



Town Council Agenda Report

Date: April 14, 2020 Item No. 12

To: Honorable Mayor and Town Council

Subject: CONFIRM THE TOWN MANAGER'S EMERGENCY EXECUTIVE ORDERS PURSUANT TO APPLE VALLEY MUNICIPAL CODE SECTION 2.40.060.A(6)(A)

From: Douglas Robertson, Town Manager

Submitted by: Thomas Rice, Town Attorney

Budgeted Item: Yes No N/A

RECOMMENDED ACTION:

Staff recommends that the Town Council confirm the Town Manager's Emergency Executive Orders pursuant to Apple Valley Municipal Code Section 2.40.060.A(6)(a).

BACKGROUND:

On March 21, 2020, the Town Manager, in accordance with Section 2.40.060.A(1) of the Apple Valley Municipal Code, issued Proclamation No. 2020-01 proclaiming the existence of a local emergency relating to the worldwide spread of respiratory illness due to the novel coronavirus known as COVID-19. On March 24, 2020, the Town Council adopted Resolution No. 2020-10, ratifying Proclamation No. 2020-01 and declaring a local emergency.

During the pendency of the emergency, the Town Manager as the Director of Emergency Services has the power to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency.

Thus far, the Town Manager has issued two executive orders in accordance with that authority: (1) Executive Order No. 2020-01, dated March 24, 2020, which enacted a temporary moratorium on evictions for non-payment of rent by residential and commercial tenants impacted by COVID-19; and (2) Executive Order No. 2020-02, dated March 27, 2020, which implemented restrictions on stores selling essential products in large quantities to members of single households.

DISCUSSION:

In accordance with Apple Valley Municipal Code Section 2.40.060.A(6)(a), these orders must be confirmed by the Town Council at the earliest practicable time in order to remain valid. This action will confirm Executive Order Nos. 2020-01 and 2020-02.

FISCAL IMPACT:

None.

CONCLUSION:

Staff recommends the Town Council confirm the Town Manager's Emergency Executive Orders pursuant to Apple Valley Municipal Code Section 2.40.060.A(6)(a).

ATTACHMENTS:

Executive Order No. 2020-01
Executive Order No. 2020-02

**APPLE VALLEY
DIRECTOR OF EMERGENCY SERVICES**

EXECUTIVE ORDER NO. 2020-01

**EMERGENCY EXECUTIVE ORDER OF THE TOWN
MANAGER/DIRECTOR OF EMERGENCY SERVICES OF
THE TOWN OF APPLE VALLEY, CALIFORNIA,
ENACTING A TEMPORARY MORATORIUM AND
EVICTIONS DUE TO NON-PAYMENT OF RENT BY
RESIDENTIAL AND COMMERCIAL TENANTS IMPACTED
BY THE NOVEL CORONAVIRUS (COVID-19) DURING A
PERIOD OF LOCAL EMERGENCY AND TEMPORARILY
PROHIBITING UTILITY SHUTOFFS/DISCONNECTIONS
DUE TO NON-PAYMENT**

WHEREAS, on March 16, 2020, the Governor of the State of California issued Executive Order Executive Order N-28-20, authorizing local governments' through their police power to impose substantive limitations on residential or commercial evictions for nonpayment of rent for tenants financially impacted by COVID-19 through May 31, 2020; and

WHEREAS, on March 17, 2020, the Health Officer of the County of San Bernardino issued an order countywide that: (1) with limited exceptions, prohibits all gatherings, i.e., any event or convening that brings together people in a single room or single space at the same time, except for gatherings of members of a household or living unit; (2) orders the closure of all bars, adult entertainment establishments, and other business establishments that serve alcohol but not food (3) orders the closure of movie theatres, gyms, and health clubs; (4) requires food and beverage establishments to follow CDPH guidance, including requirements that restaurants close to in-restaurant seated dining and open only to drive-through or other pick-up/delivery options; and

WHEREAS, on March 19, 2020, the Governor of the State of California, issued Executive Order N-33-20, an Order of the State Public Health Officer ordering all individuals living in California to stay home or at their place of residence except as needed to maintain continuity of operations of outlined federal critical infrastructure sectors; and

WHEREAS, on March 20, 2020, in my capacity as Director of Emergency Services, I proclaimed the existence of a local emergency in the Town of Apple Valley in connection with the global pandemic caused by the spread of a novel coronavirus, COVID-19 ("Proclamation 2020-01"); and

WHEREAS, on March 24, 2020, the Town Council ratified Proclamation 2020-01 through the adoption of a resolution proclaiming the existence of a local emergency and expressly authorizing the Town Manager/Director of Emergency Services to establish a temporary moratorium on evictions and enact other protections in accordance with

Executive Order N-28-20 issued by the Governor on March 16, 2020 ("Resolution No. 2020-51"); and

WHEREAS, during the pendency of the local emergency and statewide state of emergency, the Director of Emergency Services is empowered "[t]o make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency . . ." under Section 2.40.060 A.(6)(a) of the Town's Municipal Code; and

WHEREAS, as of the date of this Executive Order: many businesses have imposed work from home policies; meetings, events and social gatherings are cancelled and in some cases prohibited as people remain at home; customers are not patronizing restaurants, hotels, and retail establishments or hiring domestic help or travelling; and

WHEREAS, the above actions are severely impacting hourly workers, through employee terminations and the cutting back of hours; and

WHEREAS, as a result of the public health emergency and the precautions recommended by health authorities, many tenants in the Town of Apple Valley have experienced or expect soon to experience sudden and unexpected income loss or an increase in out-of-pocket medical expenses; and

WHEREAS, the Governor of the State of California has stated that individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19 and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks; and

WHEREAS, most, if not all, local schools are closed to prevent further spread of COVID-19, and these closures cause children to have to remain at home, leading to many parents adjusting their work schedules to take time off work, whether paid or unpaid. Hourly wage earners are unlikely to be paid for time off. The inability to work due to school closures will economically strain those families who cannot afford to take off time from work to stay at home; and

WHEREAS, the situation is unprecedented and evolving rapidly, and further economic impacts are anticipated, which leaves tenants vulnerable to eviction; and

WHEREAS, displacement through eviction creates undue hardship for tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing, and lack of moving services and supplies as stores and businesses close; and

WHEREAS, during the COVID-19 pandemic outbreak, affected tenants who have lost income due to impact on the economy or their employment may be at risk of

homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted; and

WHEREAS, people experiencing homelessness are especially vulnerable to the spread of COVID-19 due to an inability to practice social distancing and a lack of access to health care; and

WHEREAS, the Governor has ordered the State to take extraordinary measures to secure shelter for homeless populations during this emergency to limit exposure to and spreading of COVID-19; and

WHEREAS, widespread evictions of tenants vulnerable to eviction due to financial hardship occurring due to COVID-19 would exacerbate the challenge of sheltering the homeless during this emergency, and increase the risk of spread of COVID-19 and would cause people to be in violation the Governor's Executive order to stay home; and

WHEREAS, promoting stability amongst commercial tenancies is also conducive to public health, allowing businesses to follow the advice and directives of public health officials to close, and allowing employees to avoid public contact, during times of a public health crisis without fear of imminent eviction; and

WHEREAS, the Town desires to prohibit evictions due to nonpayment of rent for residential and commercial tenants where the failure to pay rent results from income loss resulting from the novel coronavirus (COVID-19); and

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary to exercise authority to adopt this order related to the protection of life and property, to ensure renters can remain in their homes and prevent proliferation of homelessness and further spread of COVID-19; and

WHEREAS, this Order is temporary in nature and only intended to promote stability and fairness within the residential and commercial rental market in the Town during the COVID-19 pandemic outbreak, and to prevent avoidable homelessness thereby serving the public peace, health, safety, and public welfare and to enable tenants in the Town whose income and ability to work is affected due to COVID-19 to remain in their homes; and

WHEREAS, the Town also desires to discontinue shut-offs and disconnections of vital utilities, such as sewer and trash, for non-payment for at least the next 60 days, to reduce the burden on residents during this time; and

WHEREAS, this Order is adopted pursuant to the Town's police powers and powers afforded to the Town in time of national, state, county and local emergency during an unprecedented health pandemic, such powers being afforded by the State Constitution, State law, and the Chapter 2.40 of the Apple Valley Municipal Code to protect the peace, health, and safety of the public; and

WHEREAS, this Order is necessary for the preservation of the public peace, health, and safety of residents living within the Town and, under Government Code Section 8634, this Order is necessary to provide for the protection of life and property.

BE IT ORDERED BY THE TOWN MANAGER/DIRECTOR OF EMERGENCY SERVICES OF THE TOWN OF APPLE VALLEY AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference. The recitals and findings in Proclamation 2020-01 and Resolution 2020-10 are also incorporated herein by this reference.

SECTION 2. Temporary Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Crisis.

A. During the period of local emergency declared in response to COVID-19, no landlord shall endeavor to evict a tenant for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19.

B. A landlord who knows that a tenant cannot pay some or all of the rent temporarily for the reasons set forth above shall not serve a notice pursuant to California Code of Civil Procedure Section 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for nonpayment of rent. A landlord knows of a tenant's inability to pay rent within the meaning of this Order if the tenant, within 30 days after the date that rent is due, notifies the landlord in writing of lost income and inability to pay full rent due to financial impacts related to COVID-19, and provides documentation to support the claim. For purposes of this Order, "in writing" includes email or text communications to a landlord or the landlord's representative with whom the tenant has previously corresponded by email or text. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim.

C. For purposes of this Order "financial impacts related to COVID-19" include, but are not limited to, tenant lost household income as a result of any of the following: (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (2) lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19; (3) compliance with a recommendation from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (4) extraordinary out-of-pocket medical expenses; or (5) child care needs arising from school closures related to COVID-19.

D. This Order applies to nonpayment eviction notices and unlawful detainer actions based on such notices, served or filed on or after the date on which the local emergency was proclaimed.

E. This Order grants a defense in the event that an unlawful detainer action is commenced in violation of this Order. Violation of this Order shall be punishable as set forth in Section 2.40.100 of the Apple Valley Municipal Code.

F. Nothing in this Order shall relieve the tenant of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency and the tenant must pay within six months of the expiration of the local emergency. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Order; nor may a landlord seek rent that is delayed or the reasons stated in this Order through the eviction process.

G. No other legal remedies available to landlord are affected by this Order.

SECTION 3. Temporary Moratorium on Evictions for Non-Payment of Rent by Commercial Tenants Impacted by the COVID-19 Crisis.

A. Commercial landlords in the Town are hereby prohibited from evicting commercial tenants for nonpayment of rent with respect to tenants whose businesses are impacted by federal, state, or local public health orders or are otherwise limited or closed (voluntarily or by mandate) to prevent or reduce the spread of COVID-19 and who demonstrate lost income and inability to pay rent as a result of such limitation or closure or other demonstrated financial impact related to COVID-19.

B. A landlord knows of a tenant's lost income and inability to pay rent within the meaning of this Order if the tenant, within 30 days after the date rent is due, notifies the landlord in writing of the lost income and inability to pay rent due to a limitation or closure of the tenant's business related to COVID-19, with appropriate supporting documentation. If a tenant suffers only a partial loss of income, the tenant shall pay the pro-rated share of their rent that corresponds to the income they generated during the period of loss. For purposes of this Order, "in writing" includes email or text communications to a landlord or the landlord's representative with whom the tenant has previously corresponded by email or text. All financial information provided to the landlord shall be kept in confidence and only used for evaluating the tenant's claim or enforcing this provision.

C. This Order grants a defense in the event that an unlawful detainer action is commenced in violation of this Order. Violation of this Order shall be punishable as set forth in Section 2.40.100 of the Apple Valley Municipal Code.

D. Nothing in this Order shall relieve the commercial tenant of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency and the tenant must pay within six months of the expiration of the local emergency. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Order; nor may a landlord seek rent that is delayed, or the reasons stated in this Order through the eviction process.

E. No other legal remedies available to landlord are affected by this Order.

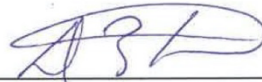
SECTION 4. Utility Shut-Offs/Disconnections.

As a result of the local emergency, for a period of 60 days from the date of this Order, the Town hereby suspends: (a) the discontinuation or shut off of trash or sewer service for residents and businesses in the Town for non-payment of trash and sewer bills; and (b) the imposition of late payment penalties or fees for delinquent trash and/or sewer bills. Nothing in this Order shall relieve any customer of liability for the unpaid utility bills, which the Town will seek after expiration of the temporary stay on shut-offs/disconnections and the customer must pay within six months of the expiration of the this stay.

SECTION 5. Severability. If any provision of this Proclamation or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Proclamation are declared to be severable.

SECTION 6. Effective Date and Termination. This Order shall become effective immediately and shall continue until the earlier to occur of: (1) the conclusion of the local emergency; (2) May 31, 2020 or such other date as the Governor declares through an amendment to Executive Order N-28-20; (3) its termination is ordered by the Town Manager/Director of Emergency Services; or (4) it is duly terminated by the Town Council. The Order may also be superseded by a duly enacted ordinance of the Town Council expressly superseding this Order.

ORDERED by the Town Manager/Director of Emergency Service this 24th day of March, 2020.



Doug Robertson, Town Manager and
Director of Emergency Services
Town of Apple Valley

**APPLE VALLEY
DIRECTOR OF EMERGENCY SERVICES**

EXECUTIVE ORDER NO. 2020-02

**EMERGENCY EXECUTIVE ORDER OF THE TOWN
MANAGER/DIRECTOR OF EMERGENCY SERVICES OF
THE TOWN OF APPLE VALLEY, CALIFORNIA,
IMPLEMENTING RESTRICTIONS ON STORES SELLING
ESSENTIAL PRODUCTS IN LARGE QUANTITIES TO
MEMBERS OF SINGLE HOUSEHOLDS**

WHEREAS, conditions of extreme peril to the safety of persons and property have arisen within the Town of Apple Valley caused by the worldwide spread of respiratory illness due to the novel coronavirus known as COVID-19; and

WHEREAS, the federal government, the State of California, and the County of San Bernardino have declared emergencies as a result of the spread of COVID-19; and

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued a stay-at-home order to protect the well-being of all Californians and to establish consistency across the state in order to slow the spread of COVID-19; and

WHEREAS, on March 20, 2020, in my capacity as Director of Emergency Services, I proclaimed the existence of a local emergency in the Town of Apple Valley ("Town") in connection with the global pandemic caused by the spread of a novel coronavirus, COVID-19 ("Proclamation 2020-01"); and

WHEREAS, on March 24, 2020, the Town Council ratified Proclamation 2020-01 through the adoption of a resolution proclaiming the existence of a local emergency and expressly authorizing the Town Manager/Director of Emergency Services to establish a temporary moratorium on evictions and enact other protections in accordance with Executive Order N-28-20 issued by the Governor on March 16, 2020 ("Resolution No. 2020-10"); and

WHEREAS, in response to the pandemic, some members of the public are engaging in the panic-buying of large numbers of items of essential goods, including toilet paper, hand sanitizer, and bleach for example, and hoarding these supplies; and

WHEREAS, as a result of hoarding, stores are having a difficult time maintaining essential items stocked and shoppers are responding by purchasing essential products in large quantities resulting in empty shelves and stores unable to maintain these products for the Town's residents including those most vulnerable; and

WHEREAS, in addition, in many communities, including the Town, sewer systems are being negatively impacted as consumers are turning to towels, clothing, napkins, and baby wipes to cope with the lack of toilet paper; and

WHEREAS, on March 23, 2020, in response to an urgent need to ensure sufficient personal protective equipment, sanitizing, and disinfecting products are not hoarded, President Trump issued an executive order designed to address the hoarding of health and medical resources; and

WHEREAS, during the pendency of the local emergency and statewide state of emergency, the Director of Emergency Services is empowered "[t]o make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency . . ." under Section 2.40.060 A.(6)(a) of the Town's Municipal Code; and

WHEREAS, to address the issues posed by the shortage of supplies, the Town Manager, acting as the Director of Emergency Services, now desires to establish emergency restrictions on the sale of essential products to members of a single households, such items include: toilet paper, hand sanitizer, bleach, and other items deemed essential in order to protect the life and property of Town residents and combat hoarding of essential products; and

WHEREAS, this Order is adopted pursuant to the Town's police powers under article XI, section 7 of the California Constitution and under any powers afforded to the Town in time of national, state, county and local emergency during an unprecedented health pandemic, such powers being afforded by the State Constitution, State law, and the Chapter 2.40 of the Apple Valley Municipal Code to protect the peace, health, and safety of the public; and

WHEREAS, this Order is necessary for the preservation of the public peace, health, and safety of residents living within the Town and, under Government Code Section 8634, this Order is necessary to provide for the protection of life and property.

BE IT ORDERED BY THE TOWN MANAGER/DIRECTOR OF EMERGENCY SERVICES OF THE TOWN OF APPLE VALLEY AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference. The recitals and findings in Proclamation 2020-01 and Resolution 2020-10 are also incorporated herein by this reference.

SECTION 2. Restrictions on the Sale of Essential Products to Customers.

A. No retailer shall knowingly sell in any single day to a single customer more essential products than necessary for household use.

B. Definitions.

- i. For the purposes of this Executive Order, retailer shall mean any single geographic location of any retail business, company, corporation, person, employee or associate who furnishes, distributes, or sells essential products.

- ii. For the purposes of this Executive Order, essential products shall include toilet paper, hand sanitizer, and bleach.
- iii. For the purposes of this Executive Order, the quantity of essential products necessary for household use is as follows:
 - a. For toilet paper, no more than six rolls unless the product is packaged in greater quantities by the manufacturer or distributor, in which case one single package shall be the limit.
 - b. For hand sanitizer, no more than 12 fl oz unless the product is packaged in greater quantities by the manufacturer or distributor, in which case one single package or single bottle shall be the limit.
 - c. For bleach, no more than 64 fl oz unless the product is packaged in greater quantities by the manufacturer or distributor, in which case one single package or single bottle shall be the limit.

C. Exempt Sales. Sale of essential products to the following customer classes shall not be subject to this Order:

- i. Businesses, both non-profit and for-profit, legally operating during the emergency;
- ii. Customers shopping on behalf of a group living facility such as a homeless shelter, domestic violence shelter, or group home; and
- iii. Government agencies.

SECTION 3. Severability. If any provision of this Proclamation or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications and, to this end, the provisions of this Proclamation are declared to be severable.

SECTION 4. Effective Date and Termination. This Order shall become effective immediately and shall continue until the earlier to occur of: (1) the conclusion of the local emergency; (2) its termination is ordered by the Town Manager/Director of Emergency Services; or (3) it is duly terminated by the Town Council. The Order may also be superseded by a duly enacted ordinance of the Town Council expressly superseding this Order.

Executive Order No. 2020-02

ORDERED by the Town Manager/Director of Emergency Services this 27th day of March, 2020.

A handwritten signature in blue ink, appearing to read 'DR', is written over a horizontal line.

Douglas B. Robertson, Town Manager
and Director of Emergency Services
Town of Apple Valley