



STAFF REPORT

City Council

Meeting Date:

4/14/2020

Staff Report Number:

20-076-CC

Regular Business:

Adoption of uncodified urgency Ordinance No. 1068 imposing temporary moratorium on eviction for non-payment of rent by small business commercial tenants directly impacted by the COVID-19 pandemic

Recommendation

Adopt an uncodified urgency Ordinance No. 1068 of the City of Menlo Park establishing a temporary moratorium on eviction for non-payment of rent by small business commercial tenants directly impacted by the COVID-19 pandemic.

Policy Issues

Immediate steps are necessary to mitigate the economic impacts of COVID-19 by ensuring that local small businesses, which are essential to the health and vibrancy of our local community, survive this current pandemic and continue to operate, both during the local emergency as essential businesses, as defined in the County's stay-at-home order, and after the restrictions in the stay-at-home order are lifted.

A number of local small businesses that provide essential items and services to City residents are deemed essential businesses under the stay-at-home order. The public interest is served by helping those businesses remain open. Moreover, to the extent that other local small businesses are not currently operating due to the stay-at-home order, the public interest is served by helping those businesses resume operations as soon as the stay-at-home order is lifted because the ongoing existence of such small businesses are essential to the City's economic vitality, community character, and the general welfare of City residents.

Section 8634 of the Government Code provides that during a local emergency, the governing body of a political subdivision of the State, which includes the City of Menlo Park, "may promulgate orders and regulations necessary to provide for the protection of life and property..." The law requires that such orders "shall be in writing and shall be given widespread publicity and notice."

Background

The scale of the COVID-19 pandemic is staggering. To date, there have been over 1,600,000 confirmed COVID-19 cases worldwide and nearly 500,000 in the United States, with thousands of deaths. Closer to home, California has over 20,000 confirmed cases, and San Mateo County has 638 confirmed cases, and 21 residents have died of the disease. The economic impacts have been swift and severe, with over 16 million Americans suddenly unemployed and many businesses forced to temporarily shut down in response to stay-at-home orders.

These effects are also being felt in the City, particularly by small businesses suffering from reductions in income due to lower customer demand, forced closures, decreases in available workforce, and increased expenses. These abrupt and severe negative impacts have affected, and will continue to affect, the ability of many small businesses to make rent payments. Without action, these small businesses, along with the local communities they serve and the residents they employ, may never recover.

Local and State actions taken to date

On March 3, and pursuant to Section 101080 of the California Health and Safety Code, the San Mateo County health officer declared a local health emergency throughout the County related to COVID-19. The board of supervisors ratified and extended this declaration of local health emergency, which remains in effect. In addition, March 3, and pursuant to Section 8630 of the California Government Code and Chapter 2.46 of the San Mateo County Ordinance Code, the San Mateo County director of emergency services proclaimed a local emergency throughout San Mateo County related to COVID-19. The board ratified and extended the proclamation of local emergency, and this local emergency remains in effect.

On March 4, Governor Newsom issued a Proclamation of State of Emergency related to COVID-19 effective throughout the State of California.

On March 11, the City of Menlo Park was one of the first cities in the Bay Area to declare a local emergency. Menlo Park's emergency declaration empowered the city manager to take actions to preserve and protect the health and safety of its community in light of its own circumstances.

On March 16, the San Mateo County health officer issued an order that, among other things, directs all individuals currently living within San Mateo County to shelter in their place of residence, and authorizes individuals to leave their residences only for certain "essential activities," essential governmental functions," or to operate "essential businesses," all as defined in the shelter-in-place order. On March 19, the Governor issued Executive Order N-33-20, which imposed a statewide stay-at-home order. (The statewide order does not affect the validity of the County's order.) The health officer issued an order March 31, that extended and revised the County's stay-at-home order.

Governor Newsom issued Executive Order N-28-20, March 16, which grants local jurisdictions broad authority to enact temporary moratoria on residential and commercial evictions based on a non-payment of rent caused by the COVID-19 pandemic or the federal, state, and/or local response to the COVID-19 pandemic.

On March 23, the San Mateo County board of supervisors adopted an emergency regulation establishing a temporary, countywide moratorium on eviction for non-payment of rent by residential tenants directly impacted by the COVID-19 pandemic.

On April 7, the City Council received information regarding various resources that are available to small businesses, discussed ways that the City could support local businesses' immediate needs and shared ideas about ways to stimulate recovery. At that meeting, the City Council directed staff to prepare an urgency temporary small business tenant eviction moratorium modeled after the county of San Mateo Ordinance (that applies to business located in unincorporated San Mateo County,) which was adopted April 7.

Judicial Council rules

On April 6, the Judicial Council (the policymaking agency of the California state court system) adopted 11 emergency rules in response to the COVID-19 emergency. The following rules are applicable to unlawful detainer actions and judicial foreclosures:

Evictions/unlawful detainer (emergency rule 1)

- A court may not issue a summons on a complaint for unlawful detainer (“U/D”) unless action is necessary to protect public health and safety.
- A court may not enter default or a default judgment in a U/D action unless (1) necessary to protect public health and safety and (2) defendant failed to appear.
- Trial dates for U/D actions are continued at least 60 days.
- The Rule is to remain in effect until 90 days after the Governor declares the state of emergency lifted or until the rule is amended or repealed by the Judicial Council.

Judicial foreclosures suspended (emergency rule 2)

- Any actions for foreclosure, including any action for a deficiency judgment, are stayed unless necessary to protect public health and safety.
- Any applicable statute of limitation is tolled.
- The Rule is to remain in effect until 90 days after the Governor declares the state of emergency lifted or until the rule is amended or repealed by the Judicial Council.

The Judicial Council adopted similar rules suspending the statute of limitations for unlawful detainer and foreclosure actions to avoid undue prejudice to the plaintiff.

While these rules provide some relief to tenants who may be subject to an eviction lawsuit, they do not prevent the landlord from actually serving a notice to vacate based on non-payment of rent. Many tenants elect to move out after receiving an eviction notice to avoid litigation, bad credit reporting and court costs. Local evictions moratorium ordinances are designed to prevent a tenant from moving as a result of a notice.

Analysis

The proposed urgency ordinance, which would take effect immediately if adopted by the City Council, prohibits an owner of commercial real property in the City from evicting a small business commercial tenant for non-payment of rent if the tenant establishes, through documentation, that their inability to pay rent is due to a decrease in net business income directly resulting from COVID-19 or the federal, state or local government response to COVID-19.

Examples of qualifying circumstances include, but are not limited to, loss of income due to any of the following:

- Being sick with COVID-19, or caring for a household or family member who is sick with COVID-19
- Lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19
- Compliance with a recommendation from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency
- Extraordinary out-of-pocket medical expenses
- Child-care needs arising from school closures related to COVID-19

Under the urgency ordinance, a qualifying small business is one with annual gross receipts of not more than \$2,500,000 for the 2019 calendar year. Prior to evicting a commercial tenant based on nonpayment of rent during the time the urgency ordinance remains in effect, the owner of the commercial property must provide the tenant written notice of the urgency ordinance. The commercial tenant then has at least 14 days, or more if reasonable under the circumstances, to provide the owner evidence of inability to pay rent due to

COVID-19.

The urgency ordinance would not relieve qualifying commercial tenants of liability for unpaid rent. A commercial tenant, if able, should continue to make monthly rent payments while the urgency ordinance remains in effect.

Within 90 days after the urgency ordinance expires, the tenant must pay the full amount of missed payments, if able to do so. If the tenant is still unable to do so as a direct result of COVID-19, the tenant must provide the owner of the commercial real property another written notice and additional documentation to extend the payment date an additional 30 days. The tenant may provide additional written notices and documentation every 30 days to further extend the deadline, but under no circumstances is the owner required to extend the deadline beyond 180 days after the urgency ordinance expires. The owner cannot charge or collect a late fee for any missed payment covered by this urgency ordinance.

If the urgency ordinance is violated, a commercial tenant may seek action through the Courts. In addition, the urgency ordinance provides an affirmative defense to eviction in the event that an action to recover possession is commenced in violation of its terms.

The urgency ordinance also includes a provision to grant relief to a landlord who experiences undue or excessive hardship as a result of the ordinance. An aggrieved landlord shall file a written request for relief explaining the nature of the hardship. The city manager or its designee shall have the authority to review that request and grant relief if deemed necessary.

The proposed urgency ordinance would remain in effect through May 31, unless extended by the City Council.

Impact on City Resources

The adoption of the proposed urgency ordinance will result in a temporary increased workload for staff as it is expected that small business commercial tenants will contact the City with questions as potential violations are reported. City staff will provide information about the urgency ordinance and make referrals to legal resources. Additionally, increased workload may result from the administration of the hardship waiver portion of the ordinance by the city manager or its designee.

The City will also incur a financial cost in order to publicize the urgency moratorium through digital and physical media to landlords and tenants.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

A. Draft urgency small business eviction Ordinance No. 1068

Report prepared by:

John Passmann, Management Analyst II

Report reviewed by:

Deanna Chow, Interim Community Development Director

Cara Silver, Interim City Attorney

ORDINANCE NO. 1068**URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MENLO PARK ESTABLISHING A MORATORIUM ON EVICTIONS FOR
NONPAYMENT OF RENT BY SMALL BUSINESS COMMERCIAL
TENANTS DIRECTLY IMPACTED BY THE COVID-19 PANDEMIC**

The City Council of the City Menlo Park does hereby ordain as follows:

SECTION 1. FINDINGS AND DETERMINATIONS. The City Council of the City of Menlo Park hereby finds:

- A. International, national, state, and local governmental and health authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus and commonly referred to as COVID-19.
- B. On March 3, 2020, the San Mateo County Health Officer (“County Health Officer”) declared a local health emergency throughout San Mateo County related to the COVID-19 outbreak.
- C. On March 10, 2020, the Board of Supervisors of the County of San Mateo ratified and extended the declaration of a local health emergency.
- D. On March 14, 2020 the County Health Officer prohibited all public or private gatherings of 50 or more people and urged the cancellation of all gatherings of ten or more people in a single confined space.
- E. On March 16, 2020, the County Health Officer issued a further order directing, among other things, that all individuals living in the county shelter at their place of residence, except to provide or receive essential services, or engage in essential activities, and that all businesses and governmental agencies cease non-essential operations at all physical locations in the county.
- F. On March 31, 2020, the County Health Officer extended the shelter-in-place order until May 3, 2020 due to the significant increase in the number of positive cases, hospitalization and deaths from COVID-19. The extended shelter-in-place order requires, among other things, that essential businesses that continue to operate scale down operations to their essential components.
- G. On March 4, 2020 Governor Newsom issued a Proclamation of State of Emergency related to COVID-19.
- H. On March 16, 2020, Governor Newsom issued Executive Order N-28-20, which grants cities and counties broad authority to enact temporary moratoria on residential and commercial evictions based on a nonpayment of rent caused by the COVID-19 pandemic or by the local, state or federal government response to COVID-19.
- I. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, which imposed a statewide shelter-in-place order requiring individuals to remain in their places of residence, except as needed to maintain continuity of operations of critical infrastructure, access to necessities such as food, prescriptions, and healthcare, or engage in other authorized activities.
- J. 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.

- K. On March 11, 2020, the City of Menlo Park declared a local state of emergency due to the rapid spread of COVID-19.
- L. The City of Menlo Park, pursuant to its police powers, has broad authority to maintain the public peace, health, safety, comfort, convenience, prosperity and welfare of its community and preserve quality of life for its residents.
- M. As a result of the public health emergency, the precautions recommended by state and county health officers, and in compliance with orders issued by those officers, many residents and businesses in Menlo Park have experienced or expect soon to experience sudden and unexpected income loss and that loss of income may have negative impacts on small businesses' ability to make rent payments.
- N. A number of local small businesses that provide essential items (e.g. food, pharmacy, veterinary services, hardware store, etc.) and services to city residents are deemed essential businesses under the county and statewide shelter-in-place orders, and it is in the public interest to have them continue to operate during the local emergency and after the restrictions in the shelter-in-place orders are lifted.
- O. To the extent that local small businesses are not currently operating due to the shelter-in-place orders, it is in the public interest to have them resume operations as soon as the county and statewide shelter-in-place orders are lifted because the ongoing existence of such small businesses are essential to the protection of the public peace and health, safety, life, property and general welfare of city residents.
- P. It is in the public interest to take immediate steps to mitigate the economic impacts of COVID-19 by ensuring that local small businesses, which are essential to the health and vibrancy of the community, survive this current pandemic.
- Q. By temporarily deferring rental payments through this ordinance, small businesses will be able to remain in place without fear of eviction pending receipt of complimentary CARES Act stimulus funds and other funds targeted at retaining small businesses.
- R. Based on the foregoing findings, the City Council desires to establish a moratorium on eviction of on-payment of rent by small business commercial tenants directly impacted by the COVID-19 pandemic.

SECTION 2. URGENCY FINDINGS. The City Council further finds, determines and declares that this ordinance is urgently needed for the immediate preservation of the public peace, health, safety or welfare of the community because:

- A. Further economic impacts are anticipated as result of COVID-19-related workplace closures, childcare expenditures due to school closures, health care expenses, labor shortages, and other expenditures stemming from compliance with emergency orders, leaving small business tenants vulnerable to eviction.
- B. These economic impacts may inhibit small businesses from fulfilling their financial obligations, including rent and public utility payments such as water, sewer, and solid waste collection charges.

- C. During this emergency and in the interest of protecting the public welfare, it is essential to avoid unnecessary termination of small business tenancies.

SECTION 3. MORATORIUM ESTABLISHED. A moratorium on eviction for non-payment of rent by small business tenants impacted by the COVID-19 crisis is imposed as follows:

- A. During the period of local emergency declared in response to COVID-19, no landlord shall endeavor to evict a tenant in either of the following situations: (1) for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19, or (2) for a no-fault eviction, unless necessary for the health and safety of tenants, neighbors or the landlord.
- B. A landlord who knows that a tenant cannot pay some or all of the rent temporarily for the reasons set forth in 2.A. shall not: (1) serve a notice pursuant to California Code of Civil Procedure Section 1161(2), (2) file or prosecute an unlawful detainer action based on a 3-day pay rent or quit notice, or (3) otherwise seek to evict for nonpayment of rent. A landlord knows of a tenant's inability to pay rent within the meaning of this ordinance if the tenant, within 14 days after the date the landlord provides written notice of this emergency ordinance as required in 2.D., 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 ordinance, "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. Upon expiration or termination of this ordinance, a tenant who demonstrated an inability to pay full rent when due to financial impacts related to COVID-19, as required under this ordinance, shall have up to 180 days after the expiration or termination of this ordinance to pay all past-due rent. The tenant shall tender the full amount of all past due rent within 90 days if able to do so; however, if the tenant remains unable to tender the full amount of all past-due rent for the reasons set forth in this ordinance, the tenant may provide the landlord another written notice and additional documentation to support that claim and thereby extend the payment date an additional 30 days. The tenant may provide additional written notices and documentation every 30 days to further extend the deadline, but under no circumstances shall the landlord be required to extend the deadline beyond 180 days after the expiration or termination of this ordinance. A landlord may not charge or collect a late fee for any portion of unpaid rent that is delayed because a tenant's inability to pay in accordance with this ordinance.
- D. Prior to taking any action, during the term of this ordinance, to endeavor to evict a tenant for nonpayment of rent or under any circumstance that constitutes a no-fault termination of tenancy, the landlord must first provide the affected tenant or tenants with written notice of this ordinance; such notice shall include at a minimum: (1) the amount of rent to which the landlord is legally entitled pursuant to any written or oral agreement and under the provisions of state or local law; (2) that this rent is due unless the tenant promptly establishes in writing to the landlord that the amount of rent due qualifies for deferral under this ordinance; and (3) that the notice from the tenant to the landlord of the deferral of rent payment must be provided to the landlord within 14 days of receipt from the landlord of the written notice required by the subdivision.
- E. For purposes of this ordinance, the following definitions shall apply:

1. "Financial impacts related to COVID-19" include, but are not limited to, loss of income due to any of the following: (a) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (b) lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19; (c) compliance with a recommendation from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (d) extraordinary out-of-pocket medical expenses; or (e) child-care needs arising from school closures related to COVID-19.
 2. "No-fault eviction" refers to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant, including but not limited to eviction notices served pursuant to California Code of Civil Procedure sections 1161(1) or 1161(5).
 3. "Small business" is a business entity with gross receipts of less than \$2.5 million per year.
- F. Violations of this ordinance shall be punishable as set forth in Chapter 1.12 of the Menlo Park Municipal Code. In addition, this ordinance shall serve as a defense in the event that an unlawful detainer action is commenced in violation of this ordinance. In the event of a violation of this ordinance, an aggrieved tenant may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages (including damages for mental or emotional distress as specified below), and any other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled in the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of this ordinance. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to court order. The remedies available under this section shall be in addition to any existing remedies which may be available to the tenant under local, state or federal law.
- G. The City Manager or its designee shall have the authority to review and grant relief to a landlord who experiences undue or excessive hardship as a result of this ordinance. An aggrieved landlord shall file a written request for relief explaining the nature of the hardship. Such request shall be accompanied by documentation supporting the claimed hardship, such as the property owner's interest in the property, price paid or option price, assessed value, tax on the property, mortgage indebtedness, income and expense statements for income-producing property, and the like.
- H. The term of this ordinance shall be from the date of adoption until May 31, 2020, unless otherwise extended or replaced.

SECTION 4. ENVIRONMENTAL DETERMINATION. In accordance with the California Environmental Quality Act ("CEQA") guidelines section 15061(b)(3), adoption of this ordinance is exempt from the provisions of CEQA, because there is no possibility that the implementation of this ordinance may have a significant effect on the environment. This ordinance will apply tenant protections to tenants in existing buildings for a limited period of time.

SECTION 5. SEVERABILITY. In the event any section, clause or provision of this ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

SECTION 6. EFFECTIVE DATE AND POSTING. This ordinance shall be published in a newspaper of general circulation. This ordinance was introduced and adopted on April 7, 2020 and shall be effective immediately upon adoption.

PASSED AND ADOPTED as an urgency ordinance of the City of Menlo Park at a special meeting of said City Council on the fourteenth day of April, 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Cecilia Taylor, Mayor

ATTEST:

Judi A. Herren, City Clerk