



EAST PALO ALTO CITY COUNCIL STAFF REPORT

DATE: September 15, 2020

TO: Honorable Mayor and Members of the City Council

VIA: Rafael E. Alvarado Jr, City Attorney

BY: Rafael E. Alvarado Jr., City Attorney

SUBJECT: Update on the City's Residential Eviction Moratorium in Light of California Assembly Bill 3088

Recommendation

Accept the report.

Alignment with City Council Strategic Plan

This recommendation is primarily aligned with:

Priority No. 1: Enhance Public Safety and Emergency Preparedness
Priority No. 6: Create a Healthy and Safe Community

Background

The COVID-19 pandemic has continued to spread globally and changed the lives of everyone. As of the writing of this report, 6,310,663 people in the United States have been infected with COVID-19 and 189,147 people have died. In California, there are 739,527 confirmed cases, and 13,841 COVID-19 related deaths, while in San Mateo County, there are 8,895 cases of COVID-19 and 136 deaths.

Since early March when the San Mateo County Health Officer ("County Health Officer") declared a local health emergency throughout San Mateo County, the County Director of Emergency Services proclaimed a local emergency throughout San Mateo County and the San Mateo County Board of Supervisors (the "County Board") ratified and extended the declaration and proclamation, this state of emergency remains in effect.

In addition to declaring a local emergency, the County also imposed a "Shelter-in-Place" order ("SIP Order") and adopted residential and commercial eviction moratoriums. The original March 16, 2020 SIP Order by the San Mateo County Public Health Officer has been revised and/or extended on March 31, 2020, April 29, 2020, May 28, 2020, June 4, 2020, and June 17, 2020. The predominant thrust of the SIP Order is that individuals

should shelter-in-place as much as possible.

On March 16, 2020, Governor Newsom issued Executive Order N-28-20, which grants cities, counties, and cities and counties authority to enact temporary moratoria on residential evictions based on a non-payment of rent caused by the COVID-19 pandemic or the federal, state and/or local response to the COVID-19 pandemic. The provisions of this Executive Order have been extended twice, through Executive Orders N-66-20 and N-71-20.

Pursuant to these actions, the City Council adopted eviction moratoria ordinances (01-2020, 04-2020 and 05-2020) which provide that “with respect to any Delayed Payment covered by this Ordinance, a Tenant shall not be deemed to be in default of rent payment obligations unless the Tenant fails to tender the full amount of the Delayed Payment within 180 days of termination of the State of Emergency.”

At the July 21, 2020 City Council meeting, the City Council requested an analysis of the following two questions:

1. Whether the City may extend the repayment period in the City’s Rent Moratorium, for any missed rent payments caused by COVID-19, from the current 180 days to a one-year period?
2. Whether the City may prohibit a landlord from using an unlawful detainer action for non-payment of rent caused by COVID-19, thus requiring collection to occur through a civil action (i.e., consumer debt action)?

City staff prepared a staff report for the September 1, 2020 City Council meeting addressing these two questions. However, after publication of the staff report and prior to the Council meeting, a California law was adopted impacting the City’s authority to legislate in this field. California Assembly Bill (AB) 3088, known as the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (“Act”), received legislative approval before the midnight deadline on Monday, August 31, and Governor Newsom signed the bill shortly thereafter.

The report summarizes the features of AB 3088 that specifically impacts the City’s existing Residential Rental Eviction Moratorium. The effect of AB 3088 is that the City is now preempted from amending its local ordinance.

Analysis

AB 330 seeks to accomplish a few goals. It’s stated goal is to stabilize the housing situation for tenants and landlords by providing a framework for all impacted parties to negotiate and avoid as many evictions and foreclosures as possible. Although the bill does not relieve tenants, homeowners, or landlords of their financial and contractual obligations, it seeks to forestall massive social and public health harm by preventing unpaid rental debt from serving as a cause of action for eviction or foreclosure during this historic and unforeseeable period.

Local Authority:

AB 3088 enacts the COVID-19 Tenant Relief Act of 2020 (“Tenant Act”). The Tenant Act preempts portions of local ordinances, resolutions, regulations, or administrative

actions adopted in response to the COVID-19 pandemic to protect tenants from eviction based on nonpayment of rental payments. Specifically, the Tenant Act preempts local authority as follows:

- Any extension, expansion, renewal, reenactment, or new adoption of a local ordinance, that occurs between August 19, 2020, and January 31, 2021, shall have no effect before February 1, 2021.
- Applicable to East Palo Alto, the repayment period is deemed to begin on March 1, 2021 for tenants to repay COVID-19 rental debt and ends on September 1, 2021.
- The specified period of time during which a tenant is permitted to repay COVID-19 rental debt may not extend beyond the period that was in effect on August 19, 2020. The repayment period which was in effect on August 19, 2020 in East Palo Alto was six months.

In sum, state law now preempts the City of East Palo Alto from adopting a new ordinance or amending its existing ordinance to increase the tenant repayment period or require a landlord to recover unpaid rent via a consumer debt action.

Tenant Protections:

The Tenant Act provides certain protections for tenants, including:

- Extends the state eviction moratorium to January 31, 2021.
- Prohibits a landlord from evicting a resident for non-payment of rent or other charges that came due between March 1, 2020 and August 31, 2020 if the resident provides the landlord with a declaration stating their finances have been negatively affected by the COVID-19 pandemic. “High-income” residents, as defined, can also be required to provide documentation of their COVID-19-related hardship, provided the landlord follows a specific procedure.
- Prohibits landlords from evicting a resident for non-payment of rent or other charges that came due between September 1, 2020 and January 31, 2021 if the resident does both of the following: (1) provides the landlord with a declaration stating their finances have been negatively affected by the COVID-19 pandemic (and documentation, if required for a high-income resident); and, (2) by January 31, 2021, pays 25 percent of the rental payments due between September 1, 2020 and January 31, 2021 that were missed because the resident experienced COVID-19-related financial distress.
- Requires that any 3 days’ notice that demands payment of COVID-19 rental debt, that is served on a tenant between March 1, 2020, and January 31, 2021, include an unsigned copy of a declaration of COVID-19-related financial distress and that the notice advise the tenant that the tenant will not be evicted for failure to comply with the notice if the tenant delivers a signed declaration of COVID-19-related financial distress to the landlord.

- Requires landlords to give an informational notice about the new law to any residents who, as of September 1, 2020, have missed one or more payments that came due between March 1 and August 31, 2020.
- Requires a landlord to give a 15-day notice before seeking to evict for any unpaid rent or other charges due between March 1, 2020 and January 31, 2021. The 15-day period does not include Saturdays, Sundays, or judicial holidays.
- Extends “just cause” protections under AB 1482 to all residents until February 1, 2021, with limited exceptions. Eviction for demolition or “substantial rehabilitation” is limited to circumstances necessary to comply with health and safety laws.
- Prohibits a court, prior to October 5, 2020, from taking specified actions with respect to unlawful detainer actions, including issuing a summons on a complaint for unlawful detainer in any action that seeks possession of residential real property and that is based, in whole or in part, on nonpayment of rent or other charges.
- Prohibits a court from finding a tenant guilty of an unlawful detainer before February 1, 2021, subject to certain exceptions, including if the tenant was guilty of the unlawful detainer before March 1, 2020.

Landlord Protections:

AB 3088 provides certain protections for landlords:

- Allows unpaid rent and other charges due between March 1, 2020 and January 31, 2021 to be collected through small claims court. Existing small claims court limits do not apply. These small claims cases may not be filed before March 1, 2021.
- Authorize a landlord to require a high-income tenant to additionally submit documentation supporting the claim that the tenant has suffered COVID-19-related financial distress.
- “High-income tenant” means a tenant with an annual household income of 130 percent of the median income, as published by the Department of Housing and Community Development in the Official State Income Limits for 2020, for the county in which the residential rental property is located. High-income tenant” does not include a tenant with a household income of less than one hundred thousand dollars (\$100,000).

Fiscal Impact

Adoption of the proposed changes to the moratorium ordinance will have no impact on the budget.

Attachments

1. Ordinance 05-2020