



**Contra
Costa
County**

To: Board of Supervisors
From: Sharon L. Anderson, County Counsel
Date: May 26, 2020

Subject: Urgency ordinance continuing a temporary prohibition on evictions and continuing a residential rent increase moratorium.

RECOMMENDATION(S):

CONSIDER adopting Ordinance No. 2020-16, an urgency ordinance continuing and modifying a temporary prohibition on evictions of tenants in Contra Costa County impacted by the COVID-19 pandemic, and continuing and modifying a residential rent increase moratorium.

FISCAL IMPACT:

None.

BACKGROUND:

On April 21, 2020, the Board of Supervisors adopted Ordinance No. 2020-14, an urgency ordinance temporarily prohibiting evictions of residential and commercial tenants in the County who are impacted by the COVID-19 pandemic and establishing a moratorium on certain residential rent increases. The Board also directed the County Counsel's Office to return to the Board on May 26, 2020, with an update.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **05/26/2020** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes: See Addendum

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

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: May 26, 2020

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

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

By: June McHuen, Deputy

BACKGROUND: (CONT'D)

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Attached to this Board order is a draft urgency ordinance, Ordinance No. 2020-16, that continues and modifies a temporary prohibition on evictions of certain tenants in Contra Costa County impacted by the COVID-19 pandemic, and continues and modifies a residential rent increase moratorium. The attached ordinance would supersede Ordinance No. 2020-14. The attached ordinance would apply to eviction notices and unlawful detainer actions served or filed on or after May 26, 2020, and Ordinance No. 2020-14 would apply to eviction notices and unlawful detainer actions served or filed between March 16, 2020, and May 25, 2020.

This Board order summarizes the new provisions of the urgency ordinance. It also indicates areas where direction is needed before the Board considers adopting the ordinance, including dates when various ordinance provisions expire. As noted below, the attached ordinance does not specify when the County's temporary prohibition on residential, commercial, no fault, third party occupant, or COVID-19 related evictions, or similar matters would end. As part of its action today, the Board should specify when the ordinance expires, to replace the current expiration date of May 31, 2020.

A version of the ordinance highlighting the changes from Ordinance No. 2020-14 is attached. The Board may make changes to the attached draft ordinance at the Board meeting and can adopt the ordinance immediately thereafter.

Definition of commercial real property (Section 2(a)). The attached ordinance narrows the definition of “commercial real property.” The ordinance would define it as any developed real property that is used as a place of business for a small business or a non-profit organization. A “small business” would be defined as an independently owned and operated business that is not dominant in its field of operation, has its principal office in California, has 100 or fewer employees, and has average annual gross receipts of \$15 million or less over the previous three years. A “small business” also is a manufacturer with 100 or fewer employees. (See Government Code section 14837(d)(1)(A).) If the Board adopts the ordinance with this definition, the prohibitions on commercial evictions would apply only to commercial properties that are small businesses or non-profit organizations.

Prohibitions on residential and commercial evictions (Section 3(a)). 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 loss of income or 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.

Under Ordinance No. 2020-14, these temporary prohibitions last through May 31, 2020.

The attached ordinance needs to specify when the temporary prohibition on COVID-19-related evictions ends.

No-fault evictions (Section 3(b)). An owner of residential property or commercial property is prohibited from terminating a residential tenancy for any “no-fault” reason.

Under Ordinance No. 2020-14, these temporary prohibitions last through May 31, 2020. The attached ordinance needs to specify when the temporary prohibition on no-fault evictions ends.

Immediate family members (Section 3(c)). An owner of residential real property is prohibited from terminating a tenancy on the basis that a tenant allowed an unauthorized occupant to live in the dwelling unit, if the 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.

Under Ordinance No. 2020-14, these temporary prohibitions last through May 31, 2020. The attached ordinance needs to specify when the temporary prohibition on unauthorized occupant evictions ends.

Exceptions (Section 3(d)). The ordinance does not limit an owner’s ability to terminate a tenancy for three reasons: (1) the termination is necessary to protect the owner’s health and safety or any other tenant’s health and safety; (2) the termination is necessary where the owner or a member of the owner’s immediate family intends to occupy the residential real property; and (3) the termination is to remove the residential unit from the rental market when permitted by the Ellis Act. The Ellis Act, Government Code section 7060 et seq., preempts local governments from prohibiting landlords from removing residential units from the rental market. The Act places strict requirements on how and when these removals can occur.

Late fees (Section 5). 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. The attached ordinance needs to specify the length of time that an owner is prohibited from charging a late fee.

Under Ordinance No. 2020-14, an owner is prohibited from charging late fees on rent that was due during the time period between March 16, 2020, and May 31, 2020, until 120 days after that ordinance expires (i.e., September 28, 2020).

Grace period (Section 6(a)). Neither Ordinance No. 2020-14 nor this ordinance completely excuse the payment of rent. Their purpose is to give tenants a grace period to pay rent after the date it would otherwise be due, provided that the tenant follows the procedures specified in the ordinance. Under Ordinance No. 2020-14, rent that would

have been paid between March 16, 2020, and May 31, 2020, must be paid by September 28, 2020. As part of an action to adopt the attached ordinance, the Board should consider the duration of any proposed grace period for the payment of rent that would otherwise be due on or after May 26, 2020.

Repayment by large businesses (Section 6(b)). The attached ordinance requires a commercial tenant that does not qualify as a small business or a non-profit organization to pay past due rent if the tenant did not pay rent in April 2020 or May 2020 under Ordinance No. 2020-14. The deadline for these businesses to pay past due rent is a decision point for the Board.

Moratorium on residential rent increases (Section 7). An owner may not increase rent on a residential real property. The attached ordinance does not specify when the moratorium ends. Under Ordinance No. 2020-14, the moratorium on rent increases lasted through September 28, 2020.

A residential property that is exempt from the rent limits imposed by the Tenant Protection Act of 2019 (Civil Code section 1947.12) is exempt from this residential rent moratorium. The rent limits under the Tenant Protection Act do 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; owner-occupied duplexes; hotels; residential care facilities for adults or the elderly; school dormitories; and group housing.

Under the Costa-Hawkins Rental Housing Act (Civil Code section 1954.50 et seq.), local governments may not regulate rents on rental units built after 1995, single-family homes, individually owned condominiums and townhouses. Residential properties that are exempt from rent control under Costa-Hawkins are also exempt from the residential rent moratorium imposed by this ordinance.

The residential rent moratorium also does not apply to a residential property where one or more scheduled rent increases occur pursuant to a written rental agreement that was entered into before March 16, 2020.

The residential rent moratorium also does not apply when a unit becomes vacant and the owner sets the initial rent for a new tenancy, in accordance with Civil Code section 1954.53.

The ordinance would eliminate the moratorium on commercial rent increases. Local governments are preempted from controlling rents on commercial real property. (Civil Code section 1954.25 et seq.)

Ordinance term (Section 13). The attached ordinance needs to specify when it expires.

Applicability (Section 14). The regulations in the attached ordinance apply to cities within Contra Costa County and unincorporated Contra Costa County. Government Code section 8634 authorizes the Board of Supervisors to "promulgate countywide orders and regulations necessary to provide for the protection of life and property" during a local emergency. The California Attorney General has opined that when a county has declared a local emergency within its jurisdictional boundaries in an area that includes both unincorporated and incorporated territory, the county may adopt emergency rules and regulations pursuant to Government Code section 8634 that will be effective in both unincorporated and incorporated areas. (62 Ops.Cal.Atty.Gen. 701 (1979).) Under the attached ordinance, if the governing body of a city enacts an ordinance or adopts a regulation that governs the subject matter of this ordinance, that city ordinance or regulation will supersede the attached ordinance within that jurisdiction.

Eviction protections are the subject of pending legislation. One bill, proposed by Senator Toni Atkins, would grant qualifying renters 10 years to repay missed rental payments directly to the state. The state, in turn, would compensate landlords for the missed rent with tax credits.

CLERK'S ADDENDUM

Written commentary was received from: Gwynne Gilson; Elsie Mills; Darlene Rogh, Caroline Knoll, Dee Simmons; Robert S. Enea, Enea Properties Company, LLC; Jonathon Marsh; Any Huey; Elizabeth C. Enea, Esq.; Jan Warren, Alex Werth, East Bay Housing Organizations; Jima Monson, Central County Regional Group-First 5 of Contra Costa (attached).

Speakers: Kristi Laughlin, Gabriella Hernandez, Dick Offerman, Marianna Moore, Allie Silka, Carol Villa Lobos, Blanca Collins, Yara Santiago, Julia, Diane.

The prior ordinance talked about the grace period including any extension that the board granted. Counsel thought it would be simpler to simply expressly state that the grace period would be extended for tenants who could not pay their rent in April and May, and so has provided an updated version of the draft ordinance 2020-16. It's been included on the website as Ordinance 2020-16 revised.

The Board ACCEPTED the revised draft; SET the expiration date of its protections to July 15, 2020; and ADOPTED Urgency Ordinance 2020-16.

ATTACHMENTS

Ordinance No. 2020-16

Ordinance No. 2020-16 - Highlighted

Ordinance 2020-16 Revised