents with long-term solutions; to report on the impact of such policies; and, to identify policies that the City should consider adopting permanently.

DISCUSSION

This report addresses an additional six COVID-19 related ordinances that are recommended to be retained as they have continued relevance in the case of a potential future surge of COVID-19 or during a future state of emergency. In addition, this report provides a response to amending Motion (Blumenfield - Rodriguez), which instructs the CAO and CLA, with the assistance of the City Attorney, to report on the City's legal authority to continue the commercial eviction moratorium and, if not, options for conforming to State law.

Retain Certain Emergency Ordinances

Our Office recommends that six COVID-19 ordinances be retained as follows:

1. Ordinance No. 186594 - Excessive Price Increases / Council File 20-0451:
The ordinance addresses price gouging during a declared emergency by making it unlawful to sell or offer to sell certain goods and services: (a) for an amount that exceeds 10 percent of the price charged by similarly situated sellers in the local area; (b) for an amount that exceeds 10 percent of the price charged by a seller immediately prior to the proclamation or declaration of emergency; or, (c) for an amount that exceeds 10 percent

of the price charged for the same or similar items to services available for purchase by consumers in the City during the time of emergency.

The ordinance also makes it unlawful for any person to accumulate emergency or medical supplies in excess of the reasonable demands of business, personal or home consumption, for the purpose of resale at prices in excess of prevailing market prices.

- The City may need to address future emergency situations in which this ordinance would remain relevant. As there is no sunset clause, this law will protect residents from excessive and unjustified price increases and scarcity of essential goods that are necessary for the health, safety, and welfare of residents.

2. Ordinance No. 186809 - Requiring a Face Covering / Council File 20-0930:

The ordinance authorizes a business owner or operator in the City to refuse admittance or service to any person who fails to wear a face covering. The ordinance shall sunset upon the later of either the Governor of California lifting the State of Emergency declared on March 4, 2020, or the Mayor of Los Angeles lifting the Declaration of Emergency declared on March 4, 2020.

- This ordinance remains relevant as COVID-19 variants have created various surges in transmission rates during the pandemic period. In addition, local government entities and businesses may continue to have additional and more protective infection control requirements.¹ The ordinance also contains a sunset clause in relation to the lifting of the State of Emergency/Declaration of Emergency.

3. Ordinance No. 187096 - Zoning and Land Use Requirements / Council File 20-0380-S1:

This ordinance provides relief from certain zoning and land use requirements in order to ease the regulatory burdens on local businesses struggling for economic survival in the wake of the COVID-19 emergency declaration and restrictions on business activity. The ordinance also provides for the creation or expansion of outdoor dining areas by restaurants either on-site or in the adjacent public right of way without triggering additional parking requirements; the City Council's discretion to suspend all off-site parking requirements; and, the exemption of the first 5,000 square feet of tenant improvement from additional parking requirements.

Upon the declaration of a local emergency, the City Council may trigger the provisions of the ordinance by adopting a resolution. Residents and business owners may then take advantage of the benefits conferred in the ordinance by submitting an application to the Planning Department to verify eligibility. The relief provided by the ordinance automatically ends 12 months from the end of the local emergency declaration, although the City Council could extend the provisions by as much as 24 additional months.

¹ *Responding Together at Work and in the Community*, County of Los Angeles, Department of Public Health; Order of the Health Officer - March 23, 2022.

The provisions in the ordinance do not supersede state law or the Mayor's authority under the Charter and Los Angeles Administrative Code (LAAC).

- The ordinance is operative upon adoption of a Council resolution, but only when the Mayor has not already acted.
4. Ordinance No. 186637 - Contracting Authority / Council File 20-0433:
The ordinance allows the City Council, by resolution and approved by the Mayor, to delegate contracting authority during declared emergencies to the Chief Administrative Officers of City departments for the procurement of goods and services that safeguard life, health, safety, and property, or continue City services. The resolution may apply to all City departments or may specify which Departments are encompassed by the resolution.
- This ordinance provides the City with operational flexibility during a declared emergency.
5. Ordinance No. 186588 - Contracting Threshold / Council File 20-0347:
The ordinance provides that during a national, state, or local emergency declared in accordance with law, those contracts or agreements necessary to address the emergency are not required to be in writing for awarded amounts up to \$100,000.
- This ordinance provides the City Council with operational flexibility during a declared emergency. Our Office recommends that the City Council amend the ordinance to require adoption of a resolution to trigger its application when there is an emergency. This will make the ordinance similar to the other ordinances adopted during the pandemic and will allow the City Council, at its discretion, to terminate its application before the end of a declared emergency if it is no longer needed. As an additional safeguard and to ensure future oversight of emergency contracting activity, the City Council may include a departmental reporting requirement within a resolution.
6. Ordinance No. 186636 - One Year Contract Extension / Council File 20-0432:
During a national, state, or local emergency declared in accordance with law, this ordinance allows the City Council, by resolution and approved by the Mayor, to authorize the head of a City department or a Chief Administrative Officer to approve a contract extension for up to one year, for any contract that is scheduled to expire within a year from the declared emergency. During a declared emergency, the ordinance also temporarily suspends the requirements of Division 10, beginning within Section 10.7, for contracts with other government entities, or that continue City services, or that safeguard life, health, safety, and property.
- This ordinance provides the City Council with operational flexibility during a declared emergency. To ensure future oversight of contract extension activity, the City Council may include a departmental reporting requirement within a resolution.

Commercial Eviction Protections

On March 16, 2020, Governor Newsom issued Executive Order N-28-20, which removed State law restrictions on local government's ability to impose limitations on commercial evictions when the grounds for eviction is non-payment of rent due to a substantial decrease in income or increase in expenditures due to COVID-19. The Executive Order does not relieve the tenant of the obligation to pay rent. The order was subsequently extended several times and expired on September 30, 2021. Our Office, with the assistance of the City Attorney's Office, previously reported on the potential consequences of the Governor's Executive Order expiring and how that could impact City Ordinance No. 186606 relative to the continuation of commercial eviction protections (Council Files: 21-0570 and 20-0147-S19).

To address the City Council's request to clarify this matter, our Office had further discussions with the City Attorney's Office concerning the expiration of the Governor's Executive Order. The City Attorney's Office now advises that since the Governor failed to extend the order, the provisions in the City's ordinance protecting commercial tenants from eviction due to COVID-19 related financial impacts are no longer legally effective.²

Even though commercial tenants no longer receive the benefits of the City's ordinance, tenants with up to 100 employees continue to be covered by the Los Angeles County Commercial Protections, as described below.

- Los Angeles County Tenant Protections

On March 19, 2020, the Los Angeles County Board of Supervisors adopted a resolution imposing a moratorium on evictions for nonpayment of rent by commercial tenants. The protections apply to commercial tenancies in both the unincorporated areas and incorporated cities located within the County. These protections do not apply to tenants that are multi-national, publicly traded, or have more than 100 employees. The Board of Supervisors established the program as baseline protections for commercial tenants for the entire County, including incorporated cities that have their own local eviction moratoria.

On January 25, 2022, the Board of Supervisors took the following actions in regards to commercial tenant protections:

- As of February 1, 2022, commercial tenants are no longer protected from eviction due to nonpayment of rent. Tenants who comply with the County's tenant protection procedures will have an extended period of time to repay past due rent, which depends on the number of employees at the business, unless prior arrangements have been made with the landlord:


² This report supersedes the March 22, 2022, CLA report with respect to the City's commercial tenant eviction ordinance (Council File 21-0570).

Los Angeles County Commercial Rent Payback Period

Number of Employees	Time to Repay Back Rent
9 or fewer	12 months, with the option to pay unequal payments. All back rent is due by January 31, 2023.
10-100	6 months, in equal payments. All back rent is due by July 31, 2022.

Commercial tenants also have the following protections:

- Anti-harassment and retaliation protection for all commercial tenants;
- Prohibiting enforcement of personal guarantees for rent incurred by commercial tenants with nine employees or fewer; and,
- Requiring landlords to provide notices of rights to commercial tenants with nine employees or fewer.



Christopher I. Espinosa
Analyst

Attachment A: Active Policies Contingent on the Local State of Emergency Declaration.

Active Policies Contingent on the Local State of Emergency Declaration

Council File No.		General Topic	Status	CLA Recommendation
Retain				
1	20-0451	Ordinance to prohibit excessive price increases and excessive accumulation of certain supplies for resale at inflated prices during a declared emergency and for 30 days following the termination of the declaration.	Council approval action final on 4/24/2020	Retain.
2	20-0930	Ordinance to authorize a business owner or operator in the City of Los Angeles to refuse admittance or service to any person who fails to wear a face covering, which shall sunset upon the later of either the Governor of California lifting the State of Emergency he declared on March 4, 2020, or the Mayor of Los Angeles lifting the Declaration of Emergency he declared on March 4, 2020.	Council approval action final on 11/6/20	Retain.
3	20-0380-S1	Emergency ordinance to: 1) extend all expiring Conditional Use Permits for a period of 12 months after the COVID-19 emergency declaration, 2) suspend any requirement that a business provide additional parking in connection with a change in use of an existing structure, 3) suspend any condition requiring a business to provide off-site or valet parking, and 4) implement the Restaurant Beverage Program.	Most recent Council action final on 10/7/21	Retain.
4	20-0433	Ordinance to add provisions to the Los Angeles Administrative Code to delegate contract approval authority of Boards and Commissions to the general managers of departments and bureaus for the procurement of goods and services, during times of declared national, state, and/or local emergencies.	Council approval action final on 5/27/20	Retain.
5	20-0347	Ordinance amending LAAC 10.2.1 to raise the threshold at which certain contracts are required to be in writing during any declaration of emergency to \$100K.	Council approval action final on 4/2/2020	Retain.
6	20-0432	Ordinances to add provisions to the Los Angeles Administrative Code (LAAC) to suspend the contracting restrictions for contracts that safeguard life, health, safety, and property; and to authorize general managers to sign emergency contract extensions, during times of declared national, state and/or local emergencies.	Council approval action final on 5/27/20	Retain.
Will be addressed in a future report.				
7	20-0407	Ordinance stating that the maximum adjusted rent of any occupied rental unit subject to the Rent Stabilization Ordinance may not be increased unless necessary to obtain a just and reasonable return until one year after the termination of the Mayor's March 4, 2020 declaration of a local emergency.	Council approval action final on 5/8/20	Will be addressed in a future report.
8	20-0470	Ordinance to limit the delivery fee charged by a third-party food delivery service to a restaurant per online order, to no more than 15 percent of the purchase price, during the COVID-19 local public health emergency. It shall be operative at any time during which a federal, state, or local order, resulting from the COVID-19 pandemic, limits customer capacity to less than full capacity at Retail Food Establishments in the City of Los Angeles, and for a period of 90 days after any such federal, state, or local order is lifted.	Council approval action final on 10/14/20	Will be addressed in a future report.
9	20-0147-S19	Ordinance that temporarily prohibits evictions of residential and commercial tenants for failure to pay rent due to COVID-19, and prohibits evictions of residential tenants during the emergency for no-fault reasons, for unauthorized occupants or pets, and for nuisance related to COVID-19. This ordinance further suspends withdrawals of occupied residential units from the rental market under the Ellis Act, Government Code Section 7060, et seq. The ordinance applies during the Local Emergency Period and either 12 (residential) or 3 (commercial) months after it expires.	Council approval action final on 5/8/20	Will be addressed in a future report. Commercial tenant provisions no longer legally effective per the expiration of Governor's Executive Order N-28-20.

10	20-0498	Instruct the CLA and CAO, in conjunction with EWDD, Office of Finance, DOT, Bureau of Street Services, and any other necessary departments, to 1) report on incentives the City can offer to businesses who continue to allow their employees to telecommute a certain percentage of their work schedule after the emergency order is lifted and 2) report on initiatives to mitigate the effects of motorized carbon emissions.	Council approval action final on 8/26/20	Will be addressed in a future report.
11	20-0147-S21	Instruct LASAN and other relevant agencies to suspend enforcement, during the emergency declaration, of the provision of 56.11 that requires tents to come down during daytime hours, provided that the location of the tent does not impede ADA access, or is not within 10 feet of an operable driveway. Enforcement of that provision effectively prohibits people from self-quarantining and maintaining social distance; At the end of the emergency declaration, seek the advice of (LA County) Public Health and provide recommendations as to whether to continue or revise the ordinance.	Council adopted Motion forthwith on 3/17/20	Will be addressed in a future report.
12	20-0147-S44	Ordinance to provide workers of grocery, drug retail, and food delivery platforms with added protections during the COVID-19 Pandemic, which shall sunset upon the later of either the Governor of the State of California lifting his emergency order declared on March 4, 2020, or the Mayor of the City of Los Angeles lifting the State of Emergency declared on March 4, 2020.	Council approval action final on 4/8/20	Will be addressed in a future report.
13	20-0147-S15	Ordinance subjecting specified businesses in Los Angeles to worker retention provisions for certain workers when a change of ownership or control occurs within two years following the declaration of emergency resulting from the COVID-19 pandemic.	Council approval action final on 5/4/2020	Will be addressed in a future report.
14	20-0147-S35, 20-0147-S42	Right of Recall/Worker Retention	Council approval action final on 4/29/2020	Will be addressed in a future report.
Repeal/Rescind; C.F. 21-1332 (Approved by Council 3/23/22)				
15	20-0147-S5	Enact emergency provisions, including related to competitive bidding and Mayoral transfer authority. Specifically, that "competitive bidding restrictions enumerated in Charter Section 371 and Los Angeles Administrative Code Section 10.15 be suspended for contracts entered into by City Departments," and "the Mayor (and Council President for Council funds) may grant applications and issue orders for the transfer of funds under Charter Sections 340 and 343 for the protection of life and property that exceed the limit specified in LAAC 5.36, not to exceed \$1,000,000 per transfer."	Council approval action final on 4/3/20	Repeal/Rescind 3/23/22, C.F. 21-1332
16	20-0533	Ordinance stating that it shall be unlawful for any person to Deposit Personal Protective Equipment into the City's Public Right-of-Way or Storm Drain System, with a fine of \$250, which shall sunset upon the later of either the Governor of California lifting the State of Emergency he declared on March 4, 2020, or the Mayor of Los Angeles lifting the Declaration of Emergency he declared on March 4, 2020.	Council approval action final on 8/7/20	Repeal/Rescind 3/23/22, C.F. 21-1332
17	20-0953	Suspension of all citation enforcement provisions, and thereby waiving the requirement for businesses to obtain a permit for 'temporary signs' that are tacked, pasted or otherwise temporarily affixed to windows and/or walls for the duration of the COVID-19 State of Emergency.	Council approval action final on 11/25/20	Repeal/Rescind 3/23/22, C.F. 21-1332
18	20-0147-S51	Ordinance instructing supermarkets to dedicate the first hour of customer business exclusively to senior citizens and the disabled community, which "shall sunset upon the later of either the Governor of the State of California lifting the State of Emergency he declared on March 4, 2020, or the Mayor of Los Angeles lifting the Declaration of Emergency he declared on March 4, 2020"; pending Motion to repeal this ordinance as the economy is returning to pre-COVID operations.	Council approval action final on 4/2/20; Motion to repeal referred to Ad Hoc Committee on COVID-19 Recovery and Neighborhood Investment on 6/23/21	Repeal/Rescind 3/23/22, C.F. 21-1332
19	20-0472	Ordinance that authorizes a person who rents space in a self-service storage facility to temporarily defer rent and other charges incurred during the local emergency period if a person is unable to pay due to circumstances related to COVID-19. The occupant may defer payment of that rent and other charges until three months following the expiration of the local emergency period.	Council approval action final on 6/1/2020	Repeal/Rescind 3/23/22, C.F. 21-1332