



County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY MANAGER

File #: 20-135

Board Meeting Date: 3/24/2020

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Michael P. Callagy, County Manager

Subject: Emergency Regulation Establishing a Temporary, Countywide Moratorium on Eviction for Non-Payment of Rent by Residential Tenants Directly Impacted by the COVID-19 Pandemic

RECOMMENDATION:

Approve a resolution adopting an Emergency Regulation, Pursuant to Section 8634 of the Government Code and Chapter 2.46 of the San Mateo County Ordinance Code, establishing a temporary, countywide moratorium on eviction for non-payment of rent by residential tenants directly impacted by the COVID-19 pandemic.

BACKGROUND:

On March 3, 2020, and 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 San Mateo County related to the novel coronavirus ("COVID-19"). On March 10, 2020, the Board of Supervisors (the "Board") ratified and extended this declaration of local health emergency and this declaration of local health emergency remains in effect.

Also on March 3, 2020, and 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 (the County Manager also serves as the Director of Emergency Services) proclaimed a local emergency throughout San Mateo County related to COVID-19. On March 10, 2020, the Board ratified and extended the proclamation of a state of emergency, and this state of emergency ("State of Emergency") remains in effect.

In an order dated March 14, 2020, Health Officer prohibited all public or private gatherings of 50 or more people and urged the cancelation of all gatherings of 10 or more people in a single confined space.

Thereafter, on March 16, 2020, the Health Officer issued an order that, among other things, directs all individuals currently living within San Mateo County to shelter in their place of residence ("Shelter-in-Place Order"), and that authorizes individuals to leave their residences only for certain "Essential

Activities,” Essential Governmental Functions,” or to operate “Essential Businesses,” all as defined in the Shelter-in Place-Order. (A copy of the Shelter-in-Place Order is included as an exhibit to the proposed regulations included with this memorandum.)

That same day, Governor Newsom issued Executive Order N-28-20, which grants cities, counties and 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.

Even with these actions, the number of identified COVID-19 cases in the County of San Mateo continues to rise. As of the date of this memorandum, there are approximately 100 confirmed cases of COVID-19 within the County, over 1,000 confirmed cases in California, and 19 COVID-19 related deaths in California.

On March 19, 2020, Governor Newsom issued Executive Order N-33-20 which, among other things, directs all California residents to immediately heed current State public health directives, including the March 19, 2020 directive of the State Public Health Officer to all State residents to stay home or at their place of residence, subject to certain exceptions.

COVID-19 and the measures to combat it are seriously disrupting the national, state and local economy, with severe impacts on many County residents, including loss of income due to lay-offs and business closures or the reduction of work hours, as well as the incurrence of extraordinary out-of-pocket medical expenses. Other County residents have been forced to reduce their work hours due to school closures.

County workers who lose income due to lay-offs, reduced hours, illness or the need to care for a sick or otherwise dependent family member will frequently be unable to stay current on rent payments. Moreover, given the shortage of affordable rental housing in the County, people who are evicted are at risk of homelessness and, as reflected in Health Officer’s Shelter-in-Place Order, homelessness increases the COVID-19-related risks to both the homeless individuals and to the community at large.

Displacing renters who are unable to pay rent due to COVID-19-related financial impacts causes will worsen the present crisis by making it difficult for them to follow the Health Officer’s Shelter-in-Place Order, which will put tenants and many others at risk. Therefore, taking steps to ensure that people remain housed during this public health emergency is a reasonable means of protecting human life and safety.

On March 13, 2020, the Mayor of the City and County of San Francisco issued a Second Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency, which imposed a temporary moratorium on evictions for non-payment of rent by residential tenants directly impacted by the COVID-19 crisis. Other jurisdictions throughout the State have taken similar actions.

The proposed Emergency Regulation for San Mateo County, which would go into effect immediately, establishes a moratorium for non-payment of rent by residential tenants directly impacted by the COVID-19 pandemic and no-fault terminations of tenancy unless the eviction is necessary for the health and safety of the tenant or the landlord. The moratorium would remain in effect until the termination of the State of Emergency.

DISCUSSION:

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.

Along similar lines, 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 unincorporated area 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, the County has the authority to issue an emergency regulation that would apply throughout the entire geographic boundaries of the County, in both the unincorporated area and within incorporated cities.

The proposed Emergency Regulation would prohibit a landlord from evicting a tenant for either (1) non-payment of rent if the tenant shows with documentation that their inability to pay rent is due to COVID-19 or the federal, state or local government response to COVID-19, or (2) a no-fault termination of tenancy (i.e. a reason not based on the fault of the tenant) unless it is necessary for the health and safety of the landlord, the tenant, or other residents of the building where the tenant resides.

Examples of qualifying circumstances include a tenant who loses household income as a result of being sick with COVID-19, or caring for a household or family member who is sick with COVID-19, or as a result of a lay-off, loss of hours, loss of business, or other income reduction resulting from COVID-19 or the government response to COVID-19; or due to compliance with the Shelter-in-Place Order or a recommendation from a government agency to stay home, self-quarantine, or avoid congregating with others during the State of Emergency; as a result of caring for minor children affected by school, pre-school and/or childcare closures due to the State of Emergency; or as a result of having incurred significant medical or other expenses related to COVID-19.

Under the proposed Emergency Regulation, landlords would be prohibited from issuing a three-day notice to pay rent or quit or a notice of no-fault termination of tenancy after the effective date of the Emergency Regulation, or attempting to enforce a termination of tenancy through an unlawful detainer action based on any notice issued but not yet expired before the effective date of the Emergency Regulation.

Prior to evicting a tenant based on nonpayment of rent during the time the Emergency Regulation remains in effect, a landlord must provide the tenant written notice of the Emergency Regulation using a form developed by the County’s Director of Housing. The tenant then has at least 14 days, or more if reasonable under the circumstances, to provide the landlord evidence of inability to pay rent due to COVID-19.

The proposed Emergency Regulation would not relieve tenants of liability for unpaid rent; landlords would be able to seek payment of any outstanding rent after termination of the State of Emergency, and tenants must remain current on any rent due after termination of the State of Emergency.

However, as to any delayed payment covered by the Emergency Regulation, a tenant would not be considered in default of outstanding rent obligations unless the tenant failed to tender the full amount of the outstanding rent within 180 days of termination of the State of Emergency, or within 180 days of the date upon which an extension of the Emergency Regulation expires, whichever is later. In addition, a landlord would not be able not charge or collect a late fee for a delayed payment covered by the Emergency Regulation. Any three-day notices to pay or quit or no-fault eviction notices served prior the effective date of this Emergency Regulation but not yet expired would automatically be deemed served the day following the expiration of this Emergency Regulation.

Violation of the proposed Emergency Regulation would be a misdemeanor and punishable as such. Further, in the event a violation of the Emergency Regulation, a tenant may seek various forms of relief including injunctive relief, money damages of not less than three times actual damages (including damages for mental or emotional distress), and any other relief the Court deems appropriate. In the case of an award of damages for mental or emotional distress, treble damages may be available if the Court determines that the property owner knowingly violated or recklessly disregarded the Emergency Regulation. The prevailing party is entitled to reasonable attorney's fees and costs pursuant to court order. In addition, this Emergency Regulation would provide an affirmative defense to eviction in the event that an unlawful detainer action is commenced in violation of its terms.

The proposed Emergency Regulation would remain in effect until the State of Emergency is terminated.

FISCAL IMPACT:

The adoption of the proposed Emergency Regulation will result in a temporary increased workload for Department of Housing (DOH) staff as it is expected that tenants will contact the County with questions and for Code Compliance as potential violations are reported. DOH and Code Compliance staff will provide information about the Emergency Regulation and make referrals to legal resources.