



DATE: May 29, 2020

CATEGORY: New Business

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

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

RECOMMENDATION

Adopt an Amendment to Ordinance No. 2.20, 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 Extending the Duration of the Ordinance to June 30, 2020, to be read in title only, further reading waived, effective immediately upon adoption (Attachment 1 to the Council report). (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, have had a significant impact on local businesses and caused significant unemployment. As a result, some residents and businesses are experiencing 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 laws that might otherwise preempt or restrict local jurisdictions' authority to prohibit evictions of residential and commercial tenants for the nonpayment of rent if the nonpayment is a result of the COVID-19 pandemic, and is effective until May 31, 2020. On March 27, 2020, the Governor also issued Executive Order N-37-20, which extended the time period for which tenants must respond to eviction orders and prohibits the enforcement of any writs to evict such tenants. In addition, the Judicial Council of California adopted emergency rules related to COVID-19, which included, except in limited circumstances, prohibiting a court from issuing a summons in an eviction case and prohibiting automatic default judgments against

tenants failing to file a response to eviction cases. The Judicial Council eviction-related rules became effective on April 6, 2020 and will remain in effect until 90 days after the Governor lifts the COVID-19 state of emergency, unless the rules are otherwise amended or repealed by the Judicial Council.

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 (“County Moratorium”). The County Moratorium 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 Council determined that a City ordinance providing additional protections for residential tenancies was necessary to protect the public peace, health, and/or safety of the community.

The Council adopted an urgency ordinance on March 27, 2020, providing for additional residential protections beyond the County’s ordinance, and it is set to expire on May 31, 2020 (“City Moratorium”). Notably, the City Moratorium includes mobile homes and mobile home lots. Since its adoption, the City Moratorium appears to have been effective as a tool to the City’s rent relief efforts. The City of Mountain View’s Rent Stabilization Program reports a 92 percent decrease in Failure to Pay Rent Notices received by the City between March and April (when the City Moratorium went into effect). Staff report receiving 53 notices in March (prior to the City Moratorium), four in April, and three in May. The City has e-mailed information to tenants and landlords who have registered on the distribution list, updated its website with the latest information, and continues to provide education to both tenants and landlords via webinars (www.mountainview.gov/depts/comdev/preservation/rentstabilization/evictionmoratorium/default.asp).

On March 17, 2020, the City Council approved \$500,000 for the City’s COVID-19 Rent Relief Program (C-19 RRP) to support tenants unable to pay their rent due to COVID-19-related impacts, including job loss, reduction in employment, increased medical costs, and/or increased child-care costs. Subsequently, the City Council added an additional \$2.1 million in Federal Community Development Block Grant (CDBG) funding and local housing resources, for a total of \$2.6 million for the C-19 RRP. However, the demand for the assistance is significantly greater than the resources available. Community Services Agency (CSA) administers the program, and since they began accepting applications on March 25, 2020, has received an overwhelming number of applications. As of May 18, 2020, CSA has received over 1,800 applications, assisted nearly 360 households, and disbursed approximately \$968,000. Given current demands,

there is only enough funding to provide approximately 1,300 households one month of rental support. However, there may be a protracted economic recovery from COVID-19. Therefore, unemployment or reduced employment may continue for a lengthened period of time beyond the resources available to assist tenants who have lost their jobs or are working less. Extending the City Moratorium would provide an important additional layer of protection for Mountain View renters who continue to experience COVID-19-related impacts and are unable to pay some or all of their rent.

ANALYSIS

The City may amend the March 27, 2020 City Moratorium by extending its protections suspending evictions for nonpayment of rent due to COVID 19 beyond its original expiration date of May 31, 2020.

The City Moratorium is similar to the County's residential tenant protections in many aspects but provides greater protections. The City Moratorium specifically includes tenancies for mobile homes and mobile home lots and 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 Moratorium also states that violations of the Moratorium 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's which subjects violators to the County's administrative penalty provisions).

The County Moratorium 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 Moratorium does not include no-fault evictions 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 (other than nonpayment evictions), 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

The cities of San Jose and Santa Clara extended their moratoria through June 30, 2020, while the cities of Palo Alto and Sunnyvale drafted their moratoria to expire after termination of the local emergency. On May 19, 2020, San Jose not only extended its moratorium, but also amended its moratorium related to tenant repayment provisions, specifically that half of any owed rent would be due January 31, 2021, and the remaining balance of any owed rent to be due June 30, 2021.

On May 26, 2020, the County of Santa Clara took action to adopt an urgency ordinance to extend its moratorium until the earlier of August 31, 2020 or the expiration of the Governor's March 16, 2020 Order (currently expiring on May 31, 2020). If the Governor does not extend the Order, an ordinance extending portions of the moratorium that the County Counsel deems permissible without the extension of the Order will be presented to the Board of Supervisors for consideration on June 2, 2020. In addition, the County directed staff to consider extending the repayment period for the unpaid rent to one year rather than the existing 120-day period.

For context and to understand what other Santa Clara County cities are doing with regard to extending and or modifying eviction protections, the following table is offered:

Santa Clara County				
Jurisdiction	Date Eviction Moratorium Adopted	Rent Payback Period	Eviction Moratorium Extension	Rent-Stabilization Program
Mountain View	3/27/2020	120 days after expiration of moratorium	Council to consider 5/29	Yes
Cupertino	No City ordinance; relies on County ordinance	Will follow County ordinance	No	No
Los Altos	No City ordinance; relies on County ordinance	Will follow County ordinance	No	No
Los Gatos	3/24/2020	After end of emergency declaration	No	No

Santa Clara County				
Jurisdiction	Date Eviction Moratorium Adopted	Rent Payback Period	Eviction Moratorium Extension	Rent- Stabilization Program
Palo Alto	3/23/2020	120 days after County proclaims termination of emergency	Effective until 121 st day after County's termination of emergency	No
San Jose	3/17/2020	Half of owed rent due Jan. 31, 2021; the rest of the balance due June 30, 2021	Extended to 6/30/2020	Yes
Santa Clara (City)	3/24/2020	120 days after expiration of moratorium	Extended to 6/30/2020	No
Santa Clara County	3/24/2020	120 days after expiration of moratorium but considering extending to 360 days on June 2	Extended to earlier of 8/31/2020 or expiration of Governor's EO	No, but contributing to Countywide program
Sunnyvale	3/31/2020	180 days after termination of local emergency	Effective until 180 days after City's termination of emergency	No

The table makes clear that Santa Clara County cities took a variety of approaches in adopting their own initial ordinances or relying on the County Ordinance. This varied approach has continued with the recent consideration of extensions by several cities. Although this process began with a focus on modeling the major material provisions of the City Moratorium (most significantly the term) on both the State Order and County Moratorium, it has become clear cities in the County are taking increasingly independent and individualized action under the legal authority granted them in emergency circumstances. Cities may rely on their own local police powers to maintain the public peace, health, and safety of their communities and as authorized by Government Code Section 8634, the California Emergency Services Act.

Staff recommends amending the City's Moratorium to extend its protections through June 30, 2020 to address the ongoing impacts of the pandemic. Although the County is proposing an extension to August 31, 2020, the County's proposed extension is currently reliant upon the Governor's Order. The City is proposing to adopt the extension of the moratorium based on the City's police powers and as authorized by

Government Code Section 8634 so the City's ordinance is not reliant on the Governor's Order. The extension of the moratorium to June 30, 2020 represents a prudent exercise of the police powers given the fact that the duration of the current state of emergency is unknown. The Council could however extend the ordinance to August 31 or another date if it wishes.

If Council does not extend the City Moratorium, it will expire on May 31, 2020, and tenants will be required to repay any owed rent 120 days thereafter. It is important to note that even if the City Moratorium expires, evictions will not be possible due to the Judicial Council of California's emergency order that effectively prohibits all legal actions relating to evictions, with very limited exceptions for evictions necessary to protect the public health and safety (such as a tenant engaged in illegal activity). The Judicial Council's order remains in effect until 90 days after the Governor declares the COVID-19 state of emergency is lifted, or otherwise amended or repealed by the Judicial Council. However, the Judicial Council order does not prohibit landlords from serving tenants with notices to pay rent or move. The receipt of such notices often results in tenants who are unable to pay the rent moving out of fear of adverse consequences. The extension of the City's eviction moratorium will prevent the adverse impacts of nonpayment notices and protect tenants from the adverse health consequences that arise from displacement during the pandemic.

An urgency ordinance, and any amendment thereto, 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 continue to hinder/prevent from the ability of tenants to pay rent and the consequences of potential mass evictions justify the amendment extending the term of the City Moratorium. Adoption requires five votes, and the ordinance becomes effective immediately upon adoption.

FISCAL IMPACT

Costs associated with this item include administrative and enforcement costs, which include staff costs, outreach, and costs associated with the City's Mountain View Mediation Program. The initial urgency ordinance adoption included a not-to-exceed amount of \$40,000, though this is dependent on the number of mediations that may come through the program and if additional outreach is needed. If the urgency ordinance is extended, additional education and outreach will be conducted, which would require an additional \$20,000. It is recommended that this additional amount be funded through the City's General Housing Fund, and there is sufficient balance available.

CONCLUSION

Staff recommends amending the City's Moratorium to extend through June 30, 2020. Council may however, adopt a longer extension if desired.

ALTERNATIVES

1. Do not adopt the Amended Urgency Ordinance.
2. Adopt the Amended 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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Attachment: 1. Amended Urgency Ordinance