



CITY COUNCIL STAFF REPORT

MEETING DATE: April 13, 2020

ITEM TITLE: Discuss and Direct Staff Concerning a Moratorium on Commercial Evictions.

RECOMMENDATION:

Staff recommends Council consider whether to agendize a moratorium on commercial evictions, similar to those enacted by the City of San Mateo and the County of San Mateo, and provide direction.

FISCAL IMPLICATIONS:

There are no fiscal implications associated with Council's discussion of this item.

BACKGROUND AND ANALYSIS:

State and County Actions Applicable to San Carlos Tenancies

On March 16, 2020, Governor Newsom issued Executive Order N-28-20 ("Order"), which authorized local agencies to take action to temporarily halt evictions resulting from financial hardships that are attributable to COVID-19. The Order applies to both commercial and residential tenancies where the tenant can demonstrate that an increase in medical costs or loss of income related to COVID-19 has created an inability to timely pay rent.

Operating under the authority of the Governor's Order, on March 24, 2020, the San Mateo County Board of Supervisors adopted a county-wide emergency regulation that protects against residential evictions that would otherwise occur as a result of COVID-19. The emergency regulation:

- Is effective until May 31, 2020 ("termination date") unless extended by the County.
- Prohibits landlords from evicting tenants for nonpayment of rent due to COVID-19 or seeking no-fault evictions (with the exception of owner move-ins) through the termination date.
- Requires a landlord, who serves notice of the tenant's failure to pay rent prior to the termination date, to notify tenants that they have fourteen (14) days to provide documentation to their landlords of a COVID-19 related reason for failure to pay rent.
- Requires tenants to pay the unpaid rent within ninety (90) days of the termination date (i.e., August 29, 2020). If a tenant is not able to pay by that date, they may obtain an extension for thirty (30) days by providing to the landlord additional documentation demonstrating the continuing inability to pay due to COVID-19. A tenant may request up

to three (3) such extensions, which would result in the repayment occurring no later than 180 days after the termination date of the emergency regulation (i.e., November 27, 2020).

- Prohibits landlords from collecting late fees on rent payments delayed pursuant to the emergency regulation.

Additional Local Actions Related to Commercial Tenancies

The County's March 24, 2020 emergency regulation did not address commercial tenancies. The City of San Mateo, City of Burbank, Marin County, City of Los Angeles, City and County of San Francisco, Santa Clara County, City of Santa Monica, City of San Diego, and San Diego County, have taken the additional step of adopting protections for commercial tenants affected by COVID-19. The County of San Mateo added protections for commercial tenancies for unincorporated areas on April 7, 2020. South San Francisco considered Urgency regulations at its April 8, 2020 meeting.

San Mateo's urgency ordinance, adopted on March 23, 2020, provides that evictions are prohibited for all residential tenants and "small business" tenants, which include those commercial and non-profit entities with less than \$25 million in annual gross receipts. The prohibition is for ninety (90) days or until the declaration of local emergency is lifted by the City, unless extended by further Council action. Both no-fault evictions and evictions for nonpayment of rent related to COVID-19 are prohibited.

The protections offered by the City of San Mateo urgency ordinance apply to people who cannot pay rent because:

1. They are sick with COVID-19 or are caring for a household or family member who is sick with COVID-19;
2. They have suffered a lay-off, loss of hours, or other income reduction resulting from business closure or other economic/employer impacts of COVID-19;
3. They have complied with a recommendation from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency;
4. They have extraordinary out-of-pocket medical expenses due to COVID-19; or
5. They have childcare needs arising from school closures related to COVID-19.

The City of San Mateo urgency ordinance includes the following enforcement mechanisms:

- Violation of the urgency ordinance is a misdemeanor.
- Tenants have an affirmative defense in any unlawful detainer (eviction) action if the tenants have provided notice of their inability to pay due to COVID-19.
- Tenants may request injunctive relief and money damages against a landlord who violates the ordinance.

During the meeting at which the City of San Mateo Council adopted the urgency ordinance, the Council received several comments in support of a commercial eviction moratorium from members of the public and heard no comments against the proposal.

On March 31, the Governor issued Order 37-20 imposing a statewide moratorium on residential evictions, but did not address commercial evictions, leaving that for local government based on local conditions.

Further County Board of Supervisors Action

On April 7, 2020, the County Board of Supervisors considered and passed a commercial eviction moratorium, but it is more limited in nature than the residential eviction moratorium it passed last month. The commercial eviction moratorium applies only in the unincorporated areas of the County and is aimed at small businesses only (under \$2.5 million in annual gross receipts). The County indicated that it made the determination to limit this ordinance to unincorporated areas of the County because cities have unique business communities and can tailor local ordinances to best fit those communities.

Emergency Rules Issued By Judicial Council

On Monday April 6, 2020, the State Judicial Council issued 11 “Emergency Rules” (“Rules”) the courts in California and to address foreseeable burdens on the system. The Rules take effect immediately and expire 90 days from the termination of the emergency order by the Governor. The Rules include provisions that:

- Suspend the issuance of a summons in residential and commercial unlawful detainer (eviction) actions.
- Suspend the entry of defaults in eviction cases where a defendant has not appeared in the action.
- Suspend judicial foreclosures, which are mostly associated with commercial loans secured by real property.
- Allow courts to require judicial proceedings and court operations be conducted remotely, but only with the defendant’s consent in criminal proceedings.
- Adopt a statewide emergency bail schedule that sets bail at \$0 for most misdemeanor and lower-level (non-violent) felony offenses.
- Allow defendants to appear via counsel or remote technologies for pretrial criminal hearings.
- Prioritize hearings and orders in juvenile proceedings and set a structure for remote hearings and continuances.
- Extend the timeframes for specified temporary restraining orders in family law and domestic violence actions.
- Extend the statutes of limitations governing civil actions.
- Allow electronic depositions in civil cases.

The eviction provisions in the Rules are in addition to the county-wide eviction moratorium issued by the Board of Supervisors for residential evictions. The Rules freeze residential and commercial eviction processes, except where the action is necessary for health and safety reasons to a date uncertain, until 90 days after the Governor’s termination of the COVID-19 emergency or until the Rules are further amended or repealed by the Judicial Council.

The Cares Act

On March 31, 2020, the President signed into law the Cares Act. It contains \$350 billion in forgivable loans for businesses to cover payroll, health care, salaries, interest on mortgages, rent, utilities, and interest on other debt obligations. These loans first became available from certain banks working with the Small Business Administration beginning on Friday, April 3.

Action to Consider For Future Agenda

The Council may elect to move quickly to pass an ordinance on this issue. Per Government Code section 36937(b), urgency ordinances take effect immediately. The City Council would be required to declare there is a current and immediate threat to the public peace, health, and safety and to state the facts constituting the urgency. Such an ordinance requires four (4) votes


of the City Council. If the Council elects not to adopt an urgency ordinance, the Council can introduce the ordinance at its next meeting, adopt the ordinance at the following Council meeting, then the ordinance becomes effective 30 days later.

ALTERNATIVES:

The alternatives available to the City Council include:

1. Provide staff with further direction on these issues; or
2. Do not provide staff with further direction on these issues.

Respectfully submitted by:



Greg Rubens,
City Attorney

Approved for submission by:



Jeff Maltbie, City Manager