



CITY OF PALO ALTO OFFICE OF THE CITY ATTORNEY

April 6, 2020

The Honorable City Council
Palo Alto, California

SECOND READING: Adoption of an Ordinance Establishing a Temporary Moratorium on Residential Tenant Evictions Resulting From the COVID-19 Emergency (FIRST READING: MARCH 23, 2020, PASSED 7-0); and Discussion and Direction on Extending the Evictions Moratorium to Businesses, Nonprofit Organizations, and Other Commercial Tenants

Recommendation

Staff recommends that the Council:

- A. Find the proposed Ordinance exempt from the California Environmental Quality Act pursuant to Section 15301 of the CEQA Guidelines, and adopt the Ordinance (Attachment A) Establishing a Temporary Moratorium on Residential Evictions for Tenants with Substantial Income Loss Due to the COVID-19 State of Emergency.
- B. Discuss and provide direction to staff on whether to extend the temporary moratorium to protect commercial tenants from eviction due to the COVID-19 state of emergency.

Background

On March 23, 2020, the Council adopted an urgency ordinance and approved the ordinance now presented for a second reading, establishing a temporary moratorium on residential tenant evictions for nonpayment of rent due to the coronavirus (COVID-19) pandemic and state of emergency. The following day, the Santa Clara County Board of Supervisors adopted a countywide evictions moratorium applicable to residential and certain small commercial tenants. The County's ordinance stated that it does not supersede cities' ordinances to the extent a city ordinance provides greater tenant protections, but otherwise the County's ordinance applies to cities and towns in the County, in addition to the unincorporated areas. Accordingly, in Palo Alto both the City ordinance and the County ordinance apply. Staff has made proposed changes to the Palo Alto ordinance to better align with the County ordinance to reduce confusion and to address a potential gap in protections for tenants who have not yet resided in their residential units for 12 months. The changes made to the ordinance approved on first reading are shown in underline and strikethrough.

At the March 23rd Council meeting, the Council also gave direction to staff to prepare an ordinance providing similar protections to small businesses and nonprofit organizations. However, given the County's subsequent adoption of a moratorium on commercial evictions and potential action by the State Legislature, staff seeks further input from Council on whether to proceed with the City's own commercial evictions moratorium ordinance or to instead rely on the County ordinance and devote staff resources to consider other actions to assist the business and nonprofit community in Palo Alto.

Discussion

Soon after Palo Alto adopted its urgency ordinance, Santa Clara County enacted a moratorium on residential and certain commercial tenant evictions that it stated applies throughout the county, including in cities and towns within the county. Because the County made a late decision to expand its ordinance beyond the unincorporated areas, a number of other jurisdictions in the county (including the cities of Santa Clara, Gilroy and Cupertino, and the town of Los Gatos) had their own ordinances on their council agendas on the same day the county board of supervisors approved the county ordinance. The County's ordinance is substantively similar to Palo Alto's and other previously adopted ordinances like San Jose and San Francisco's ordinances, prohibiting residential tenant evictions for rent nonpayment due to substantial income loss related to COVID-19, but not affecting the tenant's continuing obligation to pay rent, and providing a safe harbor of 120 days after the end of the state of emergency to pay the back rent without risk of eviction for nonpayment.

Proposed modifications to align with the County ordinance with respect to residential tenant evictions

The County's ordinance is broader than Palo Alto's in two respects. First, on residential evictions, it prohibits "no-fault" evictions (as defined in AB 1492, the state's recently enacted "just cause" eviction law, which became effective January 1, 2020¹) if the tenant has experienced substantial income loss or incurred substantial medical costs due to the COVID-19 pandemic. Because the state's just cause eviction law only applies to tenants who have resided in their units for at least 12 months, tenants who don't yet qualify for the state protections could be evicted without a stated reason, even if the underlying reason may be failure to pay full rent. Under the County ordinance, landlords could not evict tenants for nonpayment of rent (ordinarily a "for-cause" reason) or for a no-fault reason if the tenant has had substantial financial impact due to COVID-19 related income loss or medical costs; tenants could still be evicted for a for-cause reason (i.e., breach of other lease provisions) except for nonpayment of rent related to the COVID-19 pandemic. The proposed changes to the City's ordinance would align with the county ordinance as described, including requiring landlords to provide the reason for termination of tenancy while the ordinance is in effect. However, the City's

¹ "No-fault" reasons include if the landlord wants to move in to the unit or move in a close family member, if the landlord plans to take the unit off the rental market, or if the landlord intends to demolish or substantially remodel the unit such that it is uninhabitable for at least 30 days.

ordinance would apply only to tenants who have incurred substantial job-related income loss, as addressed in the Governor’s Executive Order, not tenants who have only sustained medical costs without related income loss. Those tenants who have sustained COVID-19 related medical costs would be protected under the County ordinance.

The City’s ordinance would remain in effect through the local emergency proclaimed by the City, as extended by the Council with findings of continuing necessity every 60 days. The County ordinance expires concurrently with the Governor’s March 16th Executive Order which currently is in effect through May 31. Although it is likely that both the Executive Order and the County ordinance will be extended, if the County ordinance terminates earlier than the City’s ordinance, the protections of the City’s ordinance would still apply to Palo Alto tenants and landlords.

Commercial tenant evictions

The County ordinance is also broader than Palo Alto’s ordinance in its applicability to commercial tenant evictions for small businesses, specifically evictions from “any real property used for business, income-producing purposes, or any purpose other than for residential use, however organized, that meets the standard for a small business in the industry in which that entity operates as defined in the U.S. Small Business Administration’s table of size standards by industry” (13 CFR sec. 121.201). The Small Business Administration (SBA) uses annual receipts or number of employees to establish thresholds for businesses that vary by sector or sub-sector. The table below illustrates the thresholds identified by the SBA; businesses which fall below the employee or annual receipts thresholds are considered small and would be protected from COVID-19 related evictions under the County ordinance. The SBA calculates annual receipts as “the ‘total income’ (or ‘gross income’) plus the ‘cost of goods sold.’”²

Federal Small Business Administration Size Standards			
The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small.			
NAICS* Code	Industry Title	Size Standards in Millions of Dollars	Size Standards in Number of Employees
Sector 44 – 45 Retail Trade			
442110	Furniture Stores	\$22.0	
448140	Family Clothing Stores	\$41.5	
451211	Book Stores	\$30.0	
Sector 54 – Professional, Scientific and Technical			
541110	Offices of Lawyers	\$12.0	
541211	Offices of Certified Public Accountants	\$22.0	
541715	Research and Development in the Physical, Engineering, and Life Sciences (except		1,000

² <https://www.sba.gov/federal-contracting/contracting-guide/size-standards>

	Nanotechnology and Biotechnology)		
Subsector 624 – Social Assistance			
624410	Child Day Care Services	\$8.0	
Sector 71 – Arts, Entertainment and Recreation			
71110	Theater Companies and Dinner Theaters	\$22.0	
Subsector 722 – Food Services and Drinking Places			
722511	Full-Service Restaurants	\$8.0	
<i>*North American Industry Classification System</i>			
Information available at: https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=13%3A1.0.1.1.17#se13.1.121_1201			

At the City Council meeting on March 23, 2020, Council discussed the scope of a potential local commercial eviction moratorium. This included a discussion of the size of businesses that would be eligible for protection, with 20 employees or 50 employees suggested as potential thresholds. Since the County ordinance utilizes the SBA definition of a small business, the ordinance applies to some industries based on employee size and others based on annual receipts.

Based on the high employee and annual receipts thresholds provided by the SBA, it appears the proposed County ordinance would apply to many Palo Alto businesses and non-profit organizations. In contrast, limiting the ordinance’s reach to 20 or 50 employees may inadvertently leave out businesses hit hardest by the Shelter in Place Orders. For example, based on 2019 Business Registry data, the average Palo Alto restaurant has 30 primary employees. Yet some restaurants have 60, 70, or as many as 85 primary employees. More information about annual receipts of Palo Alto businesses by industry would be needed to assess businesses that fall inside and outside the bounds of the County ordinance. For example, any full-service restaurant with annual receipts over \$8 million would not be eligible under the County ordinance.

In addition to the County measure, State Senator Scott Weiner has introduced an amended senate bill SB 939 to prohibit eviction of tenants of commercial real property, including businesses and non-profit organizations, throughout the state during the pendency of the state of emergency declared by the Governor on March 4 related to COVID-19. The State Legislature does not return in session until April 13, and it is anticipated the bill will be further amended when the Legislature reconvenes prior to votes on the bill.

Given the likelihood of further state action in the coming weeks, staff believes it would be prudent to operate under the County ordinance for now and wait until state mandates are better defined before determining whether additional local action is warranted.

Governor’s Executive Order of March 27, 2020

Governor Newsom's Executive Order signed on March 16, 2020 allowed local jurisdictions to regulate residential and commercial evictions to protect tenants from eviction for nonpayment of rent if they are unable to pay as a result of substantial income loss related to COVID-19. On March 27, the Governor issued another Executive Order extending the time for residential tenants served with an unlawful detainer action under Code of Civil Procedure Section 1167 to respond to the summons and complaint (from 5 days as ordinarily applies to 60 days), and prohibiting the enforcement of an eviction order, if the tenant is unable to pay the full rent due to reasons related to COVID-19 and meets other conditions. The Executive Order did not modify the authorization to local jurisdictions to enact their own protections in the prior Executive Order; both orders remain in effect through May 31.

The State actions taken to date on tenant evictions are no more protective than the County and City ordinances, and do not conflict with the local actions. The most protective provisions among the State, County and City's enactments will apply. The City proposes to include minor amendments to its ordinance to better align with the county so as to reduce potential confusion among affected tenants and landlords.

Stakeholder Engagement

The staff report was posted to the City's website on April 2, 2020. Additional support for residents and businesses experiencing financial stress related to the COVID-19 pandemic is updated daily on the City's website as well as through social media, blogs and e-newsletters to the community.

Environmental Review

The proposed ordinances are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15601 of the CEQA Guidelines because it can be seen with certainty that there is no possibility that the ordinances will have a significant effect on the environment.

ATTACHMENTS:

- Ordinance Prohibiting Residential Evictions Related to Coronavirus -- 2nd reading (PDF)

Department Head: Molly Stump, City Attorney

Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Relating to a Temporary
Moratorium on Residential Evictions ~~for Nonpayment of Rent~~ Related During to
the COVID-19 State of Emergency

The Council of the City of Palo Alto ORDAINS as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

A. On March 4, 2020, California Governor Gavin Newsom declared a State of Emergency due to the threat of Coronavirus Disease 2019 (“COVID-19”).

B. On March 9, 2020, Santa Clara County reported there were 43 cases of persons testing positive for COVID-19, an increase of 23 confirmed cases in 5 days. The County also experienced its first death due to the virus. Due to the increased threat and evidence of community transmission of the virus, the County Public Health Officer issued an order prohibiting mass gatherings attended by 1,000 persons until March 31, 2020.

C. On March 12, 2020, due to the escalating increase in cases and community spread of COVID-19 in Santa Clara County, City Manager Ed Shikada, acting as the Director of Emergency Services, issued a Proclamation of Local Emergency. The City Council ratified the issuance of the proclamation on March 16, 2020.

D. On March 13, 2020, the County Public Health Officer issued a new order mandating a countywide moratorium on gatherings of more than 100 persons and a conditional countywide moratorium on gatherings between 35-100 persons. Most school districts throughout the San Francisco Bay Area also announced closures for three weeks commencing the following week on March 16, 2020.

E. On March 15, 2020, Governor Newsom directed the closing of all bars, nightclubs, brewpubs, and wineries in the state, and called for residents age 65 and older to self-isolate, to increase social distancing and protect persons most vulnerable to COVID-19. At the same time, he emphasized the plight of the thousands of unsheltered persons in the state as a top public health concern.

F. On March 16, 2020, the public health officers for the six Bay Area counties, including Santa Clara County, took the unprecedented and dramatic step of issuing “shelter-in-place” orders directing county residents to shelter at home for three weeks beginning March 17 (the “Shelter-in-Place Order” or “Order”). The Order limits activity, travel, and business functions to only the most essential needs. The Order requires all businesses other than “essential businesses”, as defined, to cease activities at facilities located in the county. Three days later, on March 20, the Governor issued a shelter-in-place order for the entire state.

G. Following prior guidance and recommendations of public health officials and experts over the past month, Californians in particularly impacted areas like Santa Clara County

had already begun observing enhanced social distancing practices, including increased telework on a voluntary basis. Under the ~~more recent~~ county health orders that became effective on March 17~~6~~, 2020, and were updated on March 31, the vast majority of city residents and workers are not able to report to work and many businesses have closed. As a result, restaurant, retail, tourism, and hospitality business has significantly declined and will continue to decline with mandatory closures now in effect for many businesses and most workers required to work remotely at home if they are able to work at all. Workers have been impacted by lost wages and layoffs. Parents have had to miss work to care for home-bound school-age children.

H. Many tenants have experienced sudden income loss, and further, more severe income impacts are anticipated. The loss of wages caused by the effects of COVID-19 may impact tenants' ability to pay rent when due, leaving tenants vulnerable to eviction.

I. Providing tenants with short-term protection from eviction due to the inability to pay rent will help avoid increasing the homeless population and stabilize the rental housing market by reducing displacement. This need is even more acute while in the middle of a growing pandemic with in-home sheltering mandated to reduce the community spread of COVID-19, the threat of overburdening of the health care system and resulting fatalities.

J. During this state of emergency, and in the interests of protecting the public health and preventing the transmission of the coronavirus, it is essential to avoid unnecessary displacement of tenants. Prohibiting evictions on a temporary basis is needed until the spread of the virus can be minimized and the emergency restrictions lifted.

K. On March 24, 2020, the day after the Council first considered and approved this Ordinance, the Santa Clara County Board of Supervisors adopted an urgency ordinance prohibiting tenant evictions related to the COVID-19 pandemic that it applied as an emergency action throughout the county, including in cities such as Palo Alto. The county's ordinance provides substantially similar protections as this Ordinance. The county's ordinance did not foreclose cities from adopting their own ordinance, nor supersede already adopted ones, but instead stated that the most protective provisions would apply. The county's ordinance is in effect through May 31, 2020, as may be extended.

SECTION 2. Title

This Ordinance shall be known as the "COVID-19 Eviction Moratorium Ordinance".

SECTION 3. Definitions

A. "Affected Tenant" shall mean a Tenant who has, as a result of the COVID-19 pandemic, or declaration of the County Public Health Officer, or other local, State or Federal Authority, suffered a substantial loss in income through their employment as a result of any of the following: (1) job loss; (2) a reduction of compensated hours of work; (3) employer's business closure; (4) missing work due to a minor child's school closure; or (5) other similarly-caused reason resulting in a loss of income due to COVID-19.

- B. “Covered Reason for Delayed Payment” includes, but is not limited to, any of the following: (1) Tenant lost household income as a result of being sick with Coronavirus, or caring for a household or family member who is sick with Coronavirus; (2) Tenant lost household income as a result of a lay-off, loss of hours, or other income reduction resulting from Coronavirus or the state of emergency; (3) Tenant lost household income due to compliance with a recommendation from a government agency to stay home, self-quarantine, or avoid congregating with others during the state of emergency.
- D. “Landlord” means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Rental Unit, and the agent, representative, or successor of any of the foregoing.
- F. “Rental Unit” means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which household pays rent for the use and occupancy for periods in excess of seven days whether or not the residential use is a conforming use permitted under the Palo Alto Municipal Code.
- G. “Tenant” means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupancy of a Rental Unit.

SECTION 4. Applicability

This Ordinance applies to Affected Tenants in any Rental Unit and Landlords of Affected Tenants. This Ordinance applies to nonpayment and certain no-fault eviction notices and unlawful detainer actions based on such notices, served or filed on or after the date of introduction of this Ordinance.

SECTION 5. Prohibited Conduct

- A. During the term of this Ordinance, no Landlord shall take actions to evict a Tenant for nonpayment of rent or for a no-fault cause for eviction, as those causes are defined in Civil Code Section 1946.2(b)(2)(A)-(B) and (D), if the Tenant demonstrates that as a result of the COVID-19 pandemic, or declaration of the County Public Health Officer, or other local, State or Federal Authority, including government-recommended precautions related to the COVID-19 pandemic, the Tenant has suffered a substantial loss in income through their employment as a result of any of the following: (1) job loss; (2) a reduction of compensated hours of work; (3) employer’s business closure; (4) missing work due to a minor child’s school closure; or (5) other similarly-caused reason resulting in a loss of income due to COVID-19 (collectively referred to as “Covered Reasons for Delayed Payment”).
- B. A Landlord who knows that a Tenant cannot pay some or all of the rent temporarily for the reasons set forth above, shall not serve a notice pursuant to Code of Civil Procedure Section 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or

quit notice, or otherwise seek to evict for nonpayment of rent.

- C. A Landlord knows of the Tenant's inability to pay rent within the meaning of this Ordinance if the Tenant notifies the Landlord in writing of lost income and inability to pay full rent, and provides documentation to support the claim. For purposes of this section, "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 or enforcing this provision.
- D. A Landlord's failure to comply with this Ordinance shall render any notice of termination of tenancy, where termination would be in violation of this Section, void. Any notice of termination of tenancy served on a Tenant while this Ordinance is in effect must contain the reason for termination of tenancy. Any notice of termination served on a Tenant must also include a copy of this Ordinance as well as notice of Tenant's rights under County Ordinance No. NS-9.287 on a form approved by the County Office of Supportive Housing if the County Ordinance is in effect at the time.

SECTION 6. Continuing Obligation to Pay Rent; 120-Day Payback Period

- A. Nothing in this Ordinance shall relieve the Tenant of liability for the unpaid rent, which the Landlord may seek after expiration of the Proclamation of Local Emergency ratified and declared by the City Council on March 23, 2020 (the "state of emergency"). A Landlord may not charge or collect interest, a late fee, or penalty for rent that is delayed for the reasons stated in this Ordinance.
- B. Tenants who were afforded eviction protection under this Ordinance shall have up to 120 days after the City of Palo Alto proclaims the termination of the state of emergency, to pay their Landlord all unpaid rent. During that 120-day period, the protections against eviction in this Ordinance apply for such Tenants.

SECTION 7. Affirmative Defense to Eviction; Penalties and Remedies

- A. Affirmative Defense. Each Landlord that seeks to terminate a tenancy of an Affected Tenant must comply with this Ordinance. Non-compliance with any applicable provision of this Ordinance shall constitute an affirmative defense for an Affected Tenant against any unlawful detainer action under California Code of Civil Procedure Section 1161, as amended.

To assert this affirmative defense, an Affected Tenant shall have notified their Landlord prior to the ~~notice of termination of tenancy~~Notice of Termination, expiring that they are an Affected Tenant and establish that, as a as a result of the COVID-19 pandemic or declaration of County Public Health Officer, or other State or Federal Authority, suffered substantial loss of income caused by any of the following: (1) job loss; (2) a reduction of compensated hours of work; (3) work closure; (4) missing work due to a minor child's school closure; or (5) other similarly-caused reason resulting in a loss of income due to COVID-19, and has provided written documentation or other objectively verifiable proof

of the same. The following documents shall create a rebuttable presumption that the Affected Tenant has met the documentation requirement set forth above, however, they are not the exclusive form of documentation demonstrating impacts to income due to COVID-19:

1. Letter from employer citing COVID-19 as a reason for reduced work hours or termination;
2. Employer paycheck stubs;
3. Bank statements.

B. Civil Remedies.

1. Any Landlord that fail(s) to comply with this Ordinance may be subject to civil proceedings for displacement of Affected Tenant(s) initiated by the City or the Affected Tenant Household for actual and exemplary damages.
2. Whoever is found to have violated this Ordinance shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees.
3. Treble damages shall be awarded for a Landlord's willful failure to comply with the obligations established under this Ordinance.
4. Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a Tenant or non-Tenant third party for the damage done to said Landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.

SECTION 8. Severability

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 9. Environmental Review

The Council finds that the Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15601 of the CEQA Guidelines because it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment.

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SECTION 10. Effective Date

This Ordinance shall be effective on the thirty-first day after the date of its adoption and shall remain in effect until the 121st day after the City Council proclaims the termination of the state of local emergency ratified and declared by the Council on March 23, 2020, as extended.

SECTION 11. Avoidance of Inconsistencies

To avoid inconsistencies, the City Manager may suspend any part of this Ordinance in the event that the President of the United States, United States Congress, Governor of the State of California, or California State Legislature adopts any order or legislation that is inconsistent with the actions directed in the Ordinance.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

NOT PARTICIPATING:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Director of Planning & Development
Services