



AGENCY: City Council
MEETING DATE: June 30, 2020
DEPARTMENT: Administration
PRESENTED BY: T. Miller
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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 was extended on May 28, 2020 for another month and is set to expire on June 30, 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. On May 29, 2020, the day after Council extended its moratorium, the Governor issued an Executive Order that extended the projection to local governments for an additional 60 days. This will expire on July 28, 2020.

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

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:

Staff recommends that the City Council extend the protection from eviction until July 31, 2020. This essentially falls within the Governors Order. Renters still have the extended protection from eviction provided by the Judicial Rule. Which will be applicable 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.

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 July 31,2020.

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