

D.5

June McHuen

From: Jan Warren <
Sent: Sunday, May 24, 2020 10:20 PM
To: Clerk of the Board
Subject: comments for extension of eviction moratorium May 26, 2020 agenda item D5

Follow Up Flag: Follow up
Flag Status: Completed

Dear CCC Clerk of the Board and Board Members

Comments for Agenda item D5, Extension of Eviction Moratorium at May 26, 2020 Meeting

Good morning,

My name is Jan Warren. On April 21 we were hopeful that the County might be able to safely reopen soon. Not a large enough number of workers have been able to go back to work, even part-time, in order to pay the full rent as of June 1.

The HEROES ACT Federal Stimulus has still not been brought to a vote in the U.S. Senate. I think we all recognize the State, County, and Cities need additional federal stimulus dollars to help restart our economy.

I ask that you extend the moratorium and eviction dates on the No.2020-16 until the end of July 2020 and that you extend the repayment period to 6 months for prior missed rent. The bottom that fell out of our economy is hurting those the most who have the least resources.

Thank you for your leadership since some cities in our County never stepped up to protect the people most at risk in their communities.



East Bay Housing Organizations

May 22nd, 2020

Honorable Supervisors
Contra Costa County
651 Pine Street
Martinez, CA 94553

Dear Members of the Board of Supervisors,

On behalf of East Bay Housing Organizations (EBHO), I urge you to extend the eviction moratorium for the duration of the state of emergency and ensure that this extension is consistent with the original ordinance to the full extent allowed by law.

EBHO is a non-profit, member-driven organization with over 500 organizational and individual members. For over 35 years, we have worked to preserve, protect, and create affordable housing opportunities for low-income communities in the East Bay by educating, advocating, organizing, and building coalitions.

The eviction moratorium is critical to the success of the shelter-in-place order as a means of protecting individual and public health. Without adequate protections against eviction, low-income tenants will be compelled to return to or search for work before it's safe to do so. This will jeopardize our collective effort to slow the spread of the coronavirus and put them and their families at disproportionate risk of infection. As long as the County continues—wisely—to place restrictions on the mobility and economic activity of residents, it needs to protect them from the impacts of those regulations, as well. Moreover, city leaders across Contra Costa are looking to the Board to establish consistent leadership and guidelines on issues that impact the County as a whole. **The eviction moratorium should thus last until 30 days after the end of the declared state of emergency, as is the case across Alameda County.**

In addition, many residents have now lost months of income due to the pandemic. Across the state, the unemployment rate has continued to rise, reaching a staggering 15.5 percent. And once the economy reopens, it's clear that it'll do so gradually and slowly. As reported in the *New York Times*, some economists predict that as many of [42 percent of the jobs lost since the start of the crisis will be permanent](#). Currently, however, the County's ordinance only allows tenants 120 days to repay missed rent. As most other cities and counties have recognized, this timetable is simply unrealistic. It'll be nearly impossible for many of the estimated [55 percent of Contra Costa renters who were already cost-burdened before the crisis](#) to pay down this debt on top of their usual rent in such a short period of time.

Without an extension of the grace period, then, the “moratorium” will be one in name only, and our communities will surely see a devastating increase in evictions, homelessness, displacement, and neighborhood distress later this year—likely at the same time that a surge of COVID and flu

cases is predicted to return. **We therefore encourage you to extend the grace period for repayment to one year from when the moratorium expires and guarantee that impacted renters can't be evicted in the future for non-payment of rent during the pandemic.** Again, this is in line with what has been enacted across all of Alameda County.

At EBHO, we're acutely aware of the impacts of this crisis on small property owners and affordable housing providers—both of which are vital to preventing further loss of community wealth and affordability in low-to-moderate-income neighborhoods. So we invite you to join us in advocating at the state and federal level for rent and mortgage relief that prioritizes renters and homeowners at risk of homelessness, small property owners, and non-profit affordable housing providers. In the interim, however, we need a true eviction moratorium to ensure that there's time for these far-reaching solutions to develop. Evicting tenants only makes them less likely to pay back rent, not more.

Finally, the Board must act to ensure that this extension of the eviction moratorium is consistent with the original ordinance to the full extent allowed by law. We understand that the County Counsel believes that the moratorium needs to be amended in order to align with State laws regarding Ellis Act evictions and the regulation of commercial rents. However, it's a matter of great concern that, rather than simply amend the existing ordinance, the agenda report published on May 22nd calls for creating *two separate ordinances*—one that runs from March 16th to May 25th and another that runs from May 26th until a later date. This approach would mean that evictions, missed rent, late fees, and repayment would be treated differently depending on whether they occurred before or after May 26th. It would create two separate grace periods—one for rent missed in April and May and another for rent missed in June and beyond.

This raises two serious concerns. First, it would take an already confusing situation and make it considerably worse. Without a comprehensive and consistent moratorium at either the federal or state level, cities and counties across California have been forced to create a patchwork of local protections for tenants, homeowners, and small businesses. Within Contra Costa County, there are eight moratoria, all of them different. This creates a chaotic situation for tenants, landlords, legal services providers, and more during a time of unprecedented confusion and stress. If the Board moves forward, as proposed, to enact a new ordinance to cover the period from May 26th onward, it would only make things that much more complicated. Whether you're a tenant or a landlord, it's hard to "know your rights" when those rights differ depending on the month or even day.

Second, creating a new ordinance would mean allowing the original moratorium (Ordinance 2020-14) to expire. This would immediately start the clock on the 120-day repayment period, meaning that tenants would need to begin to pay back rent missed in April and May. Clearly, however, the crisis hasn't passed. The threat of the coronavirus to public health and economic livelihood is alive and well. Indeed, that's why the Board needs to extend the moratorium in the first place. As such, it doesn't make sense to require tenants to begin to pay back rent while, at the same time, acknowledging that tenant protections are still needed to avoid a steep increase in evictions and homelessness.

The Honorable Board of Supervisors
May 22nd, 2020
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We've communicated these concerns to County Counsel and understand that it was neither their nor the Board's original intent to create two separate ordinances. We also understand that Counsel plans to share an amended version of the ordinance—one that's consistent with the original spirit of the eviction moratorium—on Monday. We're hopeful that the revised version will address these concerns, and we encourage you to take that revision as a much more sound starting point from which to consider the suggested extension and amendments.

Thank you for leadership in this extraordinary time,

Sincerely,

Alex Werth

A handwritten signature in black ink, appearing to be 'Alex Werth', with a stylized, flowing script.

Policy Associate
East Bay Housing Organizations

June McHuen

From: GWYNNE GILSON <
Sent: Monday, May 25, 2020 9:56 AM
To: Clerk of the Board
Subject: Support Ordinance 2020-16

Dear Board of Supervisors:

I support adoption of the proposed ordinance 2020-16, to extend for the maximum length possible, in order to prevent evictions during this unprecedented pandemic. Not only should people not lose their place to live due to no fault of their own, while being prohibited from working, but doing so would also increase the potential spread of the virus. Contra Costa County was barely handling its homelessness crisis before the pandemic. Where would all the newly homeless go?

I encourage a "yes" vote on this ordinance. Please share my email with all members of the board.

Thank you,

Gwynne Gilson
1555 2nd St
Concord CA 94518



696 San Ramon Valley Blvd, Ste 522
 Danville, CA 94526
 (925) 570-4919 phone
 (925) 314-1475 fax
rse@eneaproperties.com
www.eneaproperteis.com

May 25, 2020

Sent via email to: clerkoftheboard@cob.cccounty.us
SupervisorCandaceAnderson@bosccounty.us

To: Candace Anderson and the Clerk of the Board of Supervisors
(to be read into the record at the May 26, 2020 Board of Supervisors meeting)

My Name is Robert Enea and I am a small “commercial real property” owner. I appreciate and applaud the Boards attempt to narrow the protection to those commercial tenants that qualify as a “Small Business” as defined in Section 2. Definitions. Subsection (h) of the proposed Ordinance and further clarifies the definition of a “Small business” as set forth in Government Section 14837(d)(1)(A)¹. This amendment provides much needed clarity. However, the proposed Ordinance fails to take into account the fact that the act of acquiring “commercial real property” to own, manage and rent is itself a business enterprise which can by your own definition also meet the requirements of a “Small business” not unlike all the small businesses Ordinance 2020-16 is seeking to protect.

Ordinance 2020-16 provides no protection to small “commercial real property” owners whose livelihood hinges on the contractual obligations of their tenant’s to pay rent. Many small “commercial real property” owners would not even rise to the level of a “Micro Business” as defined by Government Code Section 148737 (B) (2)².

How can the Board in good conscience shift the economic burden from a larger business enterprise (“small business”) to a smaller business enterprise (“microbusiness”). The County seems to justify their rationale by insisting the rent is not forgiven but only deferred. Mandating a grace period on a small “real property owner” is akin to forcing small “commercial real property owners” to be an involuntary lender to their tenants for a grace period from April to October (maybe longer). This is a tremendous onerous financial burden and is wrong and unfair on so many levels. The practical reality of the grace period is that many commercial tenants will open and operate their business in a full or limited capacity, they will earn revenue without the legal or contractual obligation to pay rent during the grace period. When October arrives many of these tenants will simply move out and or file for bankruptcy and the small “real property owners” will suffer significant losses.

How would each Supervisor feel if they were notified that their salaries were going to be deferred for six months (or longer)?

The Board is essentially asking all “commercial real property” owners to defer rent they desperately need to live and cover the operating expenses of their property for up to six month (maybe longer) on the hope that they will be paid back if the COVID-19 spread is controlled and the economy improves. You are temporarily taking away my right to decide what is in my best interest to either workout a mutually satisfactory rent modification or evict a non-paying tenant that has breached their contractual obligation to pay rent. Your Ordinance eliminates my private property rights and gives all commercial tenant absolutely no incentive to negotiate or modify the terms of their lease. The County has provided a great benefit to commercial tenants at the expense and detriment of the small “commercial real property” owner.

¹ Government Code Section 14837 (d) (1) (A) “**Small business**” means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 100 or fewer employees. Commencing January 1, 2019, the average annual gross receipts threshold shall be fifteen million dollars (\$15,000,000).

² Government Code Section 14837 (B) (2) “**Microbusiness**” is a small business which, together with affiliates, has average annual gross receipts of two million five hundred thousand dollars (\$2,500,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 25 or fewer employees. Commencing January 1, 2019, the average annual gross receipts threshold shall be five million dollars (\$5,000,000).

Candace Anderson
Board of Supervisors Letter
May 25, 2020, continued

Will the County be providing economic relief once the grace period expires to the hundreds or thousands of small “commercial real property” owners that lose money resulting from the passage of Ordinance 2020-16?

Does Ordinance 2020-16 not violate the basic theory of **CONTRACTS CLAUSE**, which clearly reads: “No state shall...pass any...Law impairing the Obligation of Contracts” (*between private parties*)?

Does Ordinance 2020-16 not constitute a violation of the **TAKING CLAUSE** of the Fifth Amendment?

Does Ordinance 2020-16 not violate the **EQUAL PROTECTION OF THE LAWS CLAUSE** of the Fourteenth Amendment?

The Board should immediately ban all “commercial real property” from Ordinance 2020-16.

If the Board is unwilling to do that they should at a minimum modify Ordinance 2020-16 to define and exempt small “commercial real property” owners as a “microbusiness” and provide them the same equal protection afforded to “Small business” commercial tenants.

Respectfully,



Robert S. Enea
Managing Member

June McHuen

From: Darlene Roth <
Sent: Monday, May 25, 2020 1:26 PM
To: Clerk of the Board
Subject: CCC Supervisors - Ordinance 2020-16

Please pass this email to the Supervisors.

I urge you to support Ordinance 2020-16 to prevent evictions and rent increases.

Thank you.
Darlene Roth
Walnut Creek resident

D-5

June McHuen

From: Elsie Mills <[redacted]@seyma.com>
Sent: Monday, May 25, 2020 1:37 PM
To: Clerk of the Board
Subject: please send to all supervisors

Der Supervisors,
Please support Ordinance 2020-16, we need to prevent evictions and rent increases during the pandemic!

Elsie Mills

Concord 94518
Pronouns: She/Her

DS

June McHuen

From: Carolyn Knoll
Sent: Monday, May 25, 2020 2:37 PM
To: Supervisor Candace Andersen
Cc: Clerk of the Board
Subject: Ordinance 2020-16

Please support Ordinance 2020-16 to prevent evictions and certain residential rent increases during this unprecedented crisis.

Where would all these newly homeless people go? Huge numbers of people can't go to work through no fault of their own, and we need them to be able to stay in their homes.

Thanking you in advance of your support.

Carolyn Knoll
Orinda, CA

"Human salvation lies in the hands of the creatively maladjusted." - Martin Luther King, Jr.

"All social issues are temporary and brief. Go deep." - Howard W. Thurman

And, just for fun. . .

"Life should NOT be a journey to the grave with the intention of arriving safely in an attractive and well-preserved body; instead to skid in sideways, chocolate and wine in one hand, body thoroughly used up, totally worn out and screaming WOO HOO What a ride!!"

June McHuen

From: Dee Simmons <c...t>
Sent: Monday, May 25, 2020 3:43 PM
To: Clerk of the Board
Cc: SupervisorMitchoff
Subject: Evictions Contra Costa County

Hello,

I believe this is on the board agenda for tomorrow.

I have lived in Concord since 1979. I am asking you and the Board of Supervisors to please support Ordinance 2020-16 to prevent evictions and certain residential rent increases during this unprecedented crisis.

Where would all these newly homeless people go? We need them to be able to stay in their homes so they can get back on their feet. We already have too many homeless now.

We must remember that we are all in this terrible time together with our neighbors. Huge numbers of people can't go to work through no fault of their own.

I urge you to believe in people and support leniency and Ordinance 2020-16.

Thank you,

Deanna Simmons

Concord 94518

You can contact your supervisor through the links on this page:

[\[https://www.contracosta.ca.gov/Directory.aspx?DID=238\]](https://www.contracosta.ca.gov/Directory.aspx?DID=238)(<https://www.contracosta.ca.gov/Directory.aspx?DID=238&fbclid=IwAR3leAKKEOH-WHROX0ZqVfDhswcFqiEcYSymbxdddUDUkg6iNr13T42rWHTU>)

You can also email the clerkoftheboard@cob.cccounty.us and ask them to share your email with all of the supervisors.

Elsie Mills
She, her, hers
925-771-4771

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You received this message because you are subscribed to the Google Groups "Racial Justice Community" group. To unsubscribe from this group and stop receiving emails from it, send an email to racialjustice+unsubscribe@mduuc.org. To view this discussion on the web visit <https://groups.google.com/a/mduuc.org/d/msgid/racialjustice/EDABF769-9837-4A90-9C25-6A8C3E929A87%40gmail.com>.

June McHuen

From: Jonathan Marsh <
Sent: Monday, May 25, 2020 4:13 PM
To: Clerk of the Board
Subject: Ordinance 2020-16

Please share my email with all of the Supervisors.

I write to support Ordinance 2020-16 to prevent evictions and certain residential rent increases during this unprecedented crisis. Where would all these newly homeless people go? Huge numbers of people can't go to work through no fault of their own, and we need them to be able to stay in their homes. I realize this is a complicated problem since landlords have to pay bills and rely on rent payments, but eviction in this pandemic economy victimizes both the tenant and the landlord. This is neither a tenant's nor a landlord's market and I think you must act and seek support from the state and federal government to stabilize our housing market until we can emerge from the pandemic and rebuild our economy.

thank you for your consideration,

Jonathan Marsh

June McHuen

From: Amy Huey ·
Sent: Monday, May 25, 2020 6:14 PM
To: Clerk of the Board
Subject: Eviction Moratorium

For the record....copying to you the following e-mail sent to Supervisor Mitchoff today:

Dear Supervisor Mitchoff,

I have been a resident of Walnut Creek for 33 years. My family and I have been fortunate to own a home and have felt safe and secure all these years. I cannot begin to imagine the risk and fear of homelessness, especially, during this time of Covid-19 and SIP. I am, however, aware that many are not as fortunate as my own family and, that losing their homes through evictions or un-affordable rent is a very real threat. Many are unable to work, through no fault of their own due to the pandemic, and are therefore may be in dire financial straits (e.g. unable to pay rent).

As such, I am asking that you please support Ordinance 2020-16 to prevent evictions and certain residential rent increases during this unprecedented crisis. Folks need as much stability as possible in their lives right now. Putting more people into a state of homelessness will only make the rebuilding of our community and its economic well-being in the aftermath of the Covid crisis that much more difficult.

Thank you in advance for your attention and consideration in this matter.....please vote yes on Ordinance 2020-16.

Respectfully submitted,
Amy L. Huey

Elizabeth C. Enea Esq.
108 Laurelwood Drive / Danville, CA 94506

May 25, 2020

Sent via email to: clerkoftheboard@cob.cccounty.us

SupervisorCandaceAnderson@bosccccounty.us

To: Candace Anderson and the Clerk of the Board of Supervisors

(to be read into the record at the May 26, 2020 Board of Supervisors meeting)

Re: Ordinance NO. 2020-14, "AN ORDINANCE TEMPORARILY PROHIBITING EVICTIONS OF RESIDENTIAL AND COMMERCIAL REAL PROPERTY TENANTS IN CONTRA COSTA COUNTY IMPACTED BY THE COVID-19 PANDEMIC AND ESTABLISHING A MORATORIUM ON RENT INCREASES.

I am a stakeholder and own commercial real property in Contra Costa County. On April 21, 2020, the Contra Costa Board of Supervisors, without providing a meaningful opportunity for commercial property owners and landlords to be heard, issued Emergency Ordinance 2020-14, purporting to temporarily prohibit residential and commercial landlords from initiating eviction actions for tenants experiencing a "loss of income" as a result of the COVID-19 Pandemic. Not surprisingly, the prohibition of evictions has already resulted in more than a "substantial loss" of rent to commercial property owners and landlords, whose

tenants are now using the prohibition on evictions to avoid paying any rent. The Ordinance makes clear that tenants are not required to make even partial rent payments even if they have the means to do so, and even if they are receiving unemployment or other federal or state benefits. As reported by the Wall Street Journal, national retailers receiving millions in federal stimulus benefits are refusing to pay rent for the foreseeable future. Such tenants are taking full advantage of the eviction moratorium imposed at all levels of government.

As set forth below, the Eviction Moratorium is problematic on many legal fronts and purports to single out landlords and property owners throughout the County to absorb the residents' and commercial tenants' claimed economic losses attendant to the crisis. At the same time, the Eviction Moratorium provides no relief to property owners and landlords, who (presumably) are expected to continue meeting their contractual obligations under the respective leases even when tenants are not honoring theirs. Consider as well that many property owners in the County are co-owned or funded by investors and partnerships which include state and union pension funds, endowments and other fixed income investors whose investment in real estate is predicated on the rule of law and the security of contracts in which they invest. There are also many small to medium sized real estate management companies whose income streams have been harmed by the Eviction Moratorium. The Board of Supervisors unilateral action has set a bad precedent and warning to future investors about heightened risks of investing in assets in the County of Contra Costa versus other

Counties who respect the necessity for contract security and have not passed similar ordinances.

Given the magnitude of the rent loss Property Owners anticipate from implementation of the Eviction Moratorium, Property Owners will have no choice but to pursue any and all available legal relief against the County to recover all losses attributable to the government interference with their private contractual relationships. As discussed below, such legal relief will include an award of litigation expenses including attorney's fees and expert fees. Property Owners urge the County to remove itself from their contractual relationships which are already controlled by Governor Newsom's March 27, 2020 Executive Order and the California Judicial Council's emergency order temporarily delaying residential and commercial evictions during the pandemic.

1. The COVID-19 Response From Governor Newsom

On March 27, 2020, Governor Newsom issued Executive Order N-37-20, placing temporary limitations on eviction remedies available to landlords. Executive Order N-37-20 temporarily extended the 5-day period by which impacted residential tenants must respond to an unlawful detainer complaint to 60 days. To qualify for the relief, the tenant must notify the landlord of an inability to pay all or a portion of the rent due within 7 days after the rent is due. The tenant must also demonstrate that he or she contracted COVID-19 or needed to care for someone who contracted COVID-19, or suffered a layoff, loss of hours or other loss of income attributable to COVID-19 or the government response to COVID-19. Importantly, Executive Order N-37-20

requires tenants seeking to qualify for such relief to verify their claims with documentation. The relief available to qualifying tenants extends through May 31, 2020. Finally, Executive Order N-37-20 makes clear that the relief is only for a two-month period and that tenants are still required to meet their monthly rent obligations, even for the 60-day period during which the eviction process is delayed. (EO N-37-20 [“Nothing in this Order shall prevent a tenant who is able to pay all or some of the rent due from paying that rent in a timely manner or relieve a tenant of liability for unpaid rent.”].)

While Governor Newsom’s executive order has its own problems and unintended consequences, it does not purport to modify the terms of existing contractual relationships and simply delays eviction proceedings for a two-month period for those specific residential tenants who can meet the (more) specific criteria for qualifying for relief.

2. The Emergency Order Issued by the California Judicial Council

On April 6, 2020, the California Judicial Council issued a set of emergency rules impacting utilization of the courts to evict tenants. Except in certain rare situations posing an immediate threat to health and safety, Emergency Rule 1 generally forbids the issuance of summons for new unlawful detainer proceedings until 90 days after Governor Newsom declares an end to the state of emergency. The emergency rules do not purport to interfere with existing contracts by waiving contractual interest or late fees or extending deadlines for the payment of rent. Nor do they attempt to declare

“winners and losers” by offering substantive relief to tenants claiming to suffer from impacts created by the pandemic or, more egregiously, the response to the pandemic implemented at all levels of government.

3. The County’s Order Mandating Residential and Commercial Rent Forbearance

The Eviction Moratorium is not a model of clarity and raises more questions than it resolves. Unlike Governor Newsom’s Executive Order N-37-20, the County’s Eviction Moratorium applies to both residential and commercial tenancies. The Eviction Moratorium also prohibits landlords from even “seeking” rent during the period of the emergency and expressly prohibits service of a notice to terminate pursuant to California Code of Civil Procedure Section 1161. The Eviction Moratorium fails to provide any meaningful standard for determining whether or not a particular tenant qualifies for protection. The ordinance, rather, simply states in conclusory fashion that tenants need only to provide their Landlord a signed declaration under penalty of perjury that they have incurred “economic losses” due to the COVID-19 Pandemic to qualify for protection.

The Eviction Moratorium also purports to directly modify existing contractual relationships between tenant and landlord by nullifying any late fees and essentially defers contractual rental obligations from April 1, 2020 to September 1, 2020 (six months). The Eviction Moratorium provides no relief for landlords and property owners while at the same time, the County expects landlords and property owners to continue paying all costs associated with the management and ownership of their residential and commercial

properties (including county property taxes). While the Eviction Moratorium purports to require tenants to repay any back rent due within 120-days after May 31, 2020, the practical effect is that many tenants will never be able to repay the back due rent and will, instead, move to a different property later after exhausting the rent forbearance benefit provided to them by the County and at the expense of the landlords and property owners. Indeed, for many tenants, the Eviction Moratorium will mandate rent forgiveness. The Eviction Moratorium is the functional equivalent of forcibly requiring landlords and property owners to become involuntary lenders to their tenants and to eliminate any charges a lender would impose after evaluating the risks of any particular “debtor.”

4. Property Owners Will Suffer Millions of Dollars in Rent Losses as a Result of the Eviction Moratorium.

The extent of landlord and property owners’ losses are not yet known, but the loss in revenue will be more than “substantial.” Landlords and property owners have been informed by numerous residents and commercial businesses of all sizes of a claimed inability to pay April and May rent. The prospects for recovering April and May rent from residential and commercial tenants is grave, at best. Many of the residential and commercial tenants have informed their landlord’s that they will not pay rent until the crisis dissipates and things return to normal. This is true even for tenants who have the ability to pay and, incredibly, have received government benefits to offset their losses. There is no question that landlord and property owners will suffer millions of dollars in losses every month.

As noted, the Eviction Moratorium is scheduled to expire May 31, 2020. It is extremely concerning that the County is now considering extending the Eviction Moratorium beyond May 31, 2020 and will continue to directly interfere with landlords and property owners' contractual relationships. What is clear is that landlords and owners' losses will grow exponentially every month, much like the spread of the virus. It takes little imagination to come to the conclusion that the losses to be suffered by landlords and property owners' throughout the County will total tens of millions (if not hundreds of millions) of dollars by the end date.

5. Owners Will Seek to Recover All Their Losses from the County

It is unclear why the County would provide more protection than that afforded by Governor Newsom and the Judicial Council. Doing so clearly exposes the County to liability for inverse condemnation, substantive due process, procedural due process, equal protection, breach of entitlement agreements, interference with contract, and a host of other legal theories. The fact that the Eviction Moratorium was enacted to advance a public interest is irrelevant to the County's liability for damages stemming from the drastic impact of the Eviction Moratorium on landlords and owners' properties.

While at one time the public interest served by local legislation tended to lessen the risk of liability for a regulatory taking, the United States Supreme Court has made clear that the public interest advanced by government regulation has no relevance to takings liability. (*Chevron v. Lingle*) (2005) 544 U.S. 528, 542-

543 [holding that the “public interest” or “government objective” is irrelevant to whether the government action effected a taking.].) Indeed, Justice O’Connor, writing for the majority, made clear that the language in prior takings cases relating to whether the government regulation “substantially advances a legitimate government interest” has no place in takings law: “A test that tells us nothing about the actual burden imposed on property rights, or how that burden is allocated, cannot tell us when justice might require that burden be spread among taxpayers through the payment of compensation.” (*Id.* at 543.)

The County’s Eviction Moratorium in this matter falls squarely within the “physical occupation” line of cases the United States Supreme Court (and California courts) have held constitute “per se” categorical takings. (*See, e.g., Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419, 435 [holding that any government-imposed physical occupation of private property, no matter how small or trivial, constitutes a taking of private property for which the owner is entitled to just compensation and reasoning that “*the power to exclude has traditionally been considered one of the most treasured strands in an owner’s bundle of property rights.*” [emphasis added].) As implemented, the Ordinance will force property owners to accept occupants on their property who are not paying rent. Coupled with California landlord tenant law imposing mandatory obligations on the part of landlords, the owners will also be required to continue incurring the expenses associated with the ownership. In this case, as noted above, those costs are more than “substantial.”

As you may know, a property owner is no longer

required to attempt to invalidate an offending regulation in state court as a precondition to filing a regulatory takings claim in federal court. Just last year in *Knick v. Township of Scott* (2019) 139 S.Ct. 2162, the U.S. Supreme Court overturned *Williamson County Regional Planning Com. v. Hamilton Moratoriumk of Johnson County* (1985) 473 U.S. 172, holding that property owners need not exhaust state judicial remedies as a prerequisite to filing a regulatory takings claim in federal court. *Knick* made abundantly clear that an aggrieved property owner may pursue its takings claims under 42 U.S.C. § 1983 directly in federal court.³ The Supreme Court reasoned that a taking under the Fifth Amendment to the United States Constitution occurs when the government makes a decision impacting private property and such a taking is not a function of judicial remedies that may or may not be available in the state judicial system.

Accordingly, Property Owners have no obligation to file a petition for writ of mandamus in California Superior Court attempting to invalidate the Eviction Moratorium before seeking damages under 42 U.S.C. § 1983 in federal court. In such case, Owners would also be entitled to their litigation expenses and attorney's fees under 42 U.S.C. § 1985.

6. Owners Insist the County Immediately Repeal the Eviction Moratorium.

The foregoing should make clear that by enacting the Eviction Moratorium providing benefits well beyond what the State has provided, the County has exposed itself to significant liability risk for all damages associated with the Moratorium, including the

exorbitant damages stemming from the 120-day grace period following the, as yet, unknown date. The County may significantly limit its exposure by simply repealing the Moratorium now.

In the event the County is not willing to repeal the Moratorium immediately, landlord and property owners request the County to provide some level of clarity with respect to the following questions:

- (1) What specific protection of “life and property” does the County claim existed allowing them to adopt the urgency ordinance?
- (2) Does the eviction moratorium prohibit evictions for those residents that have received unemployment benefits that in some cases are equal or greater than their salaries prior to the COVID-19 pandemic?
- (3) Does the eviction moratorium prohibit evictions for commercial tenants who have received federal stimulus (SBA loans) or other government monetary benefits intended by the government to be used for rental payment?
- (4) What authority does the County have to modify existing statutory notices (such as notices to terminate, 3-day pay or quit notices, etc.) imposed by California landlord / tenant law, when Governor Newsom’s executive order and Judicial Emergency Rule were careful not to do so?
- (5) Is the County prepared to reimburse landlords for the administrative costs needed to ascertain

whether a tenant qualifies for protection under the eviction moratorium?

(6) Would a resident or commercial tenant be allowed to take advantage of the eviction moratorium if despite incurring an “economic loss” they still had the means to pay rent?

(7) What impact does personal or business net worth have on the determination as to whether a commercial tenant has suffered an “economic loss” in household income or business income?

(8) Would the eviction moratorium apply to residents who had co-signors on the individual leases who have not suffered an “economic loss” in household or business income?

(9) Would the eviction moratorium apply to commercial tenants with guarantors on the individual lease who have the means to pay rent?

(10) Does the rent forbearance provided in the eviction moratorium apply to monthly rent during the 120 day grace period after the Governor declares the emergency over, or does the rent forbearance only apply to unpaid rent during the emergency period?

(11) Will the County guaranty property owner’s against incurred losses if residents and commercial tenants fail to pay the accrued rents owed to landlords’ and property owners’ at the end of the 120 grace period?

As discussed above, the County's Eviction Moratorium was not well thought out and will very likely expose the County to tens of millions of dollars in liability (if not more) to landlords and property owners throughout the County. While public agencies understandably feel compelled to "do something to help" in times of crisis, such urgent actions are often not well thought out and lead to much more damage than good. That is certainly the case with the County's Eviction Moratorium.

The County has also assumed the worst when it comes to landlords and property owners. Property Owners take great pride in their communities and the relationships they have fostered with their residents and commercial tenants. Owners are in a much better position than the County to understand the particular hardships faced by their residents and commercial tenants and do not intend to run into court every time a resident or commercial tenant is unable to pay rent when due. Some tenants will require special arrangements when they experience a short-term loss of income and are unable to pay rent, and Owners will address the needed accommodations from a standpoint of understanding and compassion. The County's eviction moratorium, however, has provided tenants with the ability to ignore their contractual obligations during the course of the declared emergency and for the 120-day period thereafter. As discussed above, Owners will, at minimum, suffer seven-figure losses as a direct result of the Eviction Moratorium. The County may wish to limit this significant liability by immediately repealing the Moratorium.

Respectfully submitted,

A handwritten signature in black ink, reading "Elizabeth Enea". The signature is fluid and cursive, with the first name "Elizabeth" and the last name "Enea" clearly distinguishable.

**Elizabeth C. Enea
Attorney at Law**

June McHuen

From: Gerard D'CRUZ
Sent: Tuesday, May 26, 2020 5:19 PM
To: Clerk of the Board
Subject: Support for Assembly Bill 626 (AB 626)

To my representatives,

My name is Gerard D'CRUZ , and I am from Contra Costa, CA.

I am an active community member in your district, and a home cooking advocate. Our community is in crisis. Our workers are stuck at home without employment. Our seniors are struggling to find safe food to eat. We need a clear plan to rebuild our local economy. Now more than ever, we need to adopt the Home Cooking Bill AB626, for the future of our community.

Home cooking permits supply employment, safe community service, and critical local economic stimulus at a time we need them most.

After a year of operation and tens of thousands of meals sold, Riverside County's permitted home kitchens maintain a 100% food safety record. Riverside's program has been hailed as an unquestionable success; their Board of Supervisors has been lauded by regional, state, and national press for this people-first policy.

Home cooking is safe:

- A single Food Safety Manager certified home cook handling food
- All procedures reviewed and kitchen inspected by Health Department
- The cook is the sole face of their business, and has personal accountability to the public for food safety

As emergency relief in the shutdown, Solano County just passed AB626, and will begin permitting kitchens after shelter in place is lifted. They've put forth one of the first proactive solutions to the unemployment crisis in our state, and there is no reason we cannot follow their lead.

The opportunity in this bill is clear. As my representative, I implore you to vote "Yes" to adopt California's Home Cooking Bill AB626 immediately.

Please respond to this message so I know that my voice has been heard.

Thank you,

Gerard D'CRUZ

June McHuen

From: jima monson <
Sent: Tuesday, May 26, 2020 5:20 PM
To: Clerk of the Board
Cc: Rhea Laughlin
Subject: "Public comment agenda #D5"
Attachments: Jima M. BOS public comment 5.26.20. FINAL docx.docx

My name is Jima Monson, a Concord resident for 20 years. I'm also the Chair of the Central County Regional Group, sponsored by First 5 Contra Costa.

Thank you for your leadership in enacting an eviction and rent increase moratorium. As we are only a couple of days away from this moratorium expiring, many families are still Sheltering in Place, unable to work. Our County is not ready for an expiration. We need an extension until the end of the Emergency Order, plus an additional 30 days. We also request you strengthen the moratorium by extending the grace period to one year from the end of the Shelter in Place.

I'm a single mother struggling to pay my rent and bills. Even before this crisis, sometimes I don't have enough for food and use the food bank resources. I've been lucky enough to only have reduced hours at my job, something that many friends and family members who lost their jobs, do not have. Many have been laid off permanently and don't qualify for government assistance. They are worried about how they'll be able to survive with all these bills piling up.

I recently learned that some CCRG members, along with hundreds of others received a rent increase. It is infuriating that some landlords try to profit off of families struggling the most during this global pandemic.

This is why I want to ask you to extend and strengthen this moratorium now.

You have the power to help thousands across this county by passing policies. You demonstrated important leadership in April and we hope you do it again today. We hope you will extend these needed protections.

Thank you

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