



DATE: March 24, 2020

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Temporary Moratorium on Evictions: Adoption of Emergency Ordinance Establishing a Temporary Moratorium on Evictions in the City of Hayward for Non-Payment of Rent Caused by the Coronavirus (COVID-19) Pandemic, or for No-Fault Evictions and Providing Tenants and Landlords Mediation Services to Negotiate Payment Agreements and to Provide Direction to Staff to Develop a Financial Assistance Program to Help Stabilize the Rental Housing Market in Hayward

RECOMMENDATION

That the City Council:

1. Adopts an emergency ordinance that 1) establishes 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) provides tenants and landlords mediation services to negotiate payment agreements (Attachment II).
2. Adopts a resolution authorizing the City Manager to negotiate and execute an amendment to the agreement with Project Sentinel to expand mediation services up to a not-to-exceed amount of \$150,000. (Attachment III)

SUMMARY

As a result of the State of Emergency declarations and Alameda County Shelter-in-Place Order during the COVID-19 pandemic outbreak, many tenants have experienced or will experience 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 displacement and homelessness. However, in addition to the impacts on tenants, non-payment of rent will make it difficult for landlords to meet their obligations as housing service providers. To mitigate these impacts, staff proposes measures to balance the needs of both stakeholder groups. Staff recommends the adoption of an emergency ordinance that:

1. Prohibits evictions due to non-payment of rent related to loss of income or increased expenses related to COVID-19 and no-fault evictions, and

2. Provides mediation services for tenants and landlords to negotiate rent reduction agreements or repayment plans.

Additionally, staff is working on a third measure to provide financial assistance to help stabilize the rental housing market and requests Council direction to pursue development of this program. Staff is evaluating options to provide financial assistance either through a bridge loan to landlords or rental subsidy program for tenants.

Enactment of an emergency ordinance would require at least five affirmative votes from the City Council. If only four Council members vote for the proposed ordinance, then adoption would occur at the next City Council meeting and the ordinance would go into effect 30 days after adoption. If not approved as an emergency ordinance, tenants will be responsible for payment of rent for the months of April and May. Tenants impacted by the Shelter-in-Place Order without remote work options or paid leave would lose a minimum of three weeks of wages by the time the ordinance is enacted.

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-28-20 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. The Governor ordered that:

- Time limitations related to the prohibition of eviction of residential tenants be removed until May 31, 2020.
- Provisions of State law that preempt or otherwise restrict a local government's exercise of its police power to impose limitation on residential evictions related to nonpayment of rent arising out of a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of worked or substantial out of pocket medical expenses caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19 be suspended.

On March 17, 2020, Alameda County issued a legal order directing residents to shelter at home for three weeks. The order limits activity, travel, and business functions to only the most essential needs. It is anticipated that the Shelter-in-Place Order will cause a decrease in household income for many Hayward residents, which will increase the risk of displacement and homelessness.

DISCUSSION

As a result of the State of Emergency and the Alameda County Shelter-in-Place Order, many tenants have or may experience a sudden income loss and further income impacts related to the COVID-19 virus, leaving many tenants vulnerable to eviction. During the State of Emergency and in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary displacement and homelessness. However, in addition to the impacts on tenants, non-payment of rent will make it difficult for landlords to meet their obligations as housing service providers and potentially result in mortgage foreclosures or other serious financial impacts. To mitigate these impacts, staff proposes measures to balance the needs of both stakeholder groups. Staff recommends the adoption of an emergency ordinance that:

1. Prohibits evictions due to non-payment of rent related to loss of income or increased expenses related to COVID-19 and no-fault evictions, and
2. Provides mediation services for tenants and landlords to negotiate rent reduction agreements or repayment plans.

Additionally, staff is evaluating options to provide financial assistance either through a bridge loan to landlords or rental subsidy program for tenants.

The combination of these three measures is intended to help address the immediate needs of tenants who have suffered a loss of income or increased expense related to COVID-19, facilitate communication between tenants and landlords, and start to implement a plan to assist property owners to recover from the loss of rental revenue.

Eviction Moratorium

Staff recommends a 90-day moratorium on evictions for nonpayment of rent, if the tenant demonstrates that inability to pay rent is due to COVID-19, the State of Emergency regarding COVID-19, or following government-recommended COVID-19 precautions or for a no-fault eviction necessary for the health and safety of tenants, neighbors, or landlords. The moratorium on evictions does not cover other reasons for evictions that are caused by the tenant such as substantially violating material terms of the rental agreement, tenant disorderly conduct so as to destroy the peace and quiet of other tenants, or a tenant willfully damaging the premises and refusing to pay for the repair costs. Provisions of the ordinance include:

Applicability. All residential rental units, including mobile homes and shared housing.

Term. 90-days with an option to extend. It is anticipated that recovery from loss of income will extend beyond the current State of Emergency.

Prohibitions.

- Evictions during the moratorium for nonpayment of rent related COVID-19, the State of Emergency regarding COVID-19, or following government-recommended COVID-19 precautions.
- Evictions during the moratorium for no fault unless for the health and safety of tenants, neighbors, or landlords.
- Assessing late fees.
- Landlords from initiating unlawful detainer (eviction) proceedings for non-payment of rent within the 90-day period after the expiration of the moratorium.

Landlord Notification Requirement. Tenants must make a good faith effort to notify the landlord or the landlord's representative in writing of the loss of income and/or increased expense related to COVID-19 and inability to pay full rent. Tenants will be required to notify the landlord that they will be able to provide documentation that supports a claim of inability to pay rent due to the COVID-19 pandemic. Requirements to notify the landlord of inability to pay rent is intended to start early conversations to help tenants and landlords prepare for the loss of income. Tenants unable to make contact with the landlord or their representatives will continue to be protected by the moratorium.

Documentation Requirements. Tenants should be prepared to provide documentation to support their claim. This documentation could include but is not limited to medical bills; or medical reports, documents showing reduced income such as pay stubs or unemployment benefit documents, correspondence from an employer citing COVID-19 as a basis for reduction in work hours or termination of employment, or a statement signed under penalty of perjury to ensure that undocumented residents who contribute informally to the economy are protected under the provisions of the moratorium. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim documentation.

Payment of Past Due Rent. Nothing in the proposed ordinance would relieve the tenant of the liability for unpaid rent. However, tenants and landlords are encouraged to arrange payment terms that are mutually agreeable and relevant to tenants' capacity to pay. To assist tenants and landlords negotiate payment reductions or repayment plans, staff proposes to expand existing mediation services to work with tenants and landlords to establish rent reduction agreements and/or establish reasonable repayment plans. This program is further described in the following section.

No-Fault Evictions for Public Health or Safety. The carve-out for no-fault evictions necessary for public health or safety is intended to deal with a situation where the unit is uninhabitable or subject to some type of regulatory action such as a code enforcement or fire department 'red tag' order. This type of no-fault eviction is allowable in the Residential Rental

Stabilization Ordinance. This carve-out is not an opportunity to exploit or avoid the constraints of this emergency ordinance.

Expanded Mediation Services

Through the Residential Rent Stabilization Program, the City will provide mediation services to assist landlords and tenants to enter into agreements that:

- Temporarily reduce rent for a specified period of time agreed upon by both tenants and landlords. Such agreement would not affect the base rent for rent controlled units. Landlords could choose to forego a portion of rent or defer collection of a portion of the rent.
- Negotiate repayment plans to recover any non-payment of rent (either a missed payment or the difference of reduced rent and actual rent).
- Allow parties to renegotiate agreements if the crisis lasts longer than anticipated and tenants are unable to meet their obligations under the agreement.

Providing mediation services would reduce costs to the landlords associated with collection of past due rent and facilitate agreements outside the court system. Additionally, facilitating the negotiation of reduced rents can ensure that landlords receive some income to offset costs, and ensure that the base rent for units will not be affected by an agreement to reduce rent. Lastly, creating written agreements establishing repayment terms will provide landlords with some reassurance that the tenants will fulfill their obligation to pay past due rent.

The cost of mediation services would be paid for using the existing Residential Rent Stabilization budget. All residential rental units would have access to mediation services temporarily to negotiate repayment terms. It is anticipated that the contract with Project Sentinel for mediation services would exceed the City Manager's contracting authority. As a result, staff recommends approval of the resolution authorizing the City Manager to negotiate and execute an amendment to the agreement with Project Sentinel to expand existing mediation services increasing the not-to-exceed amount to \$150,000.

Financial Assistance to Help Stabilize the Rental Housing Market

Staff is evaluating options to provide financial assistance to help stabilize the rental housing market using a portion of the emergency funds authorized by the City Council to respond to the local emergency. Options include providing bridge loans to landlords to cover shortfalls in operating revenue caused by tenants' demonstrated inability to pay rent, as well as rental subsidies to tenants or landlords on behalf of the tenants impacted by COVID-19. A brief description of both options is provided below.

Bridge Loans. The City could provide low cost deferred loans to landlords to assist with the loss of operating revenue. The loan could allow enough time for rent revenue to be restored and could vary by property size. Loan forgiveness could be considered if lost rents are unrecoverable. Property owners would be required to sign a promissory note secured by a deed of trust. The loan would offset the loss of revenue, but will not completely address the

loss of rental revenue. The magnitude and impact of the lost revenue will be dependent on the population the landlord serves and the size of the property. Some housing providers have expressed concerns that they may see a 40% loss in rental income. A landlord that owns one single family rental would lose 100% of the revenue if the tenant is not working due to COVID-19 and unable to pay rent. It is anticipated that the need will be greater than the amount of funding available and staff will work on developing a program that maximizes assistance to as many property owners as possible.

Rental Subsidies. Alternatively, a rental subsidy program would help a tenant pay their rent or a portion of their rent. The payment would be made directly to their landlords. Staff would need to identify a third-party service provider to implement the program, such as potentially pooling resources with the County on their existing tenant subsidy program. However, funding limitations should be considered. Similar to providing bridge loans, money available to assist tenants would be limited and the City not likely be able to assist all tenants in covering their full rent obligations. It is likely that any rental subsidy program would offset a portion of the rent obligation, but may not completely bridge the difference between what the tenant can afford and the total amount due in order to extend resources to as many tenants and landlords as possible. In the event that tenants still owe past due rent, the City could require or encourage tenants and landlords to enter into a repayment agreement to ensure that the tenant will not be evicted after receipt of city assistance.

Staff will continue to evaluate and discuss with landlords and tenants the best way to use the limited funds as effectively as possible and will proceed to administratively develop a financial assistance package based on policy direction and guidance from Council at this meeting. Staff will provide an informational memo or report to Council on the final programmatic details once developed.

Moratorium on Rent Increases

Tenant advocates have recommended imposing a moratorium on rent increases. Advocates have expressed concern that rent increases during the State of Emergency will further compound issues with rent affordability and loss of wages due to COVID-19. While it is true that increasing rent will further indebt a tenant unable to pay their rent, rent increases permitted under the Residential Rent Stabilization Ordinance (RRSO) or under the State Tenant Protection Act (TPA) to tenants that have the capacity to pay may help landlords who have made concessions to struggling tenants and prolong that landlord's ability to provide housing. The RRSO and the TPA will prevent rent gouging. A rent increase moratorium would protect tenants from additional rent burden, but would also eliminate a resource available to landlords to address loss of rental revenue. Staff is not recommending a moratorium on rent increases at this time.

Next Steps

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

after adoption. If not approved as an emergency ordinance, tenants will be responsible for payment of rent for the months of April and May. Tenants impacted by the Shelter-in-Place Order without remote work options or paid leave will have lost a minimum of three weeks wages by the time the ordinance is enacted.

FISCAL IMPACT

There is no fiscal impact associated with the adoption of a moratorium on evictions. However, there could be a broader Citywide economic impact if additional tenants experience housing instability or homelessness or if landlords are unable to fulfill financial obligations due to unpaid rent during the State of Emergency. The provision of expanded mediation services and the cost of noticing landlords about the enactment of the emergency moratorium will be covered by the existing Rent Stabilization Budget allocation. A mailer will cost approximately \$7,000 and the mediation services will be increased by \$75,000.

Should Council support the Bridge Loan and/or Rental Subsidy program, the City will devote a portion of the \$3,000,000 Council appropriated when ratifying the Local Emergency Declaration relating to the COVID-19 Pandemic.

Allocation of funds for a financial assistance for rental housing stabilization program will be within the City Manager’s emergency appropriation authority granted by the City Council.

STRATEGIC INITIATIVES

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 housing security for Hayward residents. Staff will include this item in the next bi-annual update to Council on the Strategic Roadmap.

PUBLIC CONTACT

Staff has discussed staff’s proposal with several stakeholders, including tenant advocacy groups, landlord associations, market rate housing providers, and affordable housing providers. **Table 1** summarizes tenant advocate comments and staff’s response. **Table 2** summarizes landlord comments and staff’s response

Table 1. Tenant Advocate Comments

Tenant Advocate Comment	Staff Response
Moratorium on evictions should cover all types of evictions and halt any evictions currently in process.	The proposed ordinance does not halt all evictions. It is specific to evictions related to non-payment of rent related to COVID-19 and no-fault evictions. Staff is concerned about the potential for a “rent strike” that could further destabilize the rental market.

Tenants should not be required to provide proof of impacts of COVID-19 during the State of Emergency or shelter-in-place order because tenants may be unable to obtain the necessary documents.	The proposed ordinance requires that the tenant notify the landlord that they are able to provide documents. Staff is concerned about the potential for a “rent strike” if no documentation is required.
Tenants should not be required to notify the landlords in writing about their inability to pay rent as some tenants do not have the contact information.	The proposed ordinance requires a tenant to make a good faith effort to communicate with the landlord. A tenant that is unable to notify the landlord in writing will continue to have protections from evictions for non-payment of rent related to COVID-19.
Late fees should be prohibited.	The proposed ordinance includes a prohibition on late fees.
Protections should remain in place after the end of the state of emergency to allow tenants time to stabilize and address late rent payment.	The proposed moratorium will last 90 days with the option to extend beyond the current State of Emergency. Additionally, the proposed moratorium prevents landlords from filing for evictions based on non-payment of rent for 90 days after the moratorium expires.
Late rent accrued during the state of emergency should be recovered as consumer debt and without the threat of evictions.	The City intends to use the mediation services with Project Sentinel to assist landlords and tenants with drafting repayment plans. Such plans would provide repayment terms and help tenants avoid the threat of eviction. Additionally, the proposed moratorium prevents landlords from filing for evictions based on non-payment of rent for 90 days after the moratorium expires.
Moratorium on rent increases should be imposed as well in an effort to address housing affordability during the state of emergency.	Staff is not recommending a rent freeze at this time because the RRSO and the TPA will prevent rent gouging. In an effort to balance the needs of the tenants who have suffered loss of income and the rental property owners that will lose revenue needed to provide housing services, staff considers a rent freeze a loss of landlord resource to mitigate the impacts of lost revenue and prolong housing services.

Table 2. Landlord Comments

Landlord Comments	Staff Response
Landlords, including non-profit housing providers, expressed concern that a broad	Staff has limited the moratorium on evictions to evictions related to non-payment of rent

moratorium prohibiting all evictions might cause a rent strike, which will further destabilize the housing market.	related to COVID-19 and no-fault evictions. Staff proposed flexible documentation requirements, but tenants will have to be able to substantiate claims.
There was concern that the ordinance may require burdensome noticing requirements.	The ordinance does not require the landlords to notice the tenants regarding their rights under the moratorium.
Most landlords consulted advocated for a tenant based rental subsidy instead of a bridge loan.	Staff will continue to evaluate options in developing an appropriate program.

NEXT STEPS

If the proposed emergency ordinance is approved, staff will send a notice regarding approval of the emergency to all rental property owners. Typically, a mailer of this size will take three weeks to prepare and deliver; however, considering rent will be due April 5, staff will attempt to accelerate the mailer.

Staff will work with Project Sentinel to establish an expanded mediation program to negotiate rent payment agreements between affected tenants and landlords.

Staff will continue to work on developing a financial assistance program to mitigate the impacts of lost income resulting from COVID-19 and the Shelter-in-Place Order. Staff will provide an informational memo or report to Council on the final programmatic details once developed.

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Recommended by: Jennifer Ott, Deputy City Manager

Approved by:



Kelly McAdoo, City Manager