



AGENCY: City Council
MEETING DATE: May 28, 2020
DEPARTMENT: Administration
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Extension of Urgency Ordinance No. 960-2020 Providing a Temporary Moratorium on Evictions Due to COVID-19

ISSUE:

On March 30, 2020 the City Council approved an Urgency Ordinance establishing a temporary moratorium on both residential and commercial evictions as a result of nonpayment of rent due to the impacts of COVID-19. The moratorium expires on May 31, 2020. The Council requested that a continuation of the moratorium be placed on the agenda for consideration prior to its expiration.

ANALYSIS:

On March 16, 2020, the Governor issued Executive Order N-28-20. The order suspended any state law that would preempt or otherwise restrict the City's exercise of its police power to impose substantive limitations on evictions based on nonpayment of rent resulting from the impacts of COVID-19.

The Governor expressed disappointment that local jurisdictions did not more readily adopt Eviction Moratoriums. The Governor stated the increased risk of homelessness as one of his primary reasons for issuing the Executive Order allowing local governments to adopt Eviction Moratoriums. In response, on March 27, 2020, Governor Newsom issued executive order N-37-20 (the "Second Order") to directly protect residential tenants from evictions if they are unable to pay rent due to financial impacts of the COVID-19 emergency and to give them a 60+ day extension to answer eviction lawsuits filed from March 27, until May 31, 2020; the Order prevents landlords from enforcing any eviction writ through May 31, 2020. Unlike the Governor's moratorium, the City's moratorium applies to both residential and commercial tenants.

The Mendocino County Board of Supervisors also unanimously passed an Eviction Moratorium on March 24, 2020, which protects residential and commercial tenants from eviction for COVID-19 related non-payment of rents. The County Ordinance is effective upon passage and applicable through May 31, 2020 unless terminated or extended but only applies in the unincorporated areas of the County.

San Francisco, Oakland, Berkeley, San Jose, Santa Monica, Culver City, Stockton, San Diego, Alameda, Burbank, Pasadena, Vallejo, Inglewood, Glendale, El Monte, South Pasadena, Richmond, Emeryville, Ojai, Palo Alto, Clearlake, Palm Springs, Goleta, Santa Ana, San Luis Obispo County, West Sacramento and Los Angeles also adopted some version of an Eviction Moratorium Ordinance.

Effective April 6, 2020, the California Judicial Council added multiple emergency Rules of

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Court, including a rule prohibiting courts from processing nearly all unlawful detainers (the “Judicial Rule”). The Judicial Rule applies "until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted" or until the Judicial Council amends the rules. If the court's existing order is not amended, at a minimum, it will last through late summer, and if the state of emergency runs through at least September, then the Judicial Rule will be effective into 2021. The Judicial Rule protects both residential and commercial tenants.

Even if the Governor’s Orders are not extended, the Judicial Rule by itself will stop most evictions. The Judicial Rule applies for 90 days beyond the termination of the Governor’s state of emergency, thus tenants will have at least 90 days to make their best case before the judge for why they should not be evicted – if they have repaid their landlord in full by the time of the hearing, a court is less likely to evict the tenant. If there is a backlog of unlawful detainer actions, a court may not hear the case on the very first day possible – such tenants will have more than the minimum of 90 days from the termination of the state of emergency to repay their rent before the court hears the case. Of course, the Judicial Rule does not prohibit a court from still allowing an eviction even where the tenant has repaid all overdue rent – but many courts may be unwilling to evict a tenant in this situation.

If the Governor does not extend the First Order beyond May 31, 2020, Fort Bragg like other jurisdictions can fall back on the Judicial Rule to protect most tenants from being evicted during the term of the state of emergency plus 90 days.

A City may opt to extend the term of its own tenant protection ordinance, however, this comes with some risk. If the Governor’s First Order expires then the City is relying solely on its own emergency power and its own police powers as the basis for its legal right to impose the eviction protection. Although a city’s emergency powers and its police powers are broad, it is an open question exactly how far those powers extend. Potential plaintiffs might argue that an eviction ordinance constitutes a regulatory taking or that the ordinance impermissibly impairs a contract. Although it is likely that these arguments would fail if the City’s moratorium is extended for only a short duration, given the substantial dollars at issue, there is a more than *de minimis* financial risk. A court might allow the enforcement of the emergency order, but still require the city to pay damages to landlords as a result.

Urgency Ordinances

Urgency Ordinances that are necessary for the immediate preservation of the public peace, health or safety, must contain a declaration of the facts constituting the urgency, and must be passed by a four-fifths vote of the City Council per Government Code Section 36937. Urgency Ordinances go into effect immediately upon adoption per California Government Code Section 36934. The original Ordinance contains the required findings.

Local Enforcement

Under the City’s current Ordinance, so long as a tenant has complied with the notice and documentation requirements, a landlord cannot serve an eviction notice, file or prosecute an unlawful detainer action on a three-day pay or quit notice, or otherwise attempt to evict a

tenant for nonpayment of rent. The tenant may use the Ordinance as an affirmative defense in such an action. This would be applicable through court proceedings and not require active City enforcement, unless City Council directed staff to utilize the City Prosecutor from Jones & Mayer, the City's law firm for active enforcement efforts. Staff is not recommending local enforcement outside of the Court's application of local law to eviction actions based on the added costs.

RECOMMENDED ACTION:

To err on the conservative side, staff recommends that the City Council not adopt the amendment which would extend the Eviction Moratorium to June 30, 2020. Instead, renters would still have the extended protection from eviction provided by the Judicial Rule. Which will be applicable, if not amended, until 90 days after the State's declaration of emergency is lifted. Even then, there may be a backlog in the court systems that further delay evictions.

The Council can weigh the risk and adopt the ordinance, based on the City's emergency powers. This action would be to waive the reading of the Ordinance and adopt by title only an Amendment to the Urgency Ordinance of the City of Fort Bragg relating to a temporary moratorium on evicting tenants and extending the expiration to June 30, 2020 and declaring the Ordinance to be an emergency measure to take effect immediately upon adoption.

ALTERNATIVE ACTION(S):

The City Council may choose to decline to adopt the Urgency Ordinance and provide other direction to staff.

FISCAL IMPACT:

There will likely be fiscal impacts to both renters and landlords. The Ordinance protects tenants from eviction but it does not relieve or forgive a tenant of the liability for unpaid rent. Mortgage protections for landlords are beyond the scope or jurisdiction of the City of Fort Bragg.

GREENHOUSE GAS EMISSIONS IMPACT:

There may be a small positive reduction in greenhouse gas emissions if tenants are not forced to relocate or transfer belongings by vehicle to another location.

CONSISTENCY:

The proposed urgency Ordinance is consistent with city ordinances, and emergency orders currently in effect. The amendment extending the eviction moratorium may not be consistent with state law.

IMPLEMENTATION/TIMEFRAMES:

If adopted by a four-fifths vote of the entire membership of the City Council, the proposed Urgency Ordinance will become effective immediately and will expire June 30, 2020.

ATTACHMENTS:

1. Amendment to Urgency Ordinance 960-2020

NOTIFICATION:

1. Affordable Housing, Notify Me subscriber list
2. Homeless, Notify Me subscriber list
3. Economic Development Planning, Notify Me subscriber list