



Contra
Costa
County

To: Board of Supervisors
From: Sharon L. Anderson, County Counsel
Date: April 21, 2020

Subject: Urgency ordinance temporarily prohibiting evictions of tenants and establishing a rent increase moratorium

RECOMMENDATION(S):

ADOPT Ordinance No. 2020-14, an urgency ordinance temporarily prohibiting evictions of tenants in Contra Costa County impacted by the COVID-19 pandemic and establishing a rent increase moratorium.

FISCAL IMPACT:

None.

BACKGROUND:

On April 14, 2020, the Board directed the County Counsel's Office to draft an urgency ordinance to temporarily prohibit evictions of residential and commercial tenants in the County who are impacted by the COVID-19 pandemic and establish a moratorium on rent increases. The urgency ordinance, Ordinance 2020-14, is attached. This Board order summarizes the key provisions of the urgency ordinance. It also highlights areas the Board might want to address before adopting the ordinance. The Board may make changes to the attached draft ordinance at the Board meeting and can adopt the ordinance immediately thereafter.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **04/21/2020** ☒ 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 21, 2020

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

By: , Deputy

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

BACKGROUND: (CONT'D)

Definition of “owner”. The definition of “owner” includes both the property owner (master lessor) and any sublessor. For example, if a property owner leases a building to another person or corporation, and that person subleases part of the building to others (e.g., individual apartments, offices, or other spaces) both the master lessor and the sublessor(s) will be included.

Failure to pay rent. An owner of residential property or commercial property is prohibited from terminating a tenancy for failure to pay rent if the tenant demonstrates that the failure to pay rent is directly related to a substantial loss of income or substantial out-of-pocket medical expenses associated with the COVID-19 pandemic. The tenant must provide documentation showing loss of income or out-of-pocket medical expenses.

No-fault evictions. An owner of residential property or commercial property is prohibited from terminating a residential tenancy for any “no-fault” reason, subject to the limited exceptions described below. A no-fault eviction would be defined as any eviction not based on an alleged fault of the tenant.

Immediate family members. An owner of residential real property is prohibited from terminating a tenancy on the basis of a tenant allowing an unauthorized occupant to live in the dwelling unit, if that occupant is the tenant’s immediate family member living in the dwelling unit as a result of the COVID-19 pandemic.

- The ordinance defines “immediate family” as a person’s spouse, domestic partner, children, grandchildren, parents, or grandparents. This is the definition used in the Tenant Protection Act of 2019. The Board may want to consider expanding this definition to include siblings, nephews, and nieces, or consider further limiting the definition of immediate family.

Exceptions. The ordinance does not limit an owner’s ability to terminate a tenancy if the termination is necessary to protect the owner’s health or safety or any other tenant’s health or safety, or the owner or a member of the owner’s immediate family intends to occupy a residential rental unit.

Notices of termination of tenancy. Any notice of termination of tenancy served on a tenant by an owner must include the reason for terminating the tenancy, a notice of the tenant’s rights under the ordinance, and a notice of emergency rental assistance programs. A tenant who is eligible for protection under the ordinance must provide written notice of that eligibility within 14 days after receiving a notice of termination of tenancy from the owner.

Late fees. An owner may not charge or collect a late fee for unpaid rent due from a

tenant who demonstrated substantial loss of income or substantial out-of-pocket medical expenses due to COVID-19. This provision applies for 120 days after the ordinance expires.

Grace period. A tenant who demonstrated substantial loss of income or substantial out-of-pocket medical expenses due to COVID-19 must pay all past due rent within 120 days after the ordinance expires.

Moratorium on rent increases. An owner may not increase rent while the ordinance is in effect. As required by the Tenant Protection Act of 2019, the moratorium on rent increases would not apply to residences built within the last 15 years; single family homes, townhouses, and condominiums, unless owned by an investment trust, corporation, or LLC. It also would not apply to owner-occupied duplexes; hotels; residential care facilities for adults or the elderly; school dormitories; and group housing. The ordinance would apply to all other commercial or residential rentals to prohibit rent increases during the term of the ordinance.

Attorney's fees. If a tenant files a civil action against an owner for violating the ordinance, the prevailing party is entitled to reasonable attorney's fees and costs pursuant to order of the court.

Retroactivity. The ordinance applies to eviction notices, and unlawful detainer actions based on these notices, served or filed on or after March 16, 2020. The ordinance would not apply if a tenant has surrendered possession of its premises, or if an unlawful detainer lawsuit was finally adjudicated before March 16, 2020.

Countywide. Per the Board's direction, the ordinance is written to apply countywide, both in the unincorporated area and in cities. To the extent that a city enacts an ordinance or adopt a regulation that governs the same subject matter as the County ordinance, the city ordinance or resolution would apply within the city limits instead of this ordinance.

Ordinance term. As drafted, the ordinance would be in effect through May 31, 2020, unless shortened or extended by the Board. This means that the eviction protections and rent increase moratorium would last through May 31, 2020, unless the Board takes action to amend the ordinance term. This also means that late fees could not be charged until 120 days after May 31, 2020, and all past due rent would be due no later than 120 days after May 31, 2020.

May 31, 2020, is the date specified in the Governor's Executive Order N-28-20 which enables counties to enact local eviction protections in response to the pandemic. This date may extended by the Governor. Executive Order N-37-20, the statewide eviction moratorium, also lasts until May 31, unless the order is extended by the Governor.

Several ways of determining a termination date for the ordinance have been proposed, including:

- A term through May 31, 2020, unless shortened or extended by the Board.
- A term lasting through the term of the Governor's Executive Order on evictions, including any extensions of the Executive Order.
- A term lasting through the term of the local emergency proclaimed by the Board. The local emergency lasts until the Board terminates it.
- A term lasting through the term of the statewide emergency proclaimed by the Governor. The statewide emergency lasts until it is terminated by the Governor or Legislature.

If the Board prefers not to set a fixed termination date that may be extended by Board action, one option used by other entities is to tie the termination date to the termination of the Governor's eviction ban. Thus, if the Governor's eviction ban is extended, the ordinance term is automatically extended. Tying the termination date to the termination of either the local or state emergency may make it more difficult for the courts and parties to assess whether the eviction ban and rent moratorium remain in effect.

CLERK'S ADDENDUM

The following people submitted public commentary: James Beckler, Karen Gremer, Eva DiGrazia, Rich Martini, Marshall Donig, Ali Uscilka, John Jones, Carmita Vallejo, Dolores Ramos, Silvia Angeles, Belem Ramirez, Christine Clark, Yareatzet Santiago, Chip Washington, Alma Gomez, Silvia Perez, Guadalupe Morales, Jacqueline Chavez, Lucia Roan, Maria Navarro, Rosa Flores, Rosa Vargas, Victor Ramirez, John Schaeffer, Kevin, Shannon G., Douglas A. Leich, Brendon O'Laskey, Carmen Cruz, Debra Ballinger, Eduardo Torres, Jess Jollet, Mariana Moore, Vincent Lau, Anonymous, Kristina Tran, Rhovy Lyn Antonio, Anonymous, Josh Anijar, Jeffrey Levin, David Sharples, Audean Ghanbari, Leah Sinom-Weisberg, Jan Warren, Multi-Faith Action Coalition, Nicole Zapata, Kristi Laughlin, Teresa Pasquini, LaTanya Fisher.

ADOPTED the urgency ordinance as amended today with three minor modifications. Section 3 (a) was modified to provide more flexibility for tenants regarding adequate documentation of COVID-19 impacts. That section also was modified to require a tenant's written notice to the owner of a need to delay rent based on COVID-19 impacts, either before the rent is due, or within 14 days thereafter. Section 6 was modified to provide that the ordinance does not prevent a tenant who is able to pay rent from doing so in a timely manner.

ATTACHMENTS

Ordinance 2020-14