

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

MEMORANDUM

TO: City of Madison Common Council

FROM: Brittany Wilson, Assistant City Attorney

DATE: April 6, 2020

RE: Resolution Suspending CDA Late Lease Payment Fees (Legistar File No. 60085)

In her Emergency Order dated March 26, 2020, the Mayor affirmed the Community Development Authority's suspension of the imposition and collection of late lease payment fees for residential and commercial tenants. The purpose of this memorandum is to provide background for that Order, provide examples of actions the CDA has taken in conformity with that Order, and, to the extent possible, identify the fiscal impact of those actions.

BACKGROUND

Tenants residing in Community Development Authority's (CDA) properties are responsible for paying rent by the first of each month. The CDA Admissions & Continued Occupancy Policy states that if a resident fails to make a rent payment by the end of office hours on the fifth day of the month, a late fee of \$25.00 will be charged. CDA ACOP, pp. 8-9. Likewise, the CDA Tenant Selection Plan states that if a resident fails to make payment in full by the end of office hours on the fifth day of the month, a late fee of \$25.00 will be charged. CDA Tenant Selection Plan, p. 68.

On March 24, 2020, the Governor of Wisconsin issued Emergency Order Number 12, which required Nonessential Businesses to close. Many Wisconsin residents are now unemployed or face reduced work hours as a result. The consequential income losses hinder tenants' abilities to make rent payments. As a result, the Mayor's Emergency Order Number 2, dated March 26, 2020, affirms the CDA's authority to suspend the imposition and collection of late lease payment fees for its residential and commercial tenants, at the CDA's discretion.

On March 27, 2020, the day after the Mayor's Emergency Order, the United States Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act includes a temporary moratorium of 120 days for "fees, penalties, or other charges to the tenant related to such nonpayment of rent" for a dwelling in a "covered property." CARES Act, H.R. 748, 116th Cong. § 4024(b)(2) (2020). A "covered property" includes a property, among others, that participates in a "covered housing program" as defined by the Violence Against Women Act (VAWA). *Id.* at § 4024(a)(2)(A)(i). VAWA-covered housing programs include public housing, the Section

8 Housing Choice Voucher program, and Section 8 project-based housing. 34 U.S.C. § 12491(a)(3). The CDA is a housing authority administering the aforementioned housing programs and is, therefore, covered by VAWA. In turn, the CARES ACT applies to the CDA's programs.

The same day as the passage of the CARES Act, the Governor of Wisconsin issued Emergency Order Number 15, which placed a temporary ban on evictions for failure to pay rent. The Order reiterates the dire financial circumstances that many Wisconsin residents now face.

WHY THIS ORDER IS NECESSARY

The Mayor's Emergency Order Number 2 affirms the CDA's actions to forego late fees for past due rent payments in order to relieve the financial burden on its tenants during this difficult financial time. In addition, the Order complies with the CARES Act, which the CDA must now follow, by suspending the imposition of any fees or penalties related to nonpayment of rent for tenants of the housing authority.

ACTIONS TAKEN THUS FAR PURSUANT TO THIS ORDER

Beginning with the month of April, City Finance and CDA Property Managers will not apply late fees for past due rent payments. Since rent payments are not considered late until payments are made after the end of the business day on April 5th, City Finance and CDA Property Managers have not yet had an opportunity to suspend the imposition of late fees for tenants of the housing authority. Nonetheless, the CDA Deputy Director has instructed CDA Property Managers and City Finance staff not to charge late fees, when applicable.

Additionally, the CDA Deputy Director will present a resolution to the CDA Board of Commissioners to authorize the suspension of late lease payment fees for residential tenants. The resolution authorizes the suspension effective March 27, 2020 for a period of 120 days, pursuant to the CARES Act.

FISCAL IMPACT

The CDA's estimated fiscal impact is a revenue loss of \$11,425 per month. For the entire span of the 120 day moratorium, the estimated total revenue loss is \$45,700. These figures were derived from the CDA's actual revenue loss of \$2,575 for the month of February 2020, which was then increased to 50% of the CDA's total portfolio given anticipated additional late rent payments due to the coronavirus pandemic and the accompanying emergency orders. These figures were also calculated based on 914 total units and a late fee rate of \$25.00.