



DATE: August 25, 2020

CATEGORY: New Business

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

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

RECOMMENDATION

1. 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 and Repayment Period, to be read in title only, further reading waived, effective immediately upon adoption (Attachment 1 to the Council report). (Five votes required)
2. Redirect the \$100,000 for the Small Landlord Relief Program currently under agreement with Main Street Launch to the COVID-19 Rent Relief Program under agreement with Community Services Agency.
3. Amend the Agreement with Main Street Launch reducing the total agreement amount to \$400,000 (\$347,826 for the Small Business Resiliency Program plus \$52,174 in administrative costs).
4. Reappropriate in Fiscal Year 2020-21 the \$1.0 million from the Below-Market-Rate Housing Fund approved by City Council on May 5, 2020. (Five votes required)
5. Amend the Agreement with Community Services Agency for the COVID-19 Rent Relief Program by \$1.1 million for a total amount not to exceed \$2,734,702.

BACKGROUND

The City's current ordinance protecting residential tenants impacted by COVID-19 from evictions for nonpayment of rent is set to expire on August 31, 2020 ("City Moratorium"). This item presents Council with options to extend the duration of the City Moratorium

in light of the ongoing impacts of the COVID-19 pandemic. A timeline and additional background help frame tonight's consideration of extending the City Moratorium.

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 has since been extended through September 30, 2020 (Executive Order N-71-20).

On March 27, 2020, Council adopted an initial urgency ordinance, the City Moratorium, protecting residential tenants impacted by COVID-19 from evictions for nonpayment of rent, and, on May 29, 2020, Council extended the City Moratorium to August 31, 2020. The City Moratorium imposes notice and proof of financial hardship requirements and contains City-specific enforcement mechanisms. Council also extended the repayment period from 120 days to 180 days after expiration of the City Moratorium. The City Moratorium covers mobile homes and mobile home lots.

On August 13, 2020, the Judicial Council of California voted to repeal its emergency rules related to COVID-19, which included, except in limited circumstances, stays on eviction and judicial foreclosure proceedings. The emergency rules are set to expire at midnight on September 1, 2020, after which legal proceedings for evictions and judicial foreclosures may be filed with the courts.

ANALYSIS

The topic of local eviction moratoria has been complex and ever-changing since the beginning of the COVID-19 pandemic. The goal of this report is to outline the present circumstances that warrant the need for an extension of the City Moratorium along with practical recommendations to further amend the City Moratorium to protect the City's tenants and landlords. This report also details recent State and Federal actions, which, as of the date of publication of the agenda, are still in flux.

County and Local Actions

Early in the pandemic, both the County of Santa Clara and a number of cities adopted urgency ordinances to protect residential tenants impacted by COVID-19 from evictions. The County's ordinance ("County Moratorium") also covered commercial tenancies and prohibits no-fault evictions of tenants as a result of the COVID-19 crisis. The County Moratorium extended protections Countywide covering all cities within the County but also allowed cities to enact their own local regulations. The County Moratorium also contained a provision which provides that, to the extent a term in the County Moratorium is more protective for tenants than that contained in a city ordinance, the County provision governs. Santa Clara County cities took a variety of approaches in adopting their own initial ordinances and extensions or relying on the County Moratorium. Cities may rely on their own local police powers and powers under a locally declared emergency.

On June 2, 2020, the County extended its moratorium through August 31, 2020 and amended its repayment period from 120 days after expiration of its moratorium to up to six months after the moratorium expires to repay at least 50 percent of the past-due rent and up to 12 months after the moratorium expires to repay in full the past-due rent. On August 11, 2020, the County of Santa Clara's Board of Supervisors directed County Counsel to bring back an ordinance on August 25, 2020, extending its moratorium and to possibly include other related actions as well. It is anticipated that the County will extend its moratorium through September 30, 2020.

Notably, the City of Santa Clara recently extended its moratorium through September 30, 2020, and the City of San Jose will be considering an extension through September 30, 2020 on August 25, while the cities of Palo Alto and Sunnyvale drafted their moratoria to expire after termination of the local emergency.

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

Jurisdiction	Date Eviction Moratorium Adopted	Rent Payback Period	Eviction Moratorium Extension
Santa Clara County	3/24/2020	Full repayment within 12 months of expiration with at least 50% due at 6 months.	Board to consider extension on 8/25.
Mountain View	3/27/2020	180 days after expiration of moratorium.	Council to consider extension on 8/25.
Cupertino	No City ordinance; relies on County ordinance.	Will follow County Moratorium.	No
Los Altos	No City ordinance; relies on County ordinance.	Will follow County Moratorium.	No
Los Gatos	3/24/2020	After end of local emergency declaration.	Expired on June 22, 2020; follows County Moratorium.
Palo Alto	3/23/2020	120 days after County proclaims termination of emergency.	Effective until 121st day after County's termination of emergency.
San Jose	3/17/2020	Full repayment within 12 months of expiration with	Council to consider extension to 9/30 on 8/25.

Jurisdiction	Date Eviction Moratorium Adopted	Rent Payback Period	Eviction Moratorium Extension
		at least 50% due at 6 months.	
Santa Clara (City)	3/24/2020	120 days after expiration of moratorium.	Extended to 9/30/2020.
Sunnyvale	3/31/2020	180 days after termination of local emergency.	Effective until 180 days after City's termination of emergency.

The table makes clear that Santa Clara County cities are taking a variety of approaches in adopting and extending their ordinances. Although cities have latitude to use police powers to enact their own specific provisions, it has become increasingly apparent to staff that there is value in aligning the most significant provisions of the City Moratorium with the County Moratorium. This will result in additional clarity and certainty to landlords and tenants in Mountain View as well as to City staff who administer the City Moratorium.

Staff, therefore, recommends extending the City Moratorium through September 30, 2020 to align with the County and also include language that addresses future extensions by the County or, if the County does not further extend, provide that the City Moratorium remains in effect until the City terminates its local emergency.

The proposed language reflects a clear intent to align with the County and avoids the need to return to Council frequently to consider future extensions.

In addition, consideration of an extension also presents an opportunity for the City to align its tenant repayment period with the County's. Because the County Moratorium requires full repayment within 12 months of expiration, with at least 50 percent due at six months, and the City currently requires repayment within 180 days of expiration, some confusion has arisen, specifically tenant inquiries regarding the repayment timeline, and the provision in the County Moratorium that states that the more protective County repayment provision controls. Therefore, staff also recommends that the City Moratorium's repayment period align with the County's repayment period.

State Legislation

Two active bills, Assembly Bill 1436 (AB 1436) and Senate Bill 1410 (SB 1410), pertaining to COVID-19-related eviction protections for tenants, are pending in the State Legislature. Both bills apply to residential tenants and property owners and include mobile homes. The enactment of one or both of these bills would likely preempt local eviction moratoria and render local eviction moratoria moot. Staff is recommending Council still consider extending its ordinance because of the uncertainty surrounding the State legislation.

Staff is actively monitoring the bills and, as of the date of this report's publication, the bills remain pending in committee hearings. Currently, neither bill is designated as immediately effective urgency legislation; however, there has been some discussion in committee hearings of designating it as such due to the pressure on the State Legislature to take action due to the repeal of the Judicial Council's emergency rules effective September 1, 2020.

AB 1436 would relieve a tenant from being guilty of an unlawful detainer action, or eviction, if the tenant makes payment, vacates the property, or delivers a signed attestation of COVID-19-related financial distress and prohibits the application of security deposits to satisfy any rental debt unless the tenant agrees in writing. AB 1436 also allows for borrowers to request forbearance on mortgage obligations upon affirmation of difficulties to meet those obligations due to the COVID-19 emergency. The bill relieves tenants and borrowers from rental debt or forbearance from March 4, 2020 through either 90 days after the termination of the COVID-19 state of emergency or April 1, 2021, whichever occurs earlier, and it prohibits evictions for any unpaid balances left over from that period for 15 months after the date the COVID-19 state of emergency terminates or April 1, 2022, whichever is earlier.

SB 1410 would allow property owners to offer their tenants COVID-19 eviction relief agreements, which would: (i) grant owners sellable tax credits, which could be claimed for a 10-year period, starting in 2024, in order to compensate them for unpaid rent; and (ii) require tenants to repay any unpaid rent deferred under these agreements to the State over the same 10-year period. Tenants who refused to enter into these agreements could be evicted for nonpayment of rent.

Federal Actions

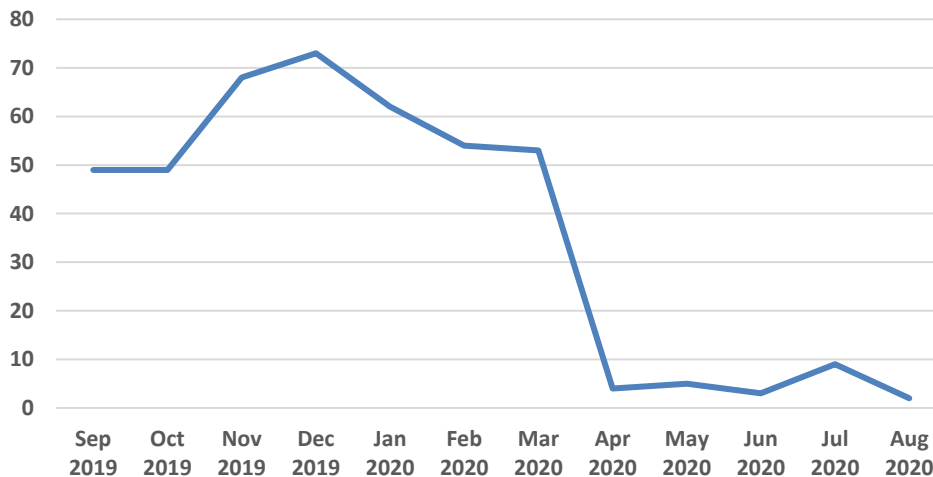
The Federal government has taken some actions related to evictions and tenant protections, but none provide the focused relief that the City and County Moratoriums

accomplish. For example, most recently, on August 8, 2020, President Donald Trump issued several Executive Orders related to COVID-19, one of which was the “Executive Order on Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners.” This order does not provide immediate relief to renters or homeowners as it only directs the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, the Secretary of the Treasury, and the Secretary of Housing and Urban Development to consider and identify ways to minimize evictions and foreclosures, and “promote” the ability of renters and homeowners to avoid evictions or foreclosures.

Effectiveness of City Moratorium to Date

Since its adoption, the City Moratorium appears to have been effective as a tool to support the City’s rent relief efforts. The City of Mountain View’s Rent Stabilization Program staff reports a 91 percent decrease in the average number of Failure to Pay Rent Notices filed monthly with the City for Community Stabilization and Fair Rent Act (CSFRA) covered units. Prior to the City Moratorium, the City received an average of 59 notices per month; however, since the start of the City Moratorium, the City has received an average of five notices per month (see Figure 1 below).

Figure 1: Failure to Pay Rent Notices



In most cases, landlords provided information regarding the City Moratorium to tenants. The City has mailed informational flyers to all Mountain View residents and CSFRA-covered landlords, e-mailed information to tenants and landlords who have registered on the Rent Stabilization Program’s e-mail distribution list, updated its website with the latest information in multiple languages, and continues to provide education to both

tenants and landlords via webinars and participation in community-based forums. See website at: www.mountainview.gov/depts/comdev/preservation/rentstabilization/evictionmoratorium/default.asp).

Based on this data, the City Moratorium, in combination with a multi-pronged education and outreach strategy, appears to be an effective tool to protect tenants, and it is recommended that it be extended to provide continued protection.

Related COVID-19 Rent Relief Program and Repurposing Funding from Small Landlord Assistance Program

Other City relief efforts are directly related to the protection of tenants and landlords due to the COVID-19 crisis. On March 17, 2020, the City Council approved \$500,000 from the Below-Market-Rate (BMR) Housing Fund 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 \$1.1 million in Federal Community Development Block Grant (CDBG) funding. On May 5, 2020, Council appropriated an additional \$1.0 million from the BMR Housing Fund, amounting to total City-provided funding towards this program of \$2.6 million.

Community Services Agency (CSA) has been expending the initial City-provided BMR funding and CDBG funding as well as other funds from private fundraising. During that time, the funding appropriation for the last City-provided amount of \$1.0 million lapsed at the end of the 2019-20 fiscal year; therefore, these funds will need to be reappropriated in the current fiscal year.

CSA was able to raise an additional \$1.2 million through their fundraising efforts, bringing total program funding to approximately \$3.8 million.

Demand for the assistance has remained high. Since the program began on March 25, 2020 to August 17, 2020, CSA has received over 2,300 applications, assisted over 1,200 households, and disbursed approximately \$2.1 million (average of \$1,750 per rental assistance check). This leaves approximately \$1.7 million remaining in the program.

While there is priority processing for households requesting their first month's assistance, CSA recently began issuing a second month's assistance to households as allowed by the program in parallel with qualifying new households. Thus, of the 1,200 recipients, 850 households have received one month of assistance, and approximately 350 households have received two months of assistance (the maximum is two months). Separately, there

are currently 370 households who have applied and are awaiting a determination of whether they qualify for assistance. If all 370 households qualify, there would be enough funding to meet that need. However, the remaining \$1.7 million is not enough to fully assist all 370 new recipients and provide a second month of assistance to qualified households. Given the current rate of disbursements, it is estimated that the funding would be depleted in approximately two months. Additionally, CSA anticipates the need for assistance to continue and, therefore, continues to fundraise for the C-19 RRP.

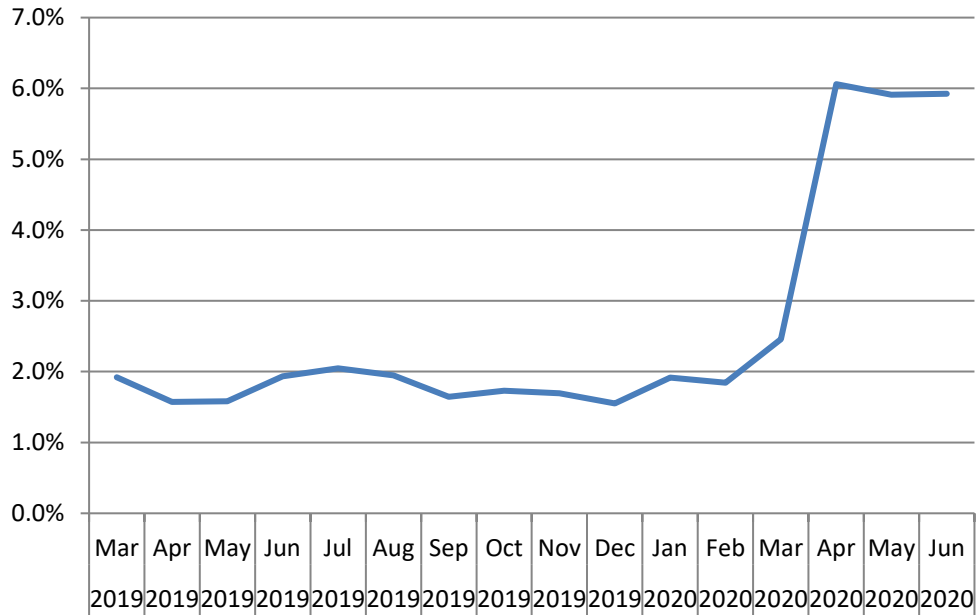
In April 2020, a separate \$100,000 Small Landlord Relief Program was created per Council direction as part of the City's overall small business relief efforts. The purpose of the Program is to provide loans to landlords who own nine units or fewer in Mountain View and are impacted by COVID-19 to pay for certain qualifying costs. To date, no loans have been disbursed. A small number of landlords have inquired about the Program, but they ultimately did not apply or it was determined early in the process that they did not qualify.

For this reason, **staff recommends redirecting \$100,000 in funding from the Small Landlord Relief Program administered by Main Street Launch to the COVID-19 Rent Relief Program as administered by CSA**, given that: (1) no funding from the Small Landlord Assistance Program has yet been disbursed; (2) rental assistance provided to tenants simultaneously benefits landlords; and (3) it is anticipated that there will be continued demand for rental assistance due to continued economic uncertainty.

Continued Economic Impacts and Uncertainty

As mentioned, CSA has indicated that it expects continued need for tenant assistance due to continued economic impacts and uncertainty. Recent unemployment data appears to support that perspective. The chart below shows the most recent unemployment data available going back 16 months based on figures from the Bureau of Labor Statistics. For the full year prior to the beginning of Shelter-in-Place in March 2020, the unemployment rate in Mountain View was just below 2 percent. Immediately after Shelter-in-Place went into effect, the April 2020 unemployment rate tripled to over 6 percent, where it has largely remained.

Figure 2: Unemployment Rate in Mountain View (March 2019 to June 2020)



Notably, the current unemployment rate likely understates the severity of the problem. The unemployment rate is calculated based on the labor force (i.e., those who are working or actively looking for employment). However, the Mountain View labor force declined by approximately 3,000 persons, yet the unemployment rate still tripled. Assuming that some or even many of those individuals who stopped working or looking for work continue to live in Mountain View, then the pandemic's actual impact on employment in the City is worse than the figures show.

Finally, there appears to be consensus that the duration of the economic impact and the nature of the recovery (for example, whether it is a "U," "V," or "W"-shaped recovery) is difficult to predict, the downturn has exacerbated existing systemic inequities, and lower-wage jobs such as restaurant and service jobs could take longer than other occupations to return to prior levels.

Given these factors, extending the City Moratorium would provide support and stability for tenants who remain economically impacted and may have continued or increasing difficulty paying rent.

CONCLUSION AND RECOMMENDATIONS

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. As set forth in this report, the severe potential impacts of the COVID-19 crisis continue to hinder/prevent the ability of tenants to pay rent, and the consequence of potential mass evictions justify the amendment extending the term of the City Moratorium and repayment period. Adoption requires five votes per City Charter Section 514, and the ordinance becomes effective immediately upon adoption. In addition, related actions regarding funding related to relief efforts are required. Staff, therefore, recommends the following:

1. 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 and Repayment Period, to be read in title only, further reading waived, effective immediately upon adoption (Attachment 1 to the Council report). (Five votes required)
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4. Reappropriate in Fiscal Year 2020-21 the \$1.0 million from the Below-Market-Rate Housing Fund approved by City Council on May 5, 2020. (Five votes required)
5. Amend the Agreement with Community Services Agency for the COVID-19 Rent Relief Program by \$1.1 million for a total amount not to exceed \$2,734,702.

FISCAL IMPACT

The agreement with CSA for the COVID-19 Rent Relief Program would be for a total \$2,734,702 from three funding sources – BMR Housing Fund, CDBG, and General Non-Operating Fund – over two fiscal years. Authority for agreement approvals set by Council Policy A-10 is administered by department and fiscal year. For Fiscal Year 2020-21, there is currently an agreement in the City Manager’s Office with CSA to expand

mobile shower services for the homeless using \$15,000. The \$100,000 funding from the Small Landlord Relief Program is also in the City Manager's Office, making the total for agreements with CSA in the City Manager's Office for Fiscal Year 2020-21 \$115,000.

There is a cost to administer the City Moratorium, primarily related to staff overtime and education and outreach. It is recommended that \$20,000 in General Housing Funds be used to pay for these costs through September 30, 2020. If the City Moratorium is extended beyond September 30, it is estimated that each additional month will have \$5,000 in administrative costs, which will also be paid for by the General Housing Fund.

ALTERNATIVES

1. Do not extend the City Moratorium or extend the repayment period.
2. Do not take the related actions in Recommendations 2 through 5.

PUBLIC NOTICING – Agenda posting.

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KC-DF/6/CAM
011-08-25-20CR
200442

Approved by:

Kimbra McCarthy
City Manager

Attachment: 1. Amended Urgency Ordinance Revised 8-22-20