



**DATE:** January 26, 2021

**TO:** Mayor and City Council

**FROM:** Assistant City Manager

**SUBJECT:** Temporary Evictions Moratoria: Adoption of Emergency Ordinances Amending the Temporary Moratorium on Commercial Evictions to Extend the Moratorium and Enacting a Moratorium on Residential Evictions

## **RECOMMENDATION**

That Council adopts:

1. An Emergency Ordinance (Attachment II) amending the temporary moratorium on commercial evictions to extend the moratorium 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 imminent health and safety of the tenant or landlord effective through June 30, 2021; and
2. An Emergency Ordinance (Attachment III) 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 through June 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of residential tenants due to non-payment of rent caused by the COVID-19 pandemic and on no-fault evictions, which was repealed and replaced on April 7, 2020 to expand the moratorium to also prohibit eviction of commercial tenants and homeowners facing eviction after foreclosure.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, 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.

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 January 31, 2021 unless extended by City Council and the Statewide residential eviction moratorium under the State Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 will conclude on January 31, 2021 unless the State Legislature votes to extend the protections.

Staff recommends:

- Extending the commercial evictions moratorium through June 30, 2021, or the date of the expiration of the Governor's Executive Order N-28-20 and any extensions thereof, whichever occurs earlier to allow time for commercial tenants' business situations to stabilize and for tenants to enter into repayment agreements with their landlords; and
- Enacting a moratorium on residential eviction from February 1, 2021 through June 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.

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<sup>1</sup> 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-

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<sup>1</sup> 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>

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 homelessness. While “essential businesses” such as pharmacies and grocery stores are exempt and restaurants are allowed to serve customers via take-out and outdoor dining 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<sup>2</sup>, 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, 2020<sup>3</sup>, 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 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 Moratorium<sup>4</sup> 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 January 5, 2021, the Court extended this stay to March 1, 2021.

On June 30, 2020<sup>5</sup>, 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

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<sup>2</sup> 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=>

<sup>3</sup> 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=>

<sup>4</sup> Alameda County Moratorium:

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

<sup>5</sup> 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=>

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 could not 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.

On September 22, 2020<sup>6</sup>, the City 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 September 23, 2020, the Governor of the State of California issued Executive Order N-80-20 extending the timeframe for protections set-forth in Executive Order N-28-20 with respect to commercial evictions through March 31, 2021.<sup>7</sup>

## 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 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.

Due to the continued state of emergency and continued restrictions under the Shelter-in-Place-Order, staff recommends the following revisions to the City's eviction moratoria:

1. **Extend the moratorium on commercial evictions through June 30, 2021**, or the date of the expiration of the Governor's Executive Order N-28-20 and any extensions thereof, whichever occurs earlier to allow time for commercial tenants' business situations to stabilize and for tenants to enter into repayment agreements with their landlords. All other terms of the eviction moratorium on commercial evictions will remain the same.
2. **Enact a moratorium on residential evictions effective February 1, 2021 through June 30, 2021.** 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 January 31, 2021,

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<sup>6</sup> 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=>

<sup>7</sup> 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>

unless extended. Staff recommends that the City Council enact a moratorium on residential evictions in the event the state legislature does not extend the statewide moratorium to ensure protection of Hayward tenants from eviction related to non-payment of rent related to COVID 19 and no cause evictions. The moratorium on residential evictions will cover the period between February 1, 2021 and June 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 these Ordinances would relieve residential or commercial tenants or homeowners of the liability for unpaid rent or mortgage payments. The City has provided to date 459 rental assistance grants through the COVID-19 rent relief program to mitigate the impacts of delinquent rent payments. The City has committed an additional \$745,000 and anticipates providing an additional 260 grants.

To further aid small businesses, the City Council appropriated \$125,000 in CARES Act funding as a match to the County of Alameda's COVID-19 Small Business Grant program on December 8, 2020. This action created a total pool of \$250,000 in grant funding available to Hayward small businesses impacted by COVID-19. Following a county-wide application period, which received over 1,900 applications, including over 700 applications from Hayward businesses, the County issued 50 grants in the amount of \$5,000 to Hayward businesses. Businesses were selected through a randomized lottery.

While the City has been actively pursuing funds to provide assistance, funding is insufficient to cover the need and prevent displacement related to non-payment of rent due to the pandemic. Therefore, staff recommends enacting these emergency ordinances.

## **STRATEGIC ROADMAP**

This agenda item supports the Strategic Priority of Preserve, Protect, & Produce Housing and 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 and housing security for Hayward residents.

## **FISCAL IMPACT**

There is no fiscal impact associated with the adoption of the extended temporary moratoria ordinances on 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, Downtown Business Association, 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 City Council. If only four Council members vote for the proposed ordinances, then adoption would occur at the next City Council meeting and the ordinances would go into effect 30 days after adoption.

*Prepared by:* Christina Morales, Housing Division Manager  
Paul Nguyen, Economic Development Manager

*Recommended by:* Jennifer Ott, Assistant City Manager

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written over a horizontal line.

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Kelly McAdoo, City Manager