



DATE: January 26, 2021

CATEGORY: Consent

DEPT.: City Attorney's Office and
Community Development

TITLE: **Urgency Ordinance Extending
Residential Eviction Protections**

RECOMMENDATION

Adopt an Urgency Ordinance of the City of Mountain View Temporarily Suspending Evictions for Nonpayment of Rent by Residential Tenants Impacted by the COVID-19 Emergency, Effective February 1, 2021, Contingent Upon Expiration of the Statewide Eviction Moratorium, to be read in title only, further reading waived, effective on February 1, 2021 upon adoption (Attachment 1 to the Council report). (Five votes required)

BACKGROUND

This item presents Council with an urgency ordinance that would ensure uninterrupted eviction protections for Mountain View residential tenants. The ordinance is designed to address the possibility that the current Statewide eviction moratorium established by Assembly Bill (AB) 3088 is not extended past January 31, 2021.

On March 12, 2020, the City proclaimed a local emergency due to COVID-19, and the Council later ratified the emergency on March 17, 2020. The State and Federal governments similarly declared a state of emergency related to the COVID-19 pandemic. The COVID-19 pandemic has continued, and both its health impacts and associated public health orders, including, but not limited to, Shelter-in-Place orders and, on December 4, 2020, the Regional Stay-at-Home order, intended to slow the spread of transmission, have had a significant impact on local businesses and caused significant unemployment.

As a result, residential tenants continue to experience a severe loss of income needed to pay rent. At the same time, many residential tenants face increased medical costs, child-care costs, and other unexpected cost increases related to the ongoing COVID-19 pandemic. The income reductions, exacerbated by ongoing or increased costs, in turn create a risk of eviction by landlords. Unchecked evictions would exacerbate the public

health risks caused by the pandemic by increasing housing instability, contributing to overcrowding, and increasing homelessness.

To address these concerns and protect the public health, safety, and welfare, Council adopted an initial urgency ordinance protecting residential tenants impacted by COVID-19 from evictions for nonpayment of rent on March 27, 2020 and extended the ordinance on May 29, 2020 and again on August 22, 2020. The City's ordinance imposed notice and proof of financial hardship requirements and contains City-specific enforcement mechanisms. The repayment for rent was 180 days after expiration of the City's ordinance. The City's ordinance covered mobile homes and mobile home lots.

On August 31, 2020, the California State Legislature adopted AB 3088, which established a Statewide eviction moratorium for residential tenants, including those who rent mobile homes and mobile home lots, and preempted any local ordinance that was adopted, was extended, or otherwise takes effect from August 19, 2020 through January 31, 2021. Because the City's original eviction moratorium was extended during that time frame, the extension did not take effect, and the ordinance expired under its own terms on August 31, 2020. Now, AB 3088 is set to expire on February 1, 2021 unless the State Legislature takes action to extend it.

ANALYSIS

State Legislation

AB 3088

AB 3088, effective August 31, 2020, established a Statewide eviction moratorium. It prohibits tenants who so demonstrate from being evicted for failure to pay rent or other charges (COVID-19 rental debt) first, accrued between March 1, 2020 and August 31, 2020 and, second, accrued between September 1, 2020 and January 31, 2021, if they pay 25 percent of the amount owed for the latter period by January 31, 2021. Tenants who fail to pay this 25 percent can be evicted beginning on February 1, 2021. Payment of any outstanding rent due can be collected in small claims court starting on March 1, 2021.

As of the date of this report, the California State Legislature (Legislature) is considering an extension of the Statewide eviction moratorium. Although the Legislature has not yet taken action to extend these dates, staff believes that AB 3088 is likely to be extended prior to the expiration of the Statewide eviction moratorium.

Potential Extension of Statewide Eviction Moratorium

Assemblymember David Chiu, AB 3088's author, has introduced AB 15 to extend AB 3088's protections through December 31, 2021.

As currently drafted, AB 15 would make the following changes to AB 3088:

- Extends the timeframe for "COVID-19 rental debt" to December 31, 2021 from January 31, 2021.
- Shifts the initial burden of showing a tenant is a "high-income tenant" ineligible for protection from the tenant to the landlord.
- Removes the requirement that tenants provide a declaration of financial distress to qualify for protection.
- Extends the prohibition on terminating utility service for tenants until January 1, 2022.
- Extends the prohibition on bringing an unlawful detainer action for nonpayment of COVID-19 rental debt through January 1, 2022.
- Makes small claims court the sole remedy for collection of COVID-rental debt through January 1, 2026 instead of February 1, 2025.
- Extends the prohibition on actions to recover COVID-19 rental debt to January 1, 2022 from March 1, 2021.
- Extends noticing provisions for change of use of mobile home parks from 15 days' notice to 60 days.
- Limits protections for mortgage borrowers in specific circumstances.

Assemblymember Chiu also introduced AB 16, which would create the Tenant, Small Landlord, and Affordable Housing Provider Stabilization Program. This would consist of a State treasury fund administered by the State's Housing and Community Development Department in furtherance of the program's purposes: to stabilize renters, small landlords, and affordable housing providers.

As of the date of this report, both AB 15 and AB 16 have been referred to the Legislature's Housing and Community Development Committee and are awaiting lawmakers' action.

Any bill to extend AB 3088 would require a two-thirds majority vote to pass as urgency legislation to become effective upon adoption.

Staff's assessment that the State is very likely to extend eviction protections is informed by several facts. Governor Gavin Newsom's 2021 budget proposal calls for an extended eviction moratorium, along with financial assistance for tenants and landlords, to be enacted as soon as possible. The plan would distribute \$2.6 billion in Federal rent relief to low-income renters and small landlords and includes a "Golden State Stimulus" of \$600 for low-wage Californians in addition to eviction protections to be passed by the Legislature.

Although legislative action to extend the Statewide eviction moratorium is likely due to calls by Governor Newsom and political pressures, the ordinance before Council is designed to address the unlikely scenario of the State not extending the Statewide eviction moratorium.

City Action

The urgency ordinance (Attachment 1) would enact substantially similar protections that currently exist in AB 3088, to be effective February 1, 2021 going forward to eliminate any gap in eviction protection coverage for Mountain View residential tenants if the Statewide eviction moratorium is not extended. This means all outstanding rent is due on January 1, 2022, and eviction for unpaid rent from February 1, 2021 through December 31, 2021 would not be possible if the tenant signs a declaration of COVID-19-related financial distress, as defined by AB 3088, and 25 percent of each rental payment due during that time frame was made by December 31, 2021. If 25 percent of rent is not paid then, landlords may pursue eviction actions starting on January 1, 2022. Any other outstanding rent due from February 1, 2021 through December 31, 2021 can be collected as consumer debt starting on January 1, 2022; however, as long as 25 percent of rent for this time frame is paid, nonpayment of the balance would not provide a basis for eviction.

If AB 3088 is not extended, rent due from March 24, 2020 through August 31, 2020 would be subject to the repayment provisions of the County of Santa Clara, meaning at least 50 percent of the past-due rent must be paid by February 28, 2021, and the remaining unpaid rent for that same time period by August 31, 2021. AB 3088's provisions would apply for rents due September 1, 2020 through January 31, 2021, meaning at least 25 percent of each rental payment due during that time must be paid by January 31 to be protected from eviction, and any further outstanding rent may be collected through small claims court starting on March 1. On February 1, if the State does not extend, residential tenants in Mountain View would be without eviction protection. The City ordinance is designed to provide tenants with uninterrupted protection.

The City's ordinance would not go into effect until February 1, 2021 in order to comply with the preemption clauses set forth in AB 3088, which states that any local action that takes effect between August 19, 2020 and January 31, 2021 is void.

As discussed above, we anticipate the State will extend its moratorium before February 1, 2021, but it is possible that the State would miss this deadline and approve an extension after the City's ordinance takes effect. To avoid confusion with the administration of an overlapping State law, the City ordinance will automatically be repealed if the State extends the protections of AB 3088 at any time after the City takes action.

CONCLUSION AND RECOMMENDATIONS

An urgency ordinance requires findings that the regulation is necessary for the immediate preservation of the public peace, health, or safety and a declaration of the facts constituting the urgency. As set forth in this report, the severe potential impacts of the COVID-19 crisis continue to create significant financial hardships for residential tenants in the City. The consequences of potential mass evictions if the Statewide eviction moratorium is not extended justify the adoption of this urgency ordinance. Adoption requires five votes per City Charter Section 514, and the ordinance takes effect immediately. To comply with AB 3088, the eviction moratorium will not go into effect until February 1, 2021.

FISCAL IMPACT

Costs associated with this item include administrative and enforcement costs, which include staff costs and outreach. As noted, in August 2020, when the City extended its eviction moratorium, an up-to-\$5,000 cost was estimated for each month the City's moratorium was in effect and would be paid for by the General Housing Fund; this amount would continue to apply if and when the City's moratorium goes back into effect. The City will respond to reports of noncompliance and will issue administrative penalties and citations, but there is no additional budget requested for enforcement.

ALTERNATIVES

Council can choose not to adopt the urgency ordinance.

PUBLIC NOTICING

Agenda posting and e-mail notification to landlords and tenants who have registered for information and/or on the Community Stabilization and Fair Rent Act distribution list.

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KC-DF/6/CAM
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Attachment: 1. Urgency Ordinance

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