



DATE: June 22, 2021

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Temporary Eviction Moratorium: Adoption of an Emergency Ordinance Enacting a Moratorium on Residential Evictions

RECOMMENDATION

That Council adopts an Emergency Ordinance (Attachment II) establishing a temporary moratorium on residential evictions in the City of Hayward for non-payment of rent caused by the coronavirus (COVID-19) pandemic, or for a no-fault reason unless the eviction is necessary for the health and safety of the tenant or landlord effective July 1, 2021 through September 30, 2021.

SUMMARY

On March 24, 2020, the City Council adopted a 90-day emergency moratorium on evictions of residential tenants due to non-payment of rent caused by the COVID-19 pandemic and on no-fault evictions, which was repealed and replaced on April 7, 2020 to expand the moratorium to also prohibit eviction of commercial tenants and homeowners facing eviction after foreclosure. On June 30, 2020, the City Council extended the moratorium on residential and commercial evictions to September 30, 2020. On August 31, 2020, the Governor signed the State Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (AB 3088), which included a statewide moratorium on residential evictions and preempted local governments from extending any existing moratoria on residential evictions. On September 22, 2020, due to this change in State law, the City Council only extended the eviction moratorium on commercial evictions, which is to remain in effect until June 30, 2021.

While it is anticipated that the State will reopen soon, distribution of State and Alameda County rental assistance has been slow and tenants effected by the COVID-19 pandemic still need time to stabilize their financial situation to avoid eviction. The Statewide residential eviction moratorium under the State Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020, and extended by Senate Bill 91 (SB 91), will conclude on June 30, 2021 unless the State Legislature votes to extend the protections.

Staff recommends enacting a moratorium on residential eviction from July 1, 2021 through September 30, 2021, absent extension of the statewide moratorium, to allow time for residential tenants to stabilize their finances, secure financial assistance, and/or enter into repayment agreements with their landlords.

Staff does not recommend extending the commercial eviction moratorium because the additional time extension is unlikely to change outcomes for commercial tenants unable to pay rent. Businesses have continued to remain open and lease interest has increased as the Bay Area region has steadily progressed consistently through less restrictive tiers outlined in the State's Blueprint for a Safe Reopening. Over the past year, commercial tenants and landlords had significant opportunity to work out payment plans or other agreements to address back rent associated with COVID-19's disruptions. Extending the commercial moratorium an additional three months will unlikely make a difference in terms of displacement of businesses and may hinder the attraction of new businesses and the recovery of commercial properties.

Enactment of an emergency ordinance would require at least five affirmative votes from the Council. If only four Council members vote for the proposed ordinance, then adoption would occur at the next Council meeting and the ordinance would go into effect 30 days after adoption.

BACKGROUND

On March 1, 2020, the Alameda County Public Health Department and Solano County Public Health Department reported two presumptive cases of COVID-19, pending confirmatory testing by the Centers for Disease Control (CDC), prompting Alameda County to declare a local health emergency.

On March 4, 2020, the Governor proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19.

On March 11, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to the spread of COVID-19, which was affirmed by the City Council on March 17, 2020.

On March 16, 2020, the Governor of the State of California issued Executive Order N-28-20¹ in response to the economic impacts of COVID-19 that threaten to undermine California's housing security and the stability of California businesses due to substantial loss of income, which authorized local jurisdictions to prohibit commercial and residential evictions due to non-payment of rent or mortgage payments, where failure to pay is related to the COVID-19 pandemic.

On March 17, 2020, Alameda County issued a legal order directing residents to shelter at home for three weeks, which has been amended and reissued multiple times, no longer includes an end date, and outlines a phased reopening plan for the County. The original order limited activity, travel, and business functions to only the most essential needs. The Shelter-in-Place Order has caused and will continue to cause a decrease in income for many Hayward businesses and residents, which will increase the risk of job loss, displacement, and

¹ State of California Executive Order N-80-20 issued March 16, 2020:
<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.16.20-Executive-Order.pdf>

homelessness. While “essential businesses” such as pharmacies and grocery stores were exempt and restaurants were only allowed to serve customers via take-out and outdoor dining only, the business community is facing severe economic injury. Businesses small and large reported a complete collapse of their revenue streams, reduced sales, and the need to layoff or reduce their workforce’s hours. While sales dramatically fell, fixed costs such as rents, health care costs, outstanding loans, and taxes remained on the books.

On March 24, 2020², the Council adopted an emergency ordinance that 1) established a temporary moratorium on evictions in the City of Hayward for non-payment of rent caused by the COVID-19 pandemic, or for no-fault evictions unless the eviction is necessary for the health and safety of the tenant or landlord (e.g. unit is deemed uninhabitable), and 2) provided residential tenants and landlords mediation services to negotiate payment agreements. At that meeting, the Council also directed staff to evaluate further the potential of including prohibitions on commercial and homeowner evictions.

On April 7, 2020³, in response to the COVID-19 pandemic and corresponding state and local emergency orders, the Council voted to expand the Temporary Moratorium on Evictions to prevent displacement of residential and commercial tenants impacted by the COVID-19 pandemic.

On April 21, 2020, the Alameda County Board of Supervisors adopted amendments to the Countywide Eviction Moratorium⁴ to provide expanded tenant eviction protections Countywide. Subsequently, the Superior Court of Alameda County issued a stay of execution of writs of possession following judgment in an unlawful detainer action until December 31, 2020. On February 5, 2021, the Court extended this stay to June 30, 2021 to align with California’s statewide eviction moratorium.

On June 30, 2020⁵, the Council adopted an Emergency Ordinance amending the temporary moratorium on residential and commercial evictions in the City for non-payment of rent or mortgage payments caused by the COVID-19 pandemic to extend the moratorium until September 30, 2020 and the repayment period an additional 90 days.

On August 31, 2020, the State enacted AB 3088 that put into place a statewide moratorium on residential evictions until January 31, 2021 and precluded local governments from extending any existing moratoria on residential evictions beyond their already enacted expiration dates. As a result, the City of Hayward could not extend its moratorium on

² March 24, 2020 City Council Meeting Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4399195&GUID=BFD696C9-8ED0-4F9F-8B99-98912C9C0679&Options=&Search=>

³ April 7, 2020 City Council Meeting Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4411520&GUID=D179CF31-EC55-4AA7-B3C1-430B1C8DC5E4&Options=&Search=>

⁴ Alameda County Moratorium:

<http://www.acgov.org/cda/hcd/>

⁵ June 30, 2020 City Council Meeting Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4580377&GUID=12885384-9D38-48A5-885F-4C0C7916C304&Options=&Search=>

residential evictions beyond September 30, 2020. The State did not enact any protections or place any restrictions on commercial evictions.

On September 22, 2020⁶, the Council adopted an Emergency Ordinance amending the temporary moratorium on commercial evictions in the City of Hayward for non-payment of rent caused by COVID-19 to extend the moratorium until January 31, 2021.

On January 26, 2021⁷, the Council extended the commercial eviction moratorium through June 30, 2021. Furthermore, on January 26, 2021, in anticipation of the sunset of AB 3088 and the termination of the residential eviction moratorium, the Council adopted an emergency ordinance enacting a moratorium on residential evictions through June 30, 2021. On January 29, 2021, Governor Newsom signed into law SB-91, COVID-19 relief: tenancy: federal rental assistance, which extended the residential statewide eviction moratorium through June 30, 2021, and created the State Rental Assistance Program.

On March 4, 2021, the Governor of the State of California issued Executive Order N-03-21 extending the timeframe for protections set-forth in Executive Order N-28-20 with respect to commercial evictions through June 30, 2021.⁸ While the State and Alameda County officially lifted most COVID-19 restrictions on June 15, 2021, many individuals are still struggling to recover from the economic hardships of the last 18 months and much of the State and County tenant relief funding has been slow to be distributed.

DISCUSSION

As a result of the State of Emergency declarations and Alameda County Shelter-in-Place Order during the COVID-19 pandemic outbreak, many residential tenants and homeowners have experienced sudden income loss, leaving them vulnerable to eviction. During the State of Emergency, the public interest in preserving peace, health, and safety, and preventing further transmission of COVID-19 will be served by avoiding unnecessary job loss, displacement, and homelessness.

The State legislature has yet to extend the residential eviction protections set forth in SB-91. While conclusion of the state of emergency is imminent, distribution of State and Alameda County rental assistance has been slow and tenants effected by the COVID-19 pandemic still need time to stabilize their financial situation; therefore, staff recommends enacting a moratorium on residential evictions effective July 1, 2021 through September 30, 2021 in the event the state does not extend the statewide moratorium to ensure protections of Hayward

⁶ Sept 22, 2020 City Council Meeting Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4646748&GUID=525441D6-E924-4A3E-AFC5-21B74FEF5B7C&Options=&Search=>

⁷ January 26, 2021 City Council Meeting Staff Report and Attachments

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4762240&GUID=3134D5B8-8823-47AC-A4DE-41D5B915DC84&Options=&Search=>

⁸ State of California Executive Order N-80-20 issued September 23, 2020:

<https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-80-20-COVID-19-signed.pdf>

tenants from eviction related to non-payment of rent related to COVID-19 and no cause evictions.

The Tenant, Homeowners, and Small Landlords Relief and Stabilization Act of 2020 put into place a statewide moratorium that precluded local governments from extending any existing moratoria on residential evictions beyond their already enacted expiration dates. Therefore, the City's moratorium on residential evictions ended on September 30, 2020. The State's legislation will sunset on June 30, 2021, unless extended. The proposed moratorium on residential evictions will cover the period between July 1, 2021 and September 30, 2021 to allow time for residential tenants to stabilize their finances, secure financial assistance, and/or enter into repayment agreements with their landlords. Attachment IV provides a summary of the terms of the moratorium, which is consistent with the City of Hayward's previously enacted residential eviction moratorium.

Nothing in the Ordinance would relieve residential tenants or homeowners of the liability for unpaid rent or mortgage payments. The City of Hayward made \$1.73 million available in federal funds from the Community Development Block Grant (CDBG) and HOME Investment programs. Through the program administrator, Bay Area Community Services (BACS), Hayward provided grants to 670 households. Of those awarded at least one grant, 48% were Hispanic/Latino and 27% were Black/African American. All funds from the program have been expended and City staff and BACS now refer community members to the County Emergency Rental Assistance Program (ERAP) for additional assistance.

The ERAP is administered by Alameda County, under the Alameda County Housing Secure Program, and together with the County's federal and state allocation will provide over \$48 million in combined rental assistance. The County is anticipating additional federal stimulus funds to continue providing rental assistance. Extension of the moratorium will protect tenants from eviction while they are in the process of seeking financial assistance from the Alameda County Housing Secure Program in the event the state does not extend its current protections.

Staff does not recommend extending the Commercial Eviction Moratorium because the additional time extension is unlikely to change outcomes for commercial tenants unable to pay rent. Businesses have continued to remain open and lease interest has increased as the Bay Area region has steadily progressed consistently through less restrictive tiers outlined in the State's Blueprint for a Safe Reopening. Alameda County entered the Red Tier on March 10, 2021; the Orange tier, which reopened most business sectors, on March 30 2021; and the Yellow tier on June 9, 2021. Each of these phases opened businesses back up and increased allowable indoor capacity limits. Over the past year, commercial tenants and landlords had significant opportunity to work out payment plans or other agreements to address back rent associated with COVID-19's disruptions. Extending the commercial moratorium an additional three months will unlikely make a difference in terms of displacement of businesses and may hinder the attraction of new businesses and the recovery of commercial properties.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of Preserve, Protect, & Produce Housing. This item is not specifically related to a project identified in the Strategic Roadmap. Staff is bringing forth this new item because economic impacts of COVID-19 threaten to undermine the stability of housing security for Hayward residents.

FISCAL IMPACT

There is no fiscal impact associated with the adoption of the extended temporary moratorium ordinances on residential evictions.

PUBLIC CONTACT

Staff has notified several key stakeholders of the proposed residential eviction moratorium extension Ordinance, including the landlord and broker associations, and residential tenant advocacy groups.

NEXT STEPS

Enactment of an emergency ordinance would require at least five affirmative votes from the Council. If only four Council members vote for the proposed ordinances, then adoption would occur at the next Council meeting and the ordinances would go into effect 30 days after adoption.

Prepared by: Christina Morales, Housing Division Manager

Recommended by: Jennifer Ott, Assistant City Manager

Approved by:



Kelly McAdoo, City Manager