



DATE: September 22, 2020

TO: Mayor and City Council

FROM: Deputy City Manager

SUBJECT: Extend Commercial Evictions Moratorium: Adopt an Emergency Ordinance Amending Temporary Moratorium on Evictions to Extend the Moratorium for Commercial Evictions until January 31, 2021

RECOMMENDATION

That Council adopts an Emergency Ordinance (Attachment II) amending the temporary moratorium on commercial evictions in the City of Hayward for non-payment of rent caused by the Coronavirus (COVID-19) pandemic to extend the moratorium until January 31, 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of residential tenants due to non-payment of rent caused by the COVID-19 pandemic and on no-fault evictions, which was repealed and replaced on April 7, 2020 to expand the moratorium to also prohibit eviction of commercial tenants and homeowners facing eviction after foreclosure.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 State enacted legislation called the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (i.e., Assembly Bill 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 cannot extend its moratorium on residential evictions beyond September 30, 2020 or until after February 1, 2021. The State did not enact any protections or place any restrictions on commercial evictions. While the courts are currently not processing any residential or commercial evictions until after the end of the year, staff is still recommending extending the City's existing moratorium on commercial evictions until January 31, 2021 to provide additional protections for the City's local businesses.

The shelter-in-place orders are only partially lifted and high unemployment and business closure rates continue. The current moratorium on commercial evictions will conclude on September 30, 2020 unless extended by City Council. Staff recommends extending the

commercial evictions moratorium until January 31, 2021 to allow time for commercial tenants' business situations to stabilize and for tenants to enter into repayment agreements with their landlords.

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 16, 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 loss of jobs, displacement, and homelessness. While "essential businesses" such as pharmacies and grocery stores are exempt and certain businesses are allowed to serve customers outdoors, 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, 2020¹, 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.

On April 7, 2020², in response to the COVID-19 pandemic and corresponding state and local emergency orders, the Hayward City Council voted to expand the Temporary Moratorium on evictions to prevent displacement of both residential and commercial tenants impacted by the COVID-19 pandemic.

On June 30, 2020, the City 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 legislation called the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (i.e., Assembly Bill 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 cannot extend its moratorium on residential evictions beyond September 30, 2020 or until after February 1, 2021. The State did not enact any protections or place any restrictions on commercial evictions.

While the courts are currently not processing any residential or commercial evictions until after the end of the year, staff is still recommending extending the City's existing moratorium on commercial evictions until January 31, 2021 to provide additional protections for the City's local business community.

DISCUSSION

As a result of the State of Emergency declarations and Alameda County Shelter-in-Place Order during the COVID-19 pandemic outbreak, many commercial businesses 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

¹ 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=>

² 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=>

COVID-19 will be served by avoiding unnecessary loss of jobs, displacement, and homelessness. Alameda County has started to lift some of the restrictions under the Shelter-in-Place Order; however, not all business have been permitted to resume operations and those that have, are subject to restrictions.

Due to the continued state of emergency and continued restrictions under the Shelter-in-Place-Order, staff recommends revising the City's eviction moratorium to extend the moratorium on commercial evictions until January 31, 2021. As discussed above, recently approved State law prohibits the City from extending its existing moratorium on residential evictions.

All other terms of the commercial eviction moratorium will remain the same. Nothing in the Ordinance would relieve commercial tenants of the liability for unpaid rent or mortgage payments.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of Grow the Economy. 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 the City's business community.

FISCAL IMPACT

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

PUBLIC CONTACT

Staff has notified several key stakeholders of the proposed eviction moratorium extension Ordinance, including the Chamber of Commerce, the Downtown Hayward Improvement District, United Merchants, and Downtown Business Association.

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.

Prepared and Recommended by: Jennifer Ott, Deputy City Manager

Approved by:



Kelly McAdoo, City Manager