



Contra
Costa
County

To: Board of Supervisors

From:

Date: September 22, 2020

Subject: Urgency Ordinance prohibiting certain residential evictions and residential rent increases.

RECOMMENDATION(S):

CONSIDER adopting Ordinance No. 2020-25, an urgency ordinance authorizing a temporary prohibition on certain evictions of residential tenants in Contra Costa County and authorizing 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. On July 14, 2020, the Board of Supervisors adopted Ordinance No. 2020-20, an urgency ordinance continuing a temporary prohibition on evictions of residential and certain commercial real property tenants in Contra Costa County impacted by the COVID-19 pandemic, and continuing a

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **09/22/2020** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

Contact: Mary Ann Mason, Chief
Assistant County Counsel, (925)
655-2200

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: September 22, 2020

, 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

moratorium on certain residential rent increases.

BACKGROUND: (CONT'D)

On August 31, 2020, Governor Newsom signed Assembly Bill 3088, the COVID-19 Tenant Relief Act of 2020 (the Act), which went into effect immediately. The Act extends eviction protections for residential tenants, including mobilehome tenants, who are experiencing a financial hardship related to COVID-19. The Act prohibits residential tenants from being evicted for failure to pay rent because of a COVID-19-related hardship occurring between March 1 and August 31, 2020, as long as the tenant provides the landlord with a written declaration of hardship. Residential tenants who experience a new COVID-19-related hardship between September 1, 2020, and January 31, 2021, are also protected from eviction through this date as long as they pay 25 percent of the rent due by January 31, 2021.

The Act authorizes local jurisdictions to amend existing urgency ordinances to continue prohibitions on certain types of residential evictions, including no fault evictions. On September 8, 2020, the Board directed the County Counsel's Office to return to the Board on September 22, 2020, with an amended urgency ordinance that continues a temporary prohibition on certain evictions of residential tenants and continues a moratorium on certain residential rent increases.

The attached urgency ordinance, Ordinance No. 2020-25, prohibits a landlord from terminating a residential tenancy for any no-fault reason, subject to specified exceptions. It also prohibits a landlord from terminating a residential 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 also prohibits a landlord from increasing rent on a residential real property. The term of the ordinance is through January 31, 2021. State law allows the County to adopt this ordinance because it is consistent with state law and provides additional tenant protections, including the provision that prohibits a landlord from terminating a residential tenancy on the basis that a tenant allowed an unauthorized immediate family member to live in the dwelling unit as a result of the COVID-19 pandemic.

The ordinance specifically provides as follows:

No fault evictions (Section 3(a)). A landlord is prohibited from terminating a residential tenancy for any "no-fault" reason, subject to specified exceptions. This prohibition lasts through January 31, 2021.

Immediate family members (Section 3(b)). A landlord is prohibited from terminating a residential 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. This prohibition lasts through January 31, 2021.

Exceptions to Eviction Moratorium (Section 3(c)). The ordinance does not limit a landlord’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.

Section 3 of the ordinance also provides that if state law is more protective of a residential tenancy than the ordinance, then those provisions of state law will apply to the residential tenancy.

Moratorium on residential rent increases (Section 4). A landlord may not increase rent on a residential real property. The moratorium on rent increases lasts through January 31, 2021.

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 landlord 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.)

Timing (Section 6). The attached ordinance applies retroactively to specified no fault and unauthorized occupancy eviction notices for residential real property, and unlawful detainers based on those notices, that were served or filed on or after September 1, 2020, except to the extent a tenant has surrendered possession of its premises, or an unlawful detainer lawsuit was finally adjudicated before March 16, 2020. The purpose of this provision is to align the ordinance with the September 1, 2020, effective date of the COVID-19 Tenant Relief Act of 2020. The provisions of Ordinance No. 2020-20 will apply to small businesses through September 30, 2020, and the grace period for past due rent owed by small businesses will extend through January 31, 2021.

Applicability (Section 7). 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.

Ordinance term (Section 10). The attached ordinance expires January 31, 2021.

Commercial Properties. Before the COVID-19 Tenant Relief Act of 2020 went into effect, Governor Newsom issued two Executive Orders authorizing counties and cities to suspend certain residential and commercial evictions. By waiving state law governing evictions, Executive Order N-28-20 authorized local jurisdictions to suspend the evictions of residential and commercial tenants for the non-payment of rent if the non-payment was a result of the COVID-19 pandemic. Executive Order N-71-20 extended this authority of local jurisdictions through September 30, 2020. As of the date of this Board order, the Governor has not taken any action that would extend past September 30 the authority of local jurisdictions to suspend the evictions of commercial tenants. If the Governor issues an Executive Order authorizing local jurisdictions to suspend these evictions, or if any legislation provides this authority to local jurisdictions, the County Counsel’s Office will seek direction from the Board on whether to exercise any new authority.

CLERK'S ADDENDUM

Speakers: Rosa Vargas, Bay Point Elsie Mills, Concord; Marianna Moore, Raise the Roof Coalition; Melvin Willis, ACCE; Maria Franco, West Contra Costa; Alex, East Bay Housing Organization; Natalie, First Time Northern California; Donald Lang, ACCE; Francisco Torres, ACCE; Rose Antonio; Patricia Aguilar, ACCE; Debra Ballinger; Christine Laughlin, Raise the Roof Coalition; Allie, Healthy and Active Before 5; name not given.

ADOPTED Ordinance No. 2020-25 as presented; and DIRECTED County Counsel to return next week with a draft ordinance amending this ordinance in order to address additional tenant protections.

ATTACHMENTS

Ordinance No. 2020-25