



DATE: April 7, 2020

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Repeal and Replacement of Temporary Moratorium on Evictions: Repeal of Existing Moratorium and Adoption of Emergency Ordinance Establishing a Temporary Moratorium on Residential and Commercial Evictions in the City of Hayward for Non-Payment of Rent or Mortgage Payments Caused by the Coronavirus (COVID-19) Pandemic to Include Prohibitions on Commercial Evictions, Lender Evictions of Homeowners, and Retaliation against Tenants

RECOMMENDATION

That Council adopts an emergency ordinance repealing the existing temporary moratorium on evictions (Ordinance No. 20-06) and imposing a new temporary moratorium in the City of Hayward for non-payment of rent or mortgage payments caused by the COVID-19 pandemic, which includes prohibitions on commercial evictions, lender evictions of homeowners, and retaliation against tenants and homeowners (Attachment II).

SUMMARY

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, homeowners, and commercial businesses 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 loss of jobs, displacement, and homelessness. 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. At that meeting, the City Council also directed staff to evaluate further the potential of including prohibitions on commercial and homeowner evictions. As a result, staff recommends repealing the existing moratorium (Ordinance No. 20-06) and adopting a replacement emergency ordinance imposing a temporary moratorium that prohibits residential and commercial evictions and lender evictions of homeowners due to non-payment of rent or mortgage payments related to loss of income or increased expenses related to COVID-19, as well as to include explicit prohibitions on retaliation against tenants and homeowners who are protected under this moratorium.

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.

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, 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. The order limits 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 loss of jobs, displacement, and homelessness. While "essential businesses" such as pharmacies and grocery stores are exempt and restaurants are allowed to serve customers via take-out only, the business community is facing severe economic injury. Businesses small and large have reported a complete collapse of their revenue streams, reduced sales and the need to layoff or reduce their workforce's hours. While sales have dramatically fallen, fixed costs such as rents, health care costs, outstanding loans, and taxes remain on the books.

On March 24, 2020, the City 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 City Council also directed staff to evaluate further the potential of including prohibitions on commercial and homeowner evictions.

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, homeowners, and commercial businesses 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 loss of jobs, displacement, and homelessness. 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. At that meeting, the City Council also directed staff to evaluate further the potential of including prohibitions on commercial and homeowner evictions. As a result, staff recommends repealing the emergency ordinance adopted on March 24, 2020 (Ordinance No. 20-06) and adopting a new emergency ordinance imposing a moratorium on both residential and commercial evictions, and lender evictions of homeowners due to non-payment of rent or mortgage payments related to loss of income or increased expenses related to COVID-19, as well as to include explicit prohibitions on retaliation against tenants and homeowners who are protected under this moratorium. The moratorium on evictions does not cover other reasons for evictions that are caused by a commercial tenant or homeowner, such as substantially violating material terms of the rental or mortgage agreement. The proposed amendments to the Ordinance include:

Applicability. All residential rental units, commercial rental units, and any residence subject to a mortgage payment that are occupied by the homeowners.

Term. If adopted, as an emergency ordinance, the new moratorium would be effective immediately and expire 90 days from that date of adoption.

Added Prohibitions. The new moratorium would expand the original protections for residential rental tenants to also prohibit evictions of commercial tenants and lender evictions of homeowners during the moratorium for nonpayment of rent or mortgage payments related COVID-19, the State of Emergency regarding COVID-19, or following government-recommended COVID-19 precautions, as well as explicit prohibitions on retaliation against tenants and homeowners who are protected under this moratorium.

Landlord and Lender Notification Requirement. Residential and Commercial tenants and homeowners must make a good faith effort to notify the landlord or lender, respectively, in writing of the loss of income and/or increased expense related to COVID-19 and inability to pay the full rent or mortgage.

Documentation Requirements. Residential and commercial tenants and homeowners 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; documents showing reduced business income; or correspondence by a business owner citing COVID-19 as a basis for reduced business hours or business closure.

Payment of Past Due Rent or Mortgage. Nothing in the proposed Ordinance would relieve residential or commercial tenants or homeowners of the liability for unpaid rent or mortgage payments.

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

Mediation Services. Through the Residential Rent Stabilization Program, the City will provide mediation services to assist residential landlords and tenants to enter into repayment agreements for past due rent. Mediation will not be available for commercial tenants or property owners' negotiating forbearance agreements with their lender.

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. Upon adoption, the existing moratorium (Ordinance No. 20-060) would be repealed and replaced with the newly adopted emergency ordinance. Upon adoption, City staff will notify business groups and relevant community organizations.

FISCAL IMPACT

There is no fiscal impact associated with the adoption of the replacement temporary moratorium ordinance on evictions.

PUBLIC CONTACT

Staff has notified several key stakeholders of the proposed replacement moratorium Ordinance, including the Chamber of Commerce, the Downtown Hayward Improvement District, United Merchants, Downtown Business Association, landlord and broker associations, and residential tenant advocacy groups.

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