



Contra
Costa
County

To: Board of Supervisors
From: Sharon L. Anderson, County Counsel
Date: April 14, 2020

Subject: ACCEPT report on emergency moratoriums on evictions and rent increases, and provide direction to staff.

RECOMMENDATION(S):

ACCEPT report on emergency moratoriums on evictions and rent increases, and provide direction to staff.

FISCAL IMPACT:

None.

BACKGROUND:

This report discusses the statewide emergency court rule that effectively suspends all evictions, the statewide moratorium on residential evictions under the Governor's Executive Order, statewide protections against excessive rent increases, and additional provisions that other local jurisdictions have implemented by adopting urgency ordinances.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **04/14/2020** ☐ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

Contact: Mary Ann Mason, Chief
Assistant County Counsel, (925)
335-1800

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: April 14, 2020

David Twa, County Administrator and Clerk of the Board of
Supervisors

By: , Deputy

cc: David Twa, County Administrator, David O. Livingston, Sheriff-Coroner, Kathy Gallagher, Director, Employment & Human Services

BACKGROUND: (CONT'D)

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A. The Judicial Council Has Suspended All Evictions

On April 5, 2020, the Judicial Council adopted an emergency court rule that effectively suspends all evictions statewide, other than those necessary to protect public health and safety, for the duration of the COVID-19 emergency. The rule applies to all courts and to all evictions cases, not just cases based on a missed rent payment due to COVID-19. The emergency rule applies to residential and commercial evictions. The new court rule applies until 90 days after the Governor lifts the COVID-19 state of emergency.

The emergency rule prohibits a court from issuing a summons after a landlord files an eviction case, unless the eviction is necessary to protect public health and safety, as determined by the court. The rule also prohibits a court from entering an automatic default judgment against a tenant because the tenant failed to file a response, unless the court determines the eviction is necessary to protect the public health and safety.

B. The Governor's Executive Order Established a Statewide Residential Eviction Moratorium

On March 27, 2020, Governor Newsom issued Executive Order N-37-20. This Executive Order prohibits landlords throughout California from evicting residential tenants for nonpayment of rent when the inability to pay is due to COVID-19. The protections in the Executive Order are in effect through May 31, 2020.

The Executive Order extends the period for a tenant to respond to an eviction complaint (an unlawful detainer action) for an additional 60 days beyond the current statutory period of five days. This extension applies to any residential tenant who is served with an eviction complaint while the Executive Order is in effect that seeks to evict the tenant for nonpayment of rent.

To qualify for eviction protection under the new Executive Order, the tenant must have paid rent before March 27, 2020, and must notify the landlord in writing within seven days after the rent is due that the tenant needs to delay all or a portion of the rent due for specified reasons related to COVID-19.

The tenant must retain verifiable documentation, such as pay stubs and bank statements, showing an inability to pay. The documentation must be provided to the landlord when back rent is due, but the order does not designate a specific date or time period for repayment.

Executive Order N-37-20 also prohibits enforcement of a writ to evict a tenant from a residence or dwelling unit due to non-payment of rent if the tenant meets the same criteria

listed above.

C. Excessive Rent Increases Are Prohibited Statewide Under the Price Gouging Law for the Duration of the Emergency

On March 4, 2020, Governor Newsom declared a state of emergency in California. Once the state of emergency was declared, California's price gouging statute - Penal Code section 396 - went into effect. The statute prohibits landlords from increasing the rent for a residential unit more than 10 percent from the unit's pre-disaster base rental price, which varies depending on the lease and whether the unit was previously vacant. The law also prohibits a landlord from evicting a residential tenant and renting to a new tenant at a higher rent after a state of emergency is declared. Executive Order N-28-20 (issued on March 16, 2020) waived the 30-day time limit in the statute, which means that the protections in the statute apply during the length of the current emergency.

D. The Tenant Protection Act of 2019 Established Statewide Rent Control and Eviction Protections

The Tenant Protection Act of 2019 went into effect on January 1, 2020. The law places a rent cap and eviction controls on certain residential properties throughout the State in jurisdictions that do not already have a rent control ordinance, including Contra Costa County.

The law limits rent increases during a 12-month period to five percent plus the increase in the consumer price index for the local area, up to a maximum of 10 percent of the monthly rent. A landlord can impose only two increases per year to reach the maximum increase.

The Tenant Protection Act also prohibits a landlord from terminating a tenancy unless the landlord has "just cause" or "no-fault just cause" to evict the tenant. These protections apply to a tenant who has lived in a unit for at least 12 months. "Just cause" to evict a tenant includes breaching a material term of the lease; criminal activity; and using the unit for an unlawful purpose. "No-fault just cause" includes when the owner or owner's family intends to occupy the unit; withdrawal of the unit from the rental market; a government or court order requires vacating the unit (e.g., due to habitability violations); and the owner intend to demolish or substantially remodel the unit.

The following properties are exempt from the Tenant Protection Act: properties constructed within the last 15 years; single family homes, townhouses and condominiums, unless owned by an investment trust, corporation, or LLC; owner-occupied duplexes; hotels; residential care facilities for adults or the elderly; school dormitories; and group housing.

E. Additional Provisions Adopted by Other Local Jurisdictions

The Governor's Executive Order N-28-20, issued on March 16, 2020, authorizes local governments to exercise their police power to limit residential and commercial evictions where the basis for the eviction is nonpayment of rent. The local authority applies to nonpayment caused by a substantial decrease in income or substantial out-of-pocket medical expenses caused by the COVID-19 crisis or governmental response to the crisis. The Executive Order suspends contrary state law that may preempt local government action. The order is in effect through May 31, 2020, unless extended.

Some Bay Area counties and cities have adopted urgency ordinances to implement moratoriums on evictions not covered by the Governor's Executive Order or in other areas not addressed by the Executive Order. Two cities have adopted a moratorium on rent increases. An urgency ordinance could be introduced and adopted at the next Board meeting. It would go into effect immediately upon adoption. An urgency ordinance requires a four-fifths vote of the Board.

1. Grace Period

Executive Orders N-28-20 and N-37-20 do not state when a residential tenant must pay past due rent that accrues during the eviction moratorium established by the Governor's Executive Order. Counties and cities have adopted ordinances that establish a grace period for paying past due rent. The grace periods range from 60 days after the emergency ends to six months after the emergency ends.

2. Late Fees

Executive Orders N-28-20 and N-37-20 do not mention late fees charged by landlords. Antioch, Concord, Oakland, Pittsburg, and Richmond adopted urgency ordinances to prohibit landlords from charging fees for late rent payments.

3. Commercial Evictions

Executive Order N-28-20 authorizes local governments, through May 31, 2020, to prohibit commercial evictions based on nonpayment of rent caused by substantial loss of income due to the COVID-19 crisis or government response to the crisis (e.g., orders closing businesses). Santa Clara, San Francisco and Marin counties, and the cities of Concord and Pittsburg, adopted ordinances that impose a moratorium on commercial evictions.

4. Moratorium on Rent Increases

Three Bay Area cities - Oakland, Concord, and Pittsburg - adopted urgency ordinances that impose a moratorium on rent increases for certain types of residential units. These moratoriums do not apply to residential units where rent control is prohibited by state law. No state laws regarding rent control have been waived by Executive Order. No Bay Area counties have imposed a moratorium on rent increases.

Oakland adopted an urgency ordinance that establishes a rent increase moratorium on properties that are already subject to the city's rent control ordinance. However, the city's rent control ordinance does not apply to dwelling units that are exempt from rent control under Costa Hawkins, a state law that establishes limits on local rent control ordinances. These exempt units include single-family residences and condominiums and units constructed after February 1, 1995.

Concord and Pittsburg adopted urgency ordinances that establish a rent increase moratorium on residential units. The following units are exempt from the ordinance: properties constructed within the last 15 years; single family homes, townhouses and condominiums, unless owned by an investment trust, corporation, or LLC; owner-occupied duplexes; hotels; residential care facilities for adults or the elderly; school dormitories; and group housing. Pittsburg also adopted a rent increase moratorium for commercial units.

F. Comparison Table

Attached to this Board Order is a table showing what provisions other Bay Area counties and cities have included in urgency ordinances adopted in response to the COVID-19 crisis. Some ordinances were adopted before the Governor's Executive Order N-37-20 and all were adopted before the Judicial Council's emergency court rule.

The table also shows which counties have adopted ordinances that apply only in the unincorporated area, and which counties have adopted ordinances that apply countywide, including in cities. Under the California Constitution and cases interpreting the Constitution, an ordinance adopted by the Board of Supervisors applies in the unincorporated area of the County. Counties that have adopted countywide urgency ordinances during the COVID-19 crisis have relied on Government Code section 8634. This statute authorizes a board of supervisors to "promulgate orders and regulations necessary to provide for the protection of life and property."

Also attached is a memorandum from the Director of Employment and Human Services that provides experiential information about evictions in the County since March 1, 2020.

Finally, attached is a memorandum from the Sheriff's Civil Unit regarding the processing of evictions from October 1, 2018 to March 13, 2020.

CLERK'S ADDENDUM

The following people submitted written commentary (attached):

Maria Esther Sanchez, Alvaro Gomez, Pam Stello, Marian Shostrom; Lucia Roan, Rosa Flores; Bianca Retano; Cristina Lorenzana; Erika Pantoja; Ina Mason; Jacqueline Chavez; Maria Ines Davalos; Edith Pastrano; Eulalia Galvin; Jane Courant; Dajenya Shoshanna Kafele; Sharon Greenblum; Dave Severy; Sky Ferraris; Bernardina Juarez; Juana Rangel; Maria Tapia; Rosa Vargas; James Brandt; Shawn Garcia; Sarah Morse; Dick Offerman; Lehidy Frias; Joni

Podschun; Missty Martinez; Dan Safran; Kathy Greene; Deborah Polk; Maggie Tysor; Joan Liston Medhurst; Eric Sanchez; Glenda; Melody Howe Weintraub; Jacquelyne M. Vera; Bakari Kafele; Victor Rameriz; Nancy Ybarra; Darlene Gee Mayor; Megan Zapanta; Brendon O'Laskey; Mary Olowin; Judy Stillman; Jan Warren; Rocheall Pierre; Denise Woods; Jeffrey Levin; Alexina Rojas; Erika; Chipso Washington; Veronica; Leydi Maldonado; Christine Clark; Azucena Torres; Mark MacMahon; Enicia Montalvo; Jima Monson; Amelia Hernandez; Rhea Elina Laughlin; Ali Uscilka; Debra Ballinger; Karen Yapp; Josh Anijar; Kristen Rigsby; Carlos de Leon; Esperanza Rojas Bolanos; Shagufta Khan; Kristen Rigsby; Danny Espinoza; Douglas A. Leigh; Lauren Babb; Rhovy Lyn Antonio; Jeannette Kortz; Ana Gonzalez; Marta Flores.

Written Correspondence was received from (attached): Darlene Gee, Mayor of Orinda; Jeffrey Levin, Policy Director of East Bay Housing Organizations (EBHO); Daryn Nabeta; Rhea Elina Laughlin; First Five Contra Costa; Esperanza Rojas; Margaret Tysor; Sandra Velasquez.

The Board discussed the matter and directed the County Counsel's office to prepare an urgency ordinance for the Board's consideration next week. The Board provided the following direction for the content of the ordinance: the Santa Clara County ordinance should be used as a basic template; the proposed ordinance should apply county-wide, but include a provision that if a city has a stricter ordinance, that ordinance applies in the city; the ordinance should apply to commercial and residential property; a tenant unable to pay rent should communicate this in writing to the landlord, and staff should provide a form for this purpose and FAQs (available on County website); rent increases should be prohibited for the duration of the ordinance; a grace period of 120 days from the expiration of the ordinance would be applied to back rent; no late fees could be assessed for 120 days after expiration of the ordinance; a civil remedy for violation, including attorneys' fees, should mirror Santa Clara's ordinance; tenants could not be evicted for exceeding the occupancy number if immediate family members moved in due to COVID-19; no-fault evictions would be prohibited except in cases of health & safety purposes (non-covid related) or the if the owner or the owner's immediate family will move into the residential rental unit; the ordinance would apply retroactive to March 16, 2020; The Board of Supervisors will meet on April 21, 2020 at 1:00 p.m. to consider adoption of the ordinance.

ATTACHMENTS

Comparison Table

EHSD Eviction Report

Sheriff's Department Eviction Report