



Legislation Text

File #: 20-250

Version: 1

Agenda Date: 4/8/2020

Item #: 8.

Report regarding an urgency ordinance of the City of South San Francisco enacting a temporary moratorium on small business and nonprofit entity evictions due to nonpayment of rent where the failure to pay rent results from income loss resulting from the Novel Coronavirus (COVID-19) (*Sky Woodruff, City Attorney*)

RECOMMENDATION

It is recommended City Council waive reading, introduce by title, and adopt an urgency ordinance of the City of South San Francisco enacting a temporary moratorium on small business and nonprofit entity evictions due to nonpayment of rent where the failure to pay rent results from income loss resulting from the Novel Coronavirus (COVID-19). Approval of an urgency ordinance requires a four-fifths vote.

BACKGROUND

International, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named “SARS-CoV-2,” and the disease it causes has been named “coronavirus disease 2019,” abbreviated COVID-19, (“COVID-19”). On January 30, 2020, the World Health Organization (“WHO”) declared COVID-19 a Public Health Emergency of International Concern, and on January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency.

On March 2, 2020, the County of San Mateo activated its Emergency Operations Center (EOC) to support the local County Health response to COVID-19. On March 3, 2020, the County of San Mateo Director of Emergency Services issued a proclamation Declaring the Existence of a Local Emergency in the County and the County of San Mateo Health Officer issued a Declaration of Local Health Emergency Regarding COVID-19. On March 4, 2020, California Governor Gavin 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 a broader spread of COVID-19.

On March 10, 2020, the Board of Supervisors of the County of San Mateo adopted a resolution Ratifying and Extending the Declaration of a Local Health Emergency. On March 12, 2020, due to an escalating increase in the number of cases in San Mateo County, the City Council of the City of South San Francisco adopted a resolution proclaiming a local State of Emergency related to the Novel Coronavirus 2019 (COVID-19) under South San Francisco Municipal Code Chapter 2.72.

On March 16, 2020, seven health officers within six Bay Area counties, including San Mateo County, took a unified step to slow the spread of novel coronavirus (COVID-19) and preserve critical health care capacity across the region by issuing a legal order directing their respective residents to shelter at home for three weeks beginning March 17, 2020. The order limits activity, travel and business functions to only the most essential needs. The guidance comes after substantial input from the U.S. Centers for Disease Control and Prevention (CDC) and best practices from other health officials around the world.

On March 16, 2020, California Governor Gavin Newsom issued Executive Order N-28-20 ordering suspension of any provision of state law that would preempt or otherwise restrict a local government’s exercise of its police

power to impose substantive limitations on residential or commercial evictions related to COVID-19. The order further suspended statutory causes of action for judicial foreclosure, including Code of Civil Procedure section 725a et seq.; the statutory cause of action for unlawful detainer, Code of Civil Procedure section 1161 et seq.; and any other statutory cause of action that could be used to evict or otherwise eject a residential or commercial tenant or occupant of residential real property after foreclosure.

On March 24, 2020, the County of San Mateo adopted an Emergency Regulation establishing a temporary, countywide moratorium on evictions for non-payment of rent by residential tenants directly impacted by the COVID-19 pandemic. On March 27, 2020, California Governor Gavin Newsom issued Executive Order N-37-20, extending the deadline specified in Civil Code of Procedure section 1167 for a period of 60 days for any residential tenant who is served, while the Order is in effect, with an eviction notice for nonpayment of rent where the tenant paid rent due prior to date of the Order and the tenant notifies the landlord in writing of an inability to pay the full amount due to reasons related to COVID-19. These actions only protect tenants from residential evictions, whereas the proposed Urgency Ordinance will further address small business and nonprofit entity evictions.

DISCUSSION

The Shelter-In-Place orders have had an immediate economic impact in all commercial sectors of the City simultaneously. Although *non-essential* businesses have seen the most dramatic impact causing all operations to cease, many *essential* businesses that remain open have also been dramatically affected. Restaurants and food establishments, for example, are considered essential and many remain open. However, operations have had to be significantly modified by limited sales to only take-out and delivery orders. This, coupled with the drop in public demand of dining out has many restaurants anticipating large revenue losses in the months of March and April, and at least until the health orders expire.

In addition, both large and smaller events across the Bay Area and in South San Francisco have all been cancelled or postponed due to the County and State's Orders. These cancellations and postponements cause loss in revenue for the event, as well as surrounding local businesses that rely on such events to bring in patrons to their businesses. This has adversely affected the City's hotel industry, conference and meeting spaces, and business-to-business sales that support large gatherings.

Economic Impact

Macro-Level Economic Forecast. Revising a forecast published March 12, UCLA Anderson Forecast economists say the U.S. economy has entered a recession, ending the expansion that began in July 2009. As the U.S. economy moved into a recession this month, it looks like California will bear a heavy share of the contraction. In 1990 it was the aerospace industry, in 2001 the tech industry, and in 2008 residential construction; each of which were sectors that California was proportionately more exposed than the rest of the nation. Now it is the turn of three more sectors with heavy concentration in the Golden State; transportation and warehousing, agriculture, and leisure and hospitality. The exposure to transportation and warehousing stems from the fact that the ports of California carry much of the goods coming in from Asia, and they are not coming in. California is a major tourist destination, particularly from Asia, and air travel has been limited across the Pacific. And agriculture, hard hit by the trade wars, now finds that there are no ships nor appropriate containers to move the latest harvest out to market. These, overlaid on a U.S. forecast of a two quarter recession, results in four quarters of job loss and three quarters of real income losses in the State.

Employment is expected to contract by -0.7% in 2020 with the 2nd and 3rd quarters contracting at an annual

rate of 2.6%. The unemployment rate will rise to 6.3% by the end of this year and expected to continue to increase into 2021 with an average for 2021 of 6.6%. By the first quarter of 2021 of the year California is expected to lose over 280K payroll jobs with over 1/3 of those in leisure and hospitality and transportation and warehousing. The expectation is for 2021 to be a slow recovery year and 2022 a year of growth once again.

Local Market Impact. The occupations of South San Francisco residents include a high share of service and production jobs, which in many ways are relatively compatible with the types of jobs found in the city. These jobs will be the most exposed during the recession. Attachment 1 includes current data for retail, industrial, and office demographics for the South San Francisco submarket.

The City has created a business resources website, dedicated for COVID-19 information and programs. A business survey has been issued to create a baseline of how the economic disruption is affecting the local economy. If a commercial eviction moratorium is enacted, the City has the ability to collect data on its impact over the duration of the moratorium.

Proposed Urgency Ordinance

For these reasons, it is recommended that City Council adopt an uncodified urgency ordinance enacting a temporary moratorium on evictions for nonpayment of rent by small business and nonprofit entities impacted by COVID-19. The proposed urgency ordinance includes provisions to prevent evictions if the small business or nonprofit entity is able to show an inability to pay rent due to circumstances related to COVID-19. Such circumstances include:

- Being sick with COVID-19, or caring for a household or family member who is sick with COVID-19;
- Compliance with a recommendation or order from a government health authority to close non-essential business;
- Income reduction resulting from business closure or other economic or employer impacts;
- Extraordinary out-of-pocket medical expenses; or
- Child care needs arising from school closures.

If adopted, the ordinance would require the small business or nonprofit entity repay any back due rent no later than six (6) months following the expiration of the ordinance. Additionally, the small business or nonprofit entity could use the ordinance as an affirmative defense in an unlawful detainer action. The ordinance, if adopted, would remain in effect until May 31, 2020 unless extended by City Council.

FISCAL IMPACT

Approval of the staff recommendations will have no direct fiscal impact on the City's General Fund.

ENVIRONMENTAL REVIEW

This Urgency Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines") under Section 15061(b) (3) of the CEQA Guidelines.

CONCLUSION

It is recommended City Council waive reading, introduce by title, and adopt an urgency ordinance of the City of South San Francisco enacting a temporary moratorium on small business and nonprofit entity evictions due to nonpayment of rent where the failure to pay rent results from income loss resulting from the Novel Coronavirus (COVID-19). *Approval of an urgency ordinance requires a four-fifths vote.*

Attachments:

1. South San Francisco Vacancy and Rental Rates by Product Type