



County of San Mateo

Inter-Departmental Correspondence

Department: BOARD OF SUPERVISORS
DISTRICT 5
File #: 20-245

Board Meeting Date: 4/28/2020

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Supervisor David Canepa, District 5
Supervisor Don Horsley, District 3

Subject: Emergency Regulation 2020-002 Establishing a Temporary Countywide Moratorium on Rent Increases on Certain Existing Residential Tenancies Due to COVID-19 Pandemic

RECOMMENDATION:

Approve a resolution adopting an Emergency Regulation 2020-002 establishing a temporary Countywide moratorium on rent increases on certain existing residential tenancies due to the COVID-19 pandemic.

BACKGROUND:

According to Governor Newsom, at least 115 people died on April 22, 2020 of COVID-19-related causes, which represents the highest daily COVID-19 death rate since the pandemic began. . As of April 22, 2020, the number of reported confirmed COVID-19 cases in California exceeded 35,000, with nearly 1,000 in San Mateo County. The number of actual cases is almost certainly much higher, and will continue to increase.

Meanwhile, the economic impacts of the COVID-19 pandemic have been historically devastating. Over the past five weeks, approximately 26.5 million workers in the United States have filed claims for unemployment, with 3.3 million in California alone. The national unemployment rate is approximately 20%, the highest our Nation has experienced since the depths of the Great Depression.

The County has not been spared these impacts, which are compounded by a residential rental market that ranks as one of the most expensive in the nation. Indeed, many of the County's renters are rent-burdened, paying over 30% of their income on rent, and some paying over 50% of their income on rent. This leaves less money available for other necessities, such as healthcare and food.

A. County and State Emergencies and Shelter-in-Place Orders.

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.

In addition, 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, directs all individuals currently living within San Mateo County to shelter in their place of residence (“County 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, Governor Newsom issued Executive Order N-33-20, which imposed a statewide shelter-in-place order requiring individuals to remain in their places of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors or to access necessities such as food, prescriptions, and health care or other authorized activities (“Statewide Shelter-in-Place Order”).

On March 31, 2020, the Health Officer issued a revised Shelter-in-Place Order that expands and extends through May 3, 2020 the County Shelter-in-Place Order.

B. County and State Protections of Residential Tenants

In conjunction with the Local and State Emergencies and County and Statewide Shelter-in-Place Orders, both the County and State have taken steps to protect residential tenants during the COVID-19 pandemic.

On March 16, 2020, Governor Newsom issued Executive Order N-28-20, 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 Emergency Regulation 2020-001, which imposed a temporary, countywide moratorium on eviction for non-payment of rent by residential tenants directly impacted by the COVID-19 pandemic. Emergency Regulation 2020-001 remains in effect until May 31, 2020, unless extended by the Board.

On March 27, 2020, Governor Newsom issued Executive Order N-37-20, which extends the period of time within which a tenant must respond to an unlawful detainer summons under Code of Civil Procedure 1167 from five (5) days to 60 days, if certain criteria are met.

Then, on April 5, 2020, the Judicial Council of California issued an emergency order that effectively halted residential evictions statewide until 90 days after Governor Newsom lifts the COVID-19 State

of Emergency, and prohibits courts from proceeding with unlawful detainer cases unless they are necessary to protect public health and safety.

None of the protections currently in place prevent landlords from increasing rent during the COVID-19-related local emergency. For struggling residential tenants who have been impacted by COVID-19, a rent increase could result in dire financial, psychological, and health consequences.

DISCUSSION:

Legal Authority for Emergency Regulation 2020-002

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, 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.

A. Protections Provided Under Emergency Regulation 2020-002

Emergency Regulation 2020-002, if adopted by the Board, would temporarily prevent property owners from increasing rent on certain residential properties in the County where the residential tenant demonstrates an inability to pay the increased rent as a direct result of the COVID-19 pandemic or any federal, state or local government response to the COVID-19 pandemic. The moratorium imposed by the Emergency Regulation does not apply to residential properties that are exempt from the rent limits imposed by Civil Code Sections 1947.12 and 1954.50, *et seq.* (i.e., the Costa-Hawkins Rental Housing Act).

Examples of reasons a tenant may be unable to pay increased rent under Emergency Regulation 2020-002 include:

- Lost 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;
- Lost household income as a result of a lay-off, loss of hours, loss of business, or other income reduction resulting from COVID-19 or the federal, state or local government response to COVID-19;

- Lost household income 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;
- Lost household income as a result of caring for minor children affected by school, pre-school and/or childcare closures;
- Tenant or a member of Tenant's household incurred substantial medical costs related to COVID-19; and
- Tenant suffered any other substantial financial hardship caused directly by COVID-19 or the governmental response to the COVID-19 pandemic.

The notice requirements under Emergency Regulation 2020-002 are modeled after similar requirements included in the temporary Countywide moratorium on residential evictions already in place. Specifically, while Emergency Regulation 2020-002 remains in effect, whenever a landlord serves a written notice to increase rent, the landlord must also provide the tenant with written notice explaining the tenant's rights under Emergency Regulation 2020-002. A tenant then has 14 days after receiving the notice to prove, through written documentation, that the tenant is unable to pay the rent increase as a direct result of COVID-19 or the governmental response to the COVID-19 pandemic.

Emergency Regulation 2020-002 would take effect immediately and remain in effect until May 31, 2020, unless extended by the Board. The protection against rent increases would apply to all notices of rent increase served on or after the date the Emergency Regulation takes effect and throughout the entire time it remains in effect. Thus, for example, assuming the Emergency Regulation takes effect April 28, 2020 and remains in effect until May 31, 2020, it would protect against a rent increase based on a notice to increase rent served anytime between April 28, 2020 and May 31, 2020, but **not** based on a notice to increase rent served before April 28, 2020 or after May 31, 2020.

A landlord's ability to increase rent resumes once Emergency Regulation 2020-002 is no longer in effect. Thus, a landlord can reinstate a planned rent increase that was deferred because of the Emergency Regulation by serving a new notice of rent increase.

Also similar to the existing temporary moratorium on residential evictions, Emergency Regulation 2020-002 applies Countywide, meaning it applies throughout the entire geographic boundary of the County, including all incorporated cities and unincorporated areas.

In the event a knowing violation of Emergency Regulation 2020-002, a residential 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. Moreover, Emergency Regulation 2020-002 operates as an affirmative defense to an unlawful detainer action based on the tenant's failure to pay increased rent imposed in violation the Emergency Regulation.

FISCAL IMPACT:

The adoption of the proposed Emergency Regulation 2020-002 will result in a temporary increased workload for Department of Housing and Code Compliance staff, as it is expected that residential tenants and landlords will contact the County with questions as potential violations are reported.