



County of San Mateo

Inter-Departmental Correspondence

Department: BOARD OF SUPERVISORS
DISTRICT 1
File #: 20-186

Board Meeting Date: 4/7/2020

Special Notice / Hearing: None
Vote Required: 4/5

To: Honorable Board of Supervisors

From: Supervisor Dave Pine, District 1
Supervisor Warren Slocum, District 4

Subject: Uncodified Urgency Ordinance Establishing a Temporary Moratorium in the Unincorporated Area on Eviction for Non-Payment of Rent by Small Business Commercial Tenants Directly Impacted by the COVID-19 Pandemic

RECOMMENDATION:

Adopt an uncodified urgency ordinance of the County of San Mateo establishing a temporary moratorium in the unincorporated area on eviction for non-payment of rent by small business commercial tenants directly impacted by the COVID-19 pandemic.

BACKGROUND:

The scale of the COVID-19 pandemic is staggering. To date, there have been over 1,000,000 confirmed COVID-19 cases worldwide and nearly 250,000 in the United States, with thousands of deaths. Closer to home, California has over 10,000 confirmed cases, and the County has 453 confirmed cases, and ten residents have died of the disease. The economic impacts have been swift and severe, with over 6.6 million Americans suddenly unemployed and many businesses forced to shut down in response to shelter-in-place orders.

These effects are also being felt in the County, particularly by small businesses suffering from reductions in income due to lower customer demand, forced closures, decreases in available workforce, and increased expenses. These abrupt and severe negative impacts have affected, and will continue to affect, the ability of many small businesses to make rent payments. Without action, these small businesses, along with the local communities they serve and the residents they employ, may never recover.

A. Local and State Actions Taken To Date.

On March 3, 2020, and pursuant to Section 101080 of the California Health and Safety Code, the

San Mateo County Health Officer declared a local health emergency throughout the County related to COVID-19. The Board of Supervisors ratified and extended this declaration of local health emergency, which remains in effect. In addition, 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 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 remains in effect.

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

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 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. On March 19, 2020, the Governor issued Executive Order N-33-20, which imposed a state-wide shelter-in-place order. (The state-wide order does not affect the validity of the County's order.) The Health Officer issued an order on March 31, 2020 that extended and revised the County's Shelter-in-Place Order.

Governor Newsom issued Executive Order N-28-20, on March 16, 2020, which grants local jurisdictions 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.

On March 23, 2020, the Board adopted an Emergency Regulation establishing a temporary, countywide moratorium on eviction for non-payment of rent by residential tenants directly impacted by the COVID-19 pandemic.

B. The Need to Protect Local Small Business Commercial Tenants.

Immediate steps are necessary to mitigate the economic impacts of COVID-19 by ensuring that local small businesses, which are essential to the health and vibrancy of our local communities, survive this current pandemic and continue to operate, both during the Local Emergency as essential businesses, as defined in the County's Shelter-in-Place Order, and after the restrictions in the Shelter-in-Place Orders are lifted.

A number of local small businesses that provide essential items and services to County residents (such as food and medical supply retailers) are deemed "Essential Businesses" under the Shelter-in-Place Orders. The public interest is served by helping those businesses remain open. Moreover, to the extent that other local small businesses are not currently operating due to the Shelter-in-Place Orders, the public interest is served by helping those businesses resume operations as soon as the Shelter-in-Place Orders are lifted because the ongoing existence of such small businesses are essential to the protection of the public peace and the health, safety, life, property, and general welfare of County residents.

DISCUSSION:

Section 25123 of the Government Code authorizes the Board to adopt an urgency ordinance to protect the public peace, health, or safety, where there is a declaration of the facts constituting the urgency and the ordinance is adopted by a four-fifths vote of the Board.

Moreover, 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 101025 of the Health and Safety Code provides that the Board shall take measures as may be necessary to preserve and protect the public health in the unincorporated territory of the County, including the adoption of ordinances, regulations, and orders.

The proposed urgency ordinance, which would take effect immediately if adopted by the Board, prohibits an owner of commercial real property in the unincorporated area of the County from evicting a small business commercial tenant for non-payment of rent if the tenant establishes, through documentation, that their inability to pay rent is due to a decrease in net business income directly resulting from COVID-19 or the federal, state or local government response to COVID-19.

Examples of qualifying circumstances include reduced business income caused by illness; an inability to work; a reduction in operating hours, in available workforce, or consumer demand; increases in the tenant’s health care expenses employee health care expenses for which the tenant is responsible; increases in the cost of supplies or other overhead expenses necessary to carry out the tenant’s business; or temporary closure of the tenant’s business.

Under the urgency ordinance, a qualifying small business is one with annual gross receipts of not more than One Million Five Hundred Thousand Dollars (\$2,500,000) for the 2019 calendar year. This \$2,500,000 figure is prorated if a business did not operate for the entire 2019 calendar year. For example, a business that operated for only six months of 2019 would qualify if its gross receipts were \$750,000 or less. In the case of a business that began operating after the 2019 calendar year, but before the adoption of the urgency ordinance, the \$2,500,000 annual gross receipt figure is similarly prorated. For example, a business that began operating in February 2020 and operated for only two months before adoption of the urgency ordinance would qualify if its gross receipts were \$250,000 or less.

The urgency ordinance incorporates the definition of “gross receipts” in Section 6012 of the Revenue & Taxation Code, which pertains to State sales and use taxes.

Prior to evicting a commercial tenant based on nonpayment of rent during the time the urgency ordinance remains in effect, the owner of the commercial property must provide the tenant written notice of the urgency ordinance using a form developed by the County Manager’s Office or designee. The commercial tenant then has at least 14 days, or more if reasonable under the circumstances, to provide the owner evidence of inability to pay rent due to COVID-19.

The urgency ordinance would not relieve qualifying commercial tenants of liability for unpaid rent. A commercial tenant, if able, must continue to make partial monthly rent payments while the urgency ordinance remains in effect.

However, a commercial tenant has up to 180 days after the urgency ordinance expires to pay the full amount of rent payments missed as a direct result of COVID-19. Within 90 days after the urgency ordinance expires, the tenant must pay the full amount of missed payments, if able to do so. If the

tenant is still unable to do so as a direct result of COVID-19, the tenant must provide the owner of the commercial real property another written notice and additional documentation 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, but under no circumstances is the owner required to extend the deadline beyond 180 days after the urgency ordinance expires. The owner cannot charge or collect a late fee for any missed payment covered by this urgency ordinance.

In the event a knowing violation of the urgency ordinance, a commercial tenant may file an action seeking injunctive relief, money damages and any other relief the Court deems appropriate, and the prevailing party in that action is entitled to reasonable attorney's fees and costs. In addition, the urgency ordinance provides an affirmative defense to eviction in the event that an action to recover possession is commenced in violation of its terms.

The proposed urgency ordinance would remain in effect through May 31, 2020, unless extended by the Board.

FISCAL IMPACT:

The adoption of the proposed urgency ordinance will result in a temporary increased workload for the County Manager's Office (CMO) staff and Code Compliance as it is expected that small business commercial tenants will contact the County with questions as potential violations are reported. County staff will provide information about the urgency ordinance and make referrals to legal resources.