



DATE: March 27, 2020

CATEGORY: New Business

DEPT.: City Manager's Office; City Attorney's Office; Community Development

TITLE: **Urgency Ordinance Temporarily Suspending Evictions for Nonpayment of Rent by Residential Tenants Impacted by COVID-19**

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, to be read in title only, further reading waived, effective immediately upon adoption. (Five votes required)

BACKGROUND

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 government similarly declared a state of emergency related to the COVID-19 pandemic. The COVID-19 pandemic and related health impacts and associated public health orders, including, but not limited to, shelter-in-place orders, will have a significant impact on local businesses and may cause significant unemployment. As a result, some residents and businesses may experience a severe loss of income needed to pay rent, in turn, creating a risk of eviction by landlords.

On March 16, 2020, Governor Gavin Newsom issued Executive Order N-28-20 (Order). The Order suspends State law that would otherwise preempt or restrict local jurisdictions' authority to prohibit evictions of tenants for the nonpayment of rent if the nonpayment is a result of the COVID-19 pandemic. The purpose of this Urgency Ordinance establishing a temporary suspension on tenant evictions is to effectuate the Governor's Executive Order in the City by providing stability during the COVID-19 pandemic, preventing avoidable homelessness, and maintaining the public health. The temporary moratorium on residential evictions will protect the health, safety, and welfare of the residents of the City.

On March 24, 2020, Santa Clara County (County) adopted an urgency ordinance prohibiting evictions arising from substantial income loss or medical expenses related to the COVID-19 pandemic. The County ordinance still allows cities to enact their own ordinances however. To the extent a city ordinance is more protective of tenants, the city ordinance governs; and to the extent a city ordinance is silent on an area of regulation (commercial tenancies for example), the County ordinance governs. The question before Council is whether to rely on the County ordinance or adopt a City ordinance which provides additional protections for residential tenancies.

ANALYSIS

The City may adopt an urgency ordinance that suspends evictions for nonpayment of rent due to COVID-19 impacts, consistent with the Governor's Order and the pre-existing legal authority of City Charter Section 514 and Government Code Sections 36934 and 36973.

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. Here the severe potential impacts of the COVID-19 crisis on tenants' ability to pay rent and the consequences of potential mass evictions justify the adoption of the urgency ordinance. The ordinance requires a four-fifths vote (five votes), which may be adopted at either a regular or special meeting and becomes effective immediately upon adoption.

In considering adoption of a City Ordinance, it is helpful to understand the main provisions of the County Ordinance, which are as follows:

- Protects tenancies for residential "dwelling units" (but does not apply to mobile home rental lots as those are not considered dwelling units) and all commercial tenancies from eviction for failure to pay rent due and prohibits no-fault eviction if the tenant has suffered a financial loss from COVID-19.
- Extends tenant protections through May 31, 2020, the same duration of the Governor's Order.
- Requires tenants to demonstrate COVID-19-related losses with documentation.
- Requires landlords who serve notices of termination to include a notice of Tenant's rights under the ordinance and notice of emergency rental assistance programs.

- Allows tenants to assert the ordinance as an affirmative defense in an unlawful detainer action.
- Prohibits landlords from charging a late fee for rent delayed during the duration of the ordinance and for a period of 120 days thereafter.
- Requires tenants to repay all past due rent within 120 days from May 31, 2020.
- Subjects landlords who violate the ordinance to civil fines and penalties imposed by the County.

The proposed City ordinance is similar to the County's residential tenant protections in many aspects but provides greater protection to tenants in three significant ways. First, the City Ordinance specifically includes tenancies for mobile homes and mobile home lots in Section 2(a). The County ordinance uses the definition "dwelling unit" which does not cover mobile home spaces. Many mobile home residents in the City own their mobile home but rent the space. There are 1,130 mobile homes in Mountain View, all of which pay space rent. In order to protect the maximum number of tenancies in the City, staff recommends including this broader definition of covered tenancies.

Second, the City Ordinance could also provide for a more protective, longer tenant repayment period than the County's 120 day period. The ordinance presented tonight allows Council to determine a longer period such as 180 days. As depicted in the tables below, a number of cities have adopted a 180-day payback period.

The final area in which a City ordinance could include different and more protective provisions than the County is in regard to enforcement. The City Ordinance contains provisions that the City's existing mediation program may be utilized to facilitate tenant-landlord relations. This is a free and voluntary mediation program. Either tenants or landlords can initiate the services of the program, and it could be used, for example, to help parties develop a repayment plan, resolve disputes, etc. The City Ordinance also states that violations of the Ordinance will be prosecuted in accordance with the Mountain View City Code's code enforcement and administrative penalties provisions which consist of civil penalties and fines (this aspect of enforcement is similar to the County ordinance which subjects violators to the County's administrative penalty provisions).

The County ordinance covers commercial evictions. The City ordinance is not proposing to cover commercial evictions. However, to the extent that the County

ordinance is applicable within the City limits, commercial tenants in Mountain View may be protected pursuant to the County ordinance.

The County Ordinance also prohibits no-fault evictions of tenants as a result of the COVID-19 crisis. No-fault evictions are those where the landlord seeks to recover possession of the property even though the tenant has not violated the lease—for example, if the landlord seeks to go out of the rental housing business or seeks to redevelop the property. The City Ordinance does not include no-fault evictions because the Governor's Order does not address any evictions other than nonpayment evictions and because restrictions on no-fault evictions for units covered by the CSFRA may be superseded by the CSFRA. Note, in the past three fiscal years (including the current fiscal year), the City received 454 notices of evictions filed by landlords, of which 428 were no-fault (primarily due to landlords withdrawing the units from the rental market for redevelopment). These no-fault evictions are just causes for evictions under the CSFRA.

Other Jurisdictions

For context and to understand what other Bay area cities are doing with regard to eviction protections, the following summary is offered.

Thirty-three (33) cities (including Mountain View) and counties have either adopted a suspension on evictions or are considering one. This information is as of 12:00 noon on March 26, 2020 based on staff's best efforts to research and may continue to change as more jurisdictions consider response options. In summary:

- Santa Clara County: Nine jurisdictions (eight cities and the County) have adopted or are considering suspension of evictions due to nonpayment of rent.
- Bay Area: Ten (10) cities/county in the Bay Area outside of Santa Clara County have adopted or are considering suspension of evictions due to nonpayment of rent.
- Rest of California: Fourteen (14) cities in the rest of California have adopted suspension of evictions due to nonpayment of rent.

Of the 33 jurisdictions, nine cities have a rent-stabilization program. Additionally, most jurisdictions do not appear to have their own rent relief program that they directly fund; rather, they may be eligible for such funding made available by counties or community organizations. As such, only seven (six cities and one county) of the 33

jurisdictions have their own rental assistance program, though it does not appear that any of those assistance programs were specifically created to respond to COVID-19 (though both Santa Clara County and the City of San Jose have indicated they are contributing funding to a Countywide COVID-19 relief program). Mountain View has both a Rental Assistance Program that has been in operation for several years, as well as a rent-stabilization program (Community Stabilization and Fair Rent Act) and the recently approved rent-relief program to mitigate COVID-19-related impacts.

Santa Clara County				
Jurisdiction	Date Eviction Suspension Adopted or To Be Heard	Rent Payback Period	Rent-Stabilization Program	Has Own Rent Relief Program
Mountain View	Council to Consider on 3/27/2020	180 days after end of emergency declaration	Yes	Yes
Cupertino	Will follow County ordinance	Will follow County ordinance	No	No
Los Altos	Will follow County ordinance	Will follow County ordinance	No	No
Los Gatos	3/24/2020 (adopted)	After end of emergency declaration	Yes	No
Palo Alto	3/23/2020 (adopted)	120 days after end of Emergency Declaration (as currently drafted)	No	No
San Jose	3/17/2020 (adopted)	6 months after end of Emergency Declaration	Yes	No, but contributing to Countywide program
Santa Clara (City)	3/24/2020 (adopted)	90 days after end of Emergency Declaration	No	No
Santa Clara County	3/24/2020 (adopted)	120 days	No	No, but contributing to Countywide program

Santa Clara County				
Jurisdiction	Date Eviction Suspension Adopted or To Be Heard	Rent Payback Period	Rent-Stabilization Program	Has Own Rent Relief Program
Sunnyvale	Council to consider 3/31/2020	NA	No	No

Rest of Bay Area (outside of Santa Clara County)				
Jurisdiction	Date Adopted or To Be Heard	Rent Payback Period	Rent-Stabilization Program	Has Own Rent Relief Program
Alameda	3/18/2020 (adopted)	NA	Yes	No
Berkeley	3/17/2020 (adopted)	After end of emergency declaration	Yes	Yes
Emeryville	3/19/2020 (adopted)	NA	No	Yes
Hayward	3/24/2020 (adopted)	90 days after end of emergency declaration	No	No
Oakland	Order requested to Alameda County Court; will be discussed at next Council meeting on 4/7/2020 (Alameda County Sheriff's Office suspending all evictions until further notice)	NA	Yes	No
Richmond	3/17/2020 (adopted)	6 months after end of Emergency Declaration	Yes	No
San Francisco	3/13/2020 (adopted)	6 months after end of Emergency Declaration	Yes	No

Rest of Bay Area (outside of Santa Clara County)				
Jurisdiction	Date Adopted or To Be Heard	Rent Payback Period	Rent-Stabilization Program	Has Own Rent Relief Program
Redwood City	Will follow County ordinance	NA	No	Yes (\$150,000)
San Mateo (City)	3/23/2020 (adopted)	6 months after end of Emergency Declaration	No	No
San Mateo County	3/24/2020 (adopted for incorporated and unincorporated areas)	6 months after end of Emergency Declaration	No	Yes

Rest of California				
Jurisdiction	Date Adopted or To Be Heard	Rent Payback Period	Rent-Stabilization Program	Has Own Rent Relief Program
Camarillo	3/18/2020 (adopted)	Not specified	No	No
Inglewood	3/17/2020 (adopted)	Not specified	No	No
Los Angeles	3/15/2020 (adopted)	6 months after end of Emergency Declaration	Yes	No
Moorpark	3/13/2020 (adopted)	6 months after end of Emergency Declaration	No	No
Ojai	3/17/2020 (adopted)	6 months after end of Emergency Declaration	No	No
Oxnard	3/19/2020 (adopted)	Not specified	No	No
Pasadena	3/17/2020 (adopted)	6 months after end of Emergency Declaration	No	No
Sacramento	3/18/2020 (adopted)	120 days after end of Emergency Declaration	No	No

Rest of California				
Jurisdiction	Date Adopted or To Be Heard	Rent Payback Period	Rent-Stabilization Program	Has Own Rent Relief Program
San Bernardino	3/18/2020 (adopted)	TBD	No	No
Santa Monica	3/14/2020 (adopted)	6 months after end of Emergency Declaration	Yes	Yes
Simi Valley	3/18/2020 (adopted)	Not specified	No	No
Stockton	3/17/2020 (adopted)	Not specified	No	No
Thousand Oaks	3/17/2020 (adopted)	TBD	No	Yes
Vallejo	3/17/2020 (adopted)	Not specified	No	No

CONCLUSION

Council may adopt an urgency ordinance with additional residential tenant protections which extend beyond the County’s ordinance in the following ways: (1) specifically include mobile homes and mobile home lots; (2) increase the rent payback period from 120 days to a longer period, such as 180 days; and (3) include local mediation and enforcement mechanisms. The County Ordinance’s commercial tenant protection provisions would still extend to commercial tenants in the City.

FISCAL IMPACT

Costs associated with this item include the drafting of the urgency ordinance, as well as administrative and enforcement costs, which include staff costs, outreach, and costs associated with the City’s Mountain View Mediation Program. Because of the limited duration of the Ordinance and limited scope of administration and enforcement, staff anticipates costs not to exceed \$40,000, though this is dependent on the number of mediations that may come through the program and if additional outreach is needed.

ALTERNATIVES

1. Do not adopt the Urgency Ordinance.
2. Adopt the Urgency Ordinance with modified provisions.

PUBLIC NOTICING

The special meeting agenda was posted pursuant to Government Code Section 54956. The agenda was posted at mountainview.legistar.com and on the official notice bulletin board in front of City Hall, and e-mails were sent to City Council meeting agenda subscribers and notification was provided to *The Mountain View Voice*. Notifications were also posted on City of Mountain View social media accounts to include Twitter, Facebook, Instagram, and Nextdoor as well as special edition of *The Briefing* newsletter e-mailed to a subscriber list.

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KC-WC/5/CAM
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Attachment: 1. Urgency Ordinance