



**Contra
Costa
County**

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

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

RECOMMENDATION(S):

CONSIDER whether to adopt Ordinance No. 2020-20, an urgency ordinance continuing a temporary prohibition on evictions of tenants in Contra Costa County impacted by the COVID-19 pandemic, and continuing 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. On May 26, 2020, the Board adopted Ordinance No. 2020-16, continuing and modifying the temporary prohibition on tenant evictions, and continuing and modifying a residential rent increase moratorium. The Board also directed the County Counsel's Office to return to the Board on July 14, 2020, with an update..

Attached to this Board order is a draft urgency ordinance, Ordinance No. 2020-20, that

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **07/14/2020** ☒ 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: July 14, 2020

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

By: , Deputy

cc: David Twa, County Administrator, David O. Livingston, Sheriff, Anna Roth, Director, Health Services, Kathy Gallagher, Director, Employment & Human Services

continues a temporary prohibition on evictions of certain tenants in Contra Costa County impacted by the COVID-19 pandemic, and continues a residential rent increase moratorium.

BACKGROUND: (CONT'D)

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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 the dates when the County's temporary prohibition on residential, commercial, no fault, third party occupant, or COVID-19 related evictions, or similar matters would end. This is a decision point for the Board. The question before the Board is whether to extend these protections beyond July 15, 2020, and if so, to what date.

Under the Governor's Executive Order N-37-20, landlords throughout California were prohibited from evicting residential tenants for nonpayment for rent when the inability to pay is due to COVID-19. These statewide protections expired May 31, 2020. Under Executive Order N-71-20, local jurisdictions are authorized to suspend the evictions of residential and commercial tenants for the non-payment of rent if the non-payment is a result of the COVID-19 pandemic through September 30, 2020.

Prohibitions on residential and commercial evictions (Section 3(a)). An owner of residential property or small business 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. 2020-16, these temporary prohibitions last through July 15, 2020.

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. 2020-16, these temporary prohibitions last through July 15, 2020.

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. 2020-16, these temporary prohibitions last through July 15, 2020.

Exceptions (Section 3(d)). The ordinance allows owners 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.

Ordinance No. 2020-16 prohibits an owner from charging late fees through November 15, 2020, on rent that was due between March 16, 2020, and May 31, 2020. The question before the Board is whether to extend the November 15, 2020, date.

Grace period (Section 6(a)). Neither Ordinance No. 2020-16 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. 2020-16, rent that would have been paid between March 16, 2020, and July 15, 2020, must be paid by November 15, 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 July 15, 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 September 30, 2020.

Moratorium on residential rent increases (Section 7). An owner may not increase rent on a residential real property. Under Ordinance No. 2020-16, the moratorium on rent increases lasts through July 15, 2020. As part of an action to adopt the attached ordinance, the Board should consider whether to continue the moratorium and if so, the duration of the moratorium.

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.

There is no 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). If the Board elects to adopt this urgency ordinance, the Board should specify when the ordinance 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.

Pending Legislation.

Eviction protections are the subject of at least eight pending bills. A description of the various bills is attached. One bill, Senate Bill 1410, would authorize a landlord and tenant to enter into a “tenant-owner COVID-19 eviction relief agreement” that would allow the tenant to defer unpaid rent and prohibit the owner from serving a notice terminating the tenancy or filing an eviction lawsuit for the unpaid rent during the statewide COVID-19 emergency. The state of California would pay the unpaid rent to the landlord in the form of a tax credit. The tenant would be required to repay the unpaid rent to the state in annual equal installment payments over a 10-year period beginning in 2024.

The state would not charge interest as long as payments are timely made. A tenant that cannot make installment payments beginning in 2024 could be eligible for a reduction or cancellation of the payment at that time.

Another bill, Assembly Bill 1436, provides that a tenant cannot be evicted due to unpaid rent accrued during the statewide COVID-19 emergency or 90 days following the emergency. The bill does not alter the obligation to pay rent after the emergency period and allows for normal evictions for future missed rent. The bill gives tenants 15 months from the end of the COVID-19 emergency declaration to arrange for voluntary repayment before unpaid rent is considered in default. After that period, landlords may use normal civil remedies for pursuing consumer debt. The bill also allows tenants and landlords to make voluntary written repayment agreements, as long as the agreements do not result in the renter owing more than the amount of unpaid rent due during the emergency period, and requires landlords to account for any assistance they have received if they enter into an agreement or pursue debt collection.

Also attached to the Board order is a memorandum from the Director of Employment and Human Services that provides experiential information about residential evictions and rent increases in the County since April 21, when the initial ordinance took effect.

CLERK'S ADDENDUM

Speakers; a tenant/landlord attorney in CCC; resident; member of ACCE; Paul Larudi, Richmond ACCE; Donald Wang, ACCE; Melvin Willis, ACCE and member of Richmond City Council; David xxxx, East County Regional Group; Patricia Aguilar, ACCE; CCC resident; Linda Olvera, Freedom for Immigrants, Contra Costa Immigrant Rights Alliance; Josh Anijar, Contra Costa Central Labor Council; Alex, Contra Costa Resident; Deena Levine, Jewish Family & Community Services East Bay; Elsie Mills, resident of Concord; Raul Vasquez; Rosie Antonio, California Apartment Association; Hector, Ensuring Opportunity Campaign; No Name Given; Sylvia, East County Regional Group; Christine Laughlin; Michael Farrar, resident of Walnut Creek; Melody Weintraub; Sherrie Grovener, resident of El Cerrito; Debra Ballinger; Ally Silka, Healthy and Active After 45; David Young, resident of San Ramon; Carla Gonzalez, resident of Concord;

Written commentary in support of extension was provided by (attached): Deena Levine, Jewish family &Community Services East Bay; Sanjita Pamidimukkala; Rahi Kotadia; Vikram B.; Skyler Spears; Jade Wang; Chelsea Wang; Riya Bindlish; Vivian Kuang; Crystal Wang; Ada Zhong; Lauria Sun; Ansuman Bardalai; Meera Bathwal; Shannon Zheng; Shreyas Kiran; Ava Vehemente; Sruthi Gade; David Jung; Sraavya Sambara; Kavin Kumaravel; Andrew Qin; Rohit Srinivas; Scarlet Reed; Eshal Sandhu; Will Dominie, Bay Area Regional Health Inequities Initiative; Debra Ballinger; Ally, Healthy and Active Before 5; David Jung, resident of San Ramon

The Board extended the ordinance provisions to September 30, with the Grace Period extended to January 31, 2021.

ADOPTED Ordinance No. 2020-20, an urgency ordinance continuing a temporary

prohibition on evictions of tenants in Contra Costa County impacted by the COVID-19 pandemic, and continuing a residential rent increase moratorium.

ATTACHMENTS

Ordinance No. 2020-20

Table of Pending Eviction Protections Legislation

EHSD Memo re Evictions and Tenant Protections