



County of San Mateo

Inter-Departmental Correspondence

Department: BOARD OF SUPERVISORS
DISTRICT 4

Board Meeting Date: 8/4/2020

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Supervisor Don Horsley, District 3
Supervisor Warren Slocum, District 4

Subject: Amendment to Temporary, Countywide Moratorium on Eviction for Non-Payment of Rent by Residential Tenants Directly Impacted by the COVID-19 Pandemic as Established Under Emergency Regulation 2020-001

RECOMMENDATION:

Approve an amendment to Emergency Regulation 2020-001, a temporary, Countywide moratorium on eviction for non-payment of rent by residential tenants directly impacted by the COVID-19 pandemic through August 31, 2020, to extend the time period in which Delayed Payments shall be paid, pursuant to Section 8634 of the Government Code and Chapter 2.46 of the San Mateo County Ordinance Code.

BACKGROUND:

On March 24, 2020, the Board of Supervisors adopted Emergency Regulation 2020-001 (the "Emergency Regulation"), which places a temporary Countywide moratorium on residential evictions for (1) non-payment of rent by tenants directly impacted by the COVID-19 pandemic; and (2) certain no-fault causes unless the eviction is necessary for the health and safety of the tenant, other residents in the tenant's building, the landlord, or the landlord's family.

The Board extended the Emergency Regulation on May 26, 2020, on June 23, 2020 and again on July 21, 2020. It currently expires August 31, 2020.

Though the County has started the process of reopening the economy, as of July 29, 2020, the County was placed on State's watch list and therefore may likely be required to roll back some reopening steps as new COVID-19 cases continue to mount. Indeed, as of July 30, 2020, there have been 5,306 confirmed COVID-19 cases, and 118 COVID-19 related deaths, within the County, and 488,000 confirmed COVID-19 cases, and 8,908 COVID-19 related deaths, State-wide. In addition, on July 31, 2020, the \$600 weekly supplemental Federal Pandemic Unemployment Compensation benefit expired without Congress taking action to extend or replace it. The economic impacts of COVID-19, which continue to be felt by residents throughout the County, are compounded by a

residential rental market that ranks as one of the most expensive in the nation. Given these circumstances and recent developments, there is a need to provide tenants with additional time to pay deferred rent once the Emergency Regulation expires.

A. Summary of County and State Response to COVID-19

On March 3, 2020, pursuant to Section 101080 of the California Health and Safety Code, the San Mateo County Health Officer (the "Health Officer") declared a local health emergency throughout the County related to COVID-19. The Board of Supervisors (the "Board") ratified and extended this declaration of local health emergency, which remains in effect.

Also on March 3, 2020, pursuant to Section 8630 of the California Government Code and Chapter 2.46 of the San Mateo County Ordinance Code, the San Mateo County Director of Emergency Services proclaimed a local emergency throughout San Mateo County related to COVID-19. The Board ratified and extended the proclamation of local emergency, and this local emergency ("Local Emergency") remains in effect.

On March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency related to COVID-19 effective throughout California ("State Emergency").

On March 16, 2020, the Health Officer issued an order that, among other things, directed all individuals living within San Mateo County to shelter in their place of residence (the "County Shelter-in-Place Order"). The Health Officer extended the County Shelter-in-Place Order on several occasions due to evidence of continued significant community transmission of COVID-19 within the County and throughout the Bay Area.

On March 16, 2020, Governor Newsom issued Executive Order N-28-20, which granted cities and counties broad authority to enact temporary moratoria on residential and commercial 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, through May 31, 2020.

On March 19, 2020, Governor Newsom issued Executive Order N-33-20 requiring individuals to remain in their places of residence except as needed to maintain continuity of operations of critical infrastructure, access necessities such as food, prescriptions and healthcare, or engage in other authorized activities (the "State Shelter Order").

On March 24, 2020, the Board adopted the Emergency Regulation.

On April 6, 2020, the Judicial Council of California issued a statewide emergency rule that effectively halts court proceedings related to unlawful detainer actions until 90 days after Governor Newsom lifts the COVID-19 State of Emergency, except where necessary to protect public health and safety.

On May 8, 2020, Governor Newsom announced a plan to allow the limited reopening of some businesses beyond those in the category of essential critical infrastructure, which is part of the "Resilience Roadmap" for California, the multiphase plan to modify the State Shelter Order.

On May 18, 2020, the Presiding Judge of the San Mateo County Superior Court issued an emergency order related to unlawful detainer proceedings, which, among other things, prohibited the entry of default in any pending unlawful detainer action. The Presiding Judge of the San Mateo

County Superior Court has extended that emergency order through August 28, 2020.

On May 26, 2020, the Board extended the Emergency Regulation for 30 days through June 30, 2020.

On May 29, 2020, Governor Newsom extended Executive Order N-28-20 through July 28, 2020.

On June 16, 2020, the State approved the County's request for a variance allowing the County to align with the Resilience Roadmap for California.

On June 17, 2020, the Health Officer entered an order aligning the County with the Statewide Shelter Order/Resilience Roadmap, emphasizing individual behavior and the practices that businesses must follow as they resume operations, including limiting gatherings to no more than 50 people, outlining social distancing and face covering requirements, allowing for social bubbles, and requiring businesses to implement a social distancing protocol and written health and safety plans, based on evidence of continued significant community transmission of COVID-19 within the County and throughout the Bay Area.

On June 23, 2020, the Board extended the Emergency Regulation from June 30, 2020 through July 28, 2020.

On June 30, 2020, the Governor extended Executive Order N-28-20 through September 30, 2020.

On July 13, 2020, due to the increased number of confirmed COVID-19 cases statewide, the Governor ordered all counties to shut down activities such as museums, zoos, dining and theaters, and bars.

On July 21, 2020, the Board extended the Emergency Regulation from July 28, 2020 through August 31, 2020.

The State Department of Health is maintaining a watch list of counties that are being monitored for worsening COVID-19 trends, and if a county is on the watch list for three days or longer, the State will order them to further roll back reopening. As of July 29, 2020, San Mateo County has been placed on the watch list. If it remains on the watch list for three consecutive days, it will be required to roll back some of its re-opening steps.

B. Need for Amendment to Countywide Moratorium on Residential Evictions Established Under Emergency Regulation 2020-001

The number of confirmed COVID-19 cases in the County continues to rise and many residents continue to suffer from the severe financial impacts of the pandemic, including loss of income due to lay-offs and business closures or the reduction of work hours and extraordinary out-of-pocket medical expenses.

These impacts are compounded by the County's rental market, where rents are much higher than the national average. As a result, many of the County's renters are rent-burdened, with some paying over 50% of their income on rent, leaving less money available for other necessities, such as healthcare and food.

Moreover, given the shortage of affordable rental housing in the County, residents who are evicted are at risk of homelessness, an outcome that in ordinary times is tragic, but during the COVID-19

pandemic is particularly dangerous, as homeless residents face increased risks of exposure to COVID-19 and are more susceptible to its associated negative health consequences. This impacts County's ability to limit the spread of COVID-19 and places an additional strain on the County's health care infrastructure.

DISCUSSION:

A. Continuing Legal Authority for Emergency Regulation 2020-001

Section 8634 of the California Government Code provides that during a local emergency, the governing body of a political subdivision of the State, which includes the County of San Mateo, "may promulgate orders and regulations necessary to provide for the protection of life and property..." The law requires that such orders "shall be in writing and shall be given widespread publicity and notice." (*Id.*) Chapter 2.46 of the County Ordinance Code tracks Section 8634 of the Government Code with respect to the adoption to emergency rules and regulations. Section 8558 of the Government Code defines "local emergency," in part, to mean that "duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city..."

Construing the above and other relevant authorities, 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 the unincorporated area and incorporated territory, the county may adopt emergency rules and regulations pursuant to Section 8634 of the Government Code that will be effective in both unincorporated and incorporated areas. (62 Ops. Cal. Atty. Gen. 701 (1979).)

Thus, while the Local Emergency remains in place, the County has the authority to amend Emergency Regulation 2020-001, which applies throughout the entire geographic boundaries of the County, in both the unincorporated area and within incorporated cities.

B. Proposed Amendment to Repayment Period for Delayed Payments

Emergency Regulation 2020-001 is currently scheduled to expire on August 31, 2020.

Currently, with respect to any delayed (i.e., missed) rent payment covered by this Emergency Regulation, a tenant has up to 180 days after the Emergency Regulation expires to tender the full amount of the missed rent payment, before the tenant shall be deemed to be in default of rent payment obligations. Specifically, within 90 days after the Emergency Order expires, the tenant must pay the full amount of delayed rent payment, if able to do so.

If the tenant is still unable to fully pay the delayed rent payment at the end of 90 days as a direct result of COVID-19 or the government's response to COVID-19, prior to the expiration of that 90 day period, the tenant must provide the landlord another written notice and additional documentation that shows this continuing inability to fully pay the delayed rent payment to extend the payment date an additional 30 days.

The tenant may provide additional written notices and documentation every 30 days to further extend the deadline to fully pay the delayed rent payment, but under no circumstances is the landlord required to extend the deadline beyond 180 days after the Emergency Regulation expires.

With the proposed amendments, a tenant would have up to six (6) months after the Emergency Regulation expires to repay at least one half of the total amount of delayed rent payment, and up to twelve (12) months after the Emergency Regulation to repay in full the amount of the delayed rent payment, before the tenant would be considered in default of rent payment obligations.

Solely by way of example, under the Emergency Regulation as proposed to be amended, a tenant covered by the Emergency Regulation who rented a unit for \$2,500 per month who was unable to make any rent payments for four months, and therefore owed \$10,000 in delayed rent payment at the time that the Emergency Regulation expired, would have six months after the expiration date of the Emergency Regulation to pay \$5,000 of this delayed rent payment and an additional six months thereafter to pay the remaining \$5,000 in delayed rent payment.

In addition, prior to initiating repayment plans of any missed rent payments with their tenants protected under this Emergency Regulation, property owners would be required to inform their tenants of their repayment rights.

All other provisions of Emergency Regulation 2020-001, as originally adopted by the Board on March 24, 2020, would remain unchanged and continue to operate through August 31, 2020.

FISCAL IMPACT:

The proposed amendment to extend the repayment period for Delayed Payment under Emergency Regulation 2020-001 may result in a temporary increased workload for Department of Housing and Code Compliance staff, as residential tenants and landlords might contact the County with questions about the impacts of this amendment.