



Legislation Details (With Text)

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Adopt an Ordinance to Extend the City's Residential Eviction Moratorium to February 28, 2024

COUNCIL PRIORITY

- Housing and Homelessness
- Race and Equity Initiatives

SUMMARY

Staff presents for the City Council's consideration an Ordinance to Extend the City's Residential Eviction Moratorium to February 28, 2024 (Attachment A)

BACKGROUND

In response to the COVID-19 Pandemic, the Governor of California proclaimed a state of emergency throughout California on March 4, 2020. Thereafter, the San Leandro Director of Emergency Services proclaimed a local emergency which was ratified by the City Council on March 16, 2020. Soon, health officers in the Bay Area (and later throughout California) issued orders directing residents to shelter at home and limit activity, travel, and business to only the most essential needs. These health orders caused businesses of all types to cease, or substantially reduce operations. This caused many employees to lose jobs or have their hours reduced.

In response to the COVID-19 pandemic and shelter-in-place orders requiring most people to stay at home, the San Leandro City Council adopted Ordinance No. 2020-003, as an urgency ordinance, to enact a residential and commercial eviction moratorium (the commercial eviction moratorium terminated in September 2021). Ordinance No. 2020-003 was a temporary measure intended to promote stability and fairness within the residential and commercial rental market in the City during the COVID-19 pandemic outbreak, and to prevent avoidable homelessness and evictions thereby preserving the peace, health, safety, and public welfare and to enable tenants in the City whose incomes and ability to work were affected by COVID-19 to remain in their homes and businesses.

Ordinance No. 2020-003 provided that the eviction moratorium would terminate on the later of: 1) May 31, 2020, 2) the expiration of the local emergency, or 3) the Governor's proclamation of a state of emergency. The Governor's proclamation of a state of emergency is set to expire on February 28, 2023. Likewise, the City Council intends to terminate the local emergency concurrently with the expiration of the Governor's proclamation of a state of emergency. Accordingly, the City's eviction moratorium will terminate on February 28, 2023. A key provision in Ordinance No. 2020-003 provides that upon the expiration of the eviction moratorium, tenants and mobile homeowners have a maximum of 180 days to repay rent that accumulated during the period of the eviction moratorium, but which has not yet been paid. Tenants who could not pay their rent due to loss of income from COVID-19 were required under the City ordinance to submit documentation in writing to their landlord (Attachment B).

The COVID-19 pandemic has persisted longer than the City Council anticipated when it enacted Ordinance No. 2020-003, which contemplated that the Governor's emergency declaration and the local emergency declaration might end earlier than May 31, 2020. Similarly, the scale of the economic impact caused by COVID-19 was deeper than expected at the time. In February 2020 the unemployment rate in Alameda County was 2.9%, but layoffs due to COVID-19 caused the unemployment rate to rise to 14.1% in April 2020, the highest rate since before World War II (Source: U.S. Bureau of Labor Statistics). The unemployment rate in Alameda County remained above 8% for 6 months, and did not drop below 5% for 18 months.

Around Summer 2020 when the pandemic was at its height, the City approved over \$1.1 million in federal Community Development Block Grant - Coronavirus (CDBG-CV) funds to create an Emergency Rental Assistance Program (ERAP) that provided rental payment assistance grants to 148 low-income San Leandro renters (out of about 250 applicants) whose incomes were negatively impacted by COVID-19; such funds were fully expended by 2022. There were over 300 applicants. The City contracted with a nonprofit Centro Legal de la Raza to administer the City's ERAP Program.

Alameda County created a similar but much larger federally funded emergency rental assistance program (Alameda Housing Secure), which stopped accepting applications in March 2022. This County program disbursed about \$74 million to residents in incorporated cities and unincorporated areas in Alameda County. There were over 13,000 applications (totaling about \$242,440,000 in requests), of which over 5,000 were approved.

San Leandro was the fourth highest jurisdiction in the County to be awarded rental assistance funding from Alameda Housing Secure. The top three were: Hayward, Berkeley, and Unincorporated Alameda County. Over 1,700 San Leandro residents applied (requesting over \$36 million), but only 656 San Leandro applicants were approved for rental assistance (totaling about \$9.5 million). The average rental assistance grant amount for San Leandro residents was about \$14,500. San Leandro was also the second highest per capita in the County to receive assistance behind Hayward. The County also contracted with Centro Legal de la Raza to administer its Alameda Housing Secure Program.

Analysis

Status of Eviction Moratoriums in Alameda County Cities

This week City staff surveyed several cities in Alameda County in regards to the status of their eviction moratoriums. See summary below of the County jurisdictions that responded:

- City of Berkeley - moratorium is still in effect. The City has taken action every 60 days to extend the local emergency.
- City of Dublin - did not adopt a moratorium
- City of Emeryville - Moratorium ended September 30, 2020
- City of Fremont - moratorium is still in effect, but similarly to San Leandro, has been superseded by Alameda County's Eviction Moratorium. The City's moratorium will end when the County's ends. Fremont set-aside \$260,000 in emergency rental assistance funding for the post-eviction moratorium period.
- City of Hayward -moratorium ended on September 30, 2020. The City provides mediation services to assist landlords and tenants to negotiate repayment plans for past due rent.
- City of Livermore - did not adopt a moratorium
- City of Newark - moratorium will end on February 28, 2023 as the City Council took action in January 2023 to end the local emergency.
- City of Piedmont - did not adopt a moratorium
- City of Pleasanton - did not adopt a moratorium.

Note: City of Oakland and Alameda County did not respond to the inquiry, but their moratoriums are still in effect and currently in litigation. City of Union City did not respond to staff's inquiry.

Impact on Renters

The City has contracted annually with Centro Legal de la Raza since July 2020 to administer the City's Tenant-Landlord Counseling Program, which includes legal services for low income renter households. Centro Legal subcontracts annually with the nonprofit ECHO Housing to administer Tenant-Landlord Counseling, while Centro Legal administers legal consultation and services.

Current City Demographics

According to Chapter 2 (Housing Needs Assessment) of the City's recently certified Housing Element Update for 2023-2031, the following are the current City population and housing demographics:

- Total City Population: 90,025 (2019)
- Total Number of Occupied Housing Units: 31,434*
- Total Number of Renter-Occupied Housing Units: 13,872 (44%)*
- Total Number of Owner-Occupied Housing Units: 17,562 (56%)*

*Source: 2015-2019 American Community Survey, Census Bureau

Below is annual data provided by Centro Legal to the City:

- 1) Data since April 1, 2020 on San Leandro residents in the incorporated area who had an unlawful detainer (UD) or notice of termination of tenancy during the pandemic. Of the 111 residents documented,
 - 70 residents sought services with Centro Legal for a written notice of termination of tenancy, some of them multiple times;

- 21 residents sought services with Centro Legal for verbal threats of eviction, some of them multiple times; and
 - 20 residents sought services with Centro Legal for a UD
- 2) Data on the threats of displacement faced by residents of incorporated San Leandro who received services from Centro Legal in calendar years 2019-2022. See Attachment C.
- 3) General eviction filing data in San Leandro for unincorporated and incorporated San Leandro. It is not possible to separate incorporated San Leandro from unincorporated in the court data. The data source is the Alameda County Superior Court:
- San Leandro, both unincorporated and incorporated, averaged 312 evictions filed annually from 2016-2019 (pre-pandemic). During the pandemic, some evictions continued: in 2020, 75 unlawful detainers (UDs) were filed (24% of pre-pandemic averages), and in 2021, 31 UD's were filed (10% of pre-pandemic averages). Note that 2022 data was not available. The 2020 and 2021 data suggest the positive effect of the eviction moratorium on lowering UD's in 2020 and 2021.

Existing City Housing Services for Tenants

The City has the following existing housing services and programs to assist renters, and in some instances landlords, that have been in place for years prior to the pandemic:

- Tenant-landlord counseling and legal aid services
 - *Annual City funding to nonprofits Centro Legal de la Raza & ECHO Housing to administer this program*
 - *In 2021, the City Council approved \$40,000 from federal American Rescue Plan Act funds to enhance tenant counseling and legal services. The City recently amended Centro Legal's FY22-23 contract to increase from \$45,000 to \$85,000 with ARPA funds to meet increased lower income San Leandro tenant rental housing needs including rent instability.*
- Fair Housing services
 - *Annual City funding to ECHO Housing to handle housing discrimination complaints and annual test protected fair housing categories in local apartment complexes.*
- Tenant Relocation Assistance Ordinance - eligible renters may receive up to \$7,000 in relocation assistance due to landlord caused terminations.
- Mobilehome Rental Stabilization Ordinance - rent control for mobilehomes and RVs in mobile home parks that caps rent at the lower of 4% or the annual Consumer Price Index (CPI)
- Rent Review Board Program - public board consisting of 5 members (2 landlords, 2 tenants and 1 homeowner) that mediates disputes over rent increases greater than 7% to find mutually agreeable outcomes for tenants and landlords.

Impacts on Landlords

Data on the negative impacts to landlords caused by the City's eviction moratorium, who are facing financial hardship due to nonpayment of rent related to COVID-19 is not readily and publicly accessible. However, general impacts to landlords who have not been able to receive rents from their tenants during eviction moratoriums may include financial hardship due to inability to pay their mortgages and utility bills and the inability to make necessary improvements to their buildings.

Current Agency Policies

- Ordinance No. 2020-003, Declaration of a Local Emergency due to the COVID-19 Pandemic.

Environmental Review

The proposed Resolution is exempt from the requirements of the California Environmental Quality Act ("CEQA") under Section 15061(b)(3) State CEQA Guidelines because it can be seen with certainty that there is no possibility that the resolution may have a significant effect on the environment.

Legal Analysis

While no Council legislative action can be completely immune from legal challenge, based on the Northern District's recent decision in *Williams v. Alameda County* (N.D. Cal., Nov. 22, 2022) 2022 WL 17169833 (*Williams*), where plaintiffs contested Alameda County's and the City of Oakland's eviction moratoria, both of which extend past the expiration of the Governor's state of emergency, as drafted the City has strong arguments that the extension of its moratorium would withstand a facial challenge.

The plaintiffs in *Williams* brought a facial challenge against the County and Oakland's moratoria arguing that the moratoria constitute:

1. A taking under the Fifth Amendment to the U.S. Constitution and an inverse condemnation under the California Constitution;
2. A violation of their due-process and equal-protection rights under the Fourteenth Amendment to the U.S. Constitution;
3. A substantial impairment of their lease agreements, in violation of the Contracts Clause of Article I of the U.S. Constitution; and
4. Preempted under Article XI, § 7, of the California Constitution to the extent that they prohibit permissible Ellis Act evictions under Cal. Gov't Code § 7600.

The District Court denied plaintiffs' Motion for Summary Judgment and found that the moratoria:

1. Are not physical or per se takings because they are temporary on their face, do not relieve tenants of their contractual obligation to pay back rent and include exceptions allowing a landlord to leave the rental business;
2. Do not violate the Contracts Clause because elimination of the eviction remedy does not extinguish the landlords' contractual rights and plaintiffs did not meet the burden to show the moratoria was an unreasonable response to legitimate public problems;
3. Do not violate Due Process because they do not deny landlords a hearing, but instead allow tenants to raise a defense in an eviction proceeding; and
4. Do not conflict with state eviction laws because cities can enact restrictions that are more protective than state law and the moratoria include Ellis Act eviction exceptions.

Pursuant to this November 2022 Northern District Court decision that would apply to any ordinance passed by the Council, the proposed regular, uncodified, and temporary ordinance hues precisely to the Court's decision and dicta as to how the Ordinance comports with the law. For example, there are good arguments that the ordinance does not constitute a taking under the Fifth Amendment or an inverse condemnation under State law because it is temporary in nature (it automatically expires on February 28, 2024), it does not relieve tenants of their contractual obligation to pay back rent, eviction restrictions are limited to non-payment of rent, the ordinance's protections apply to tenants only, and it includes exceptions allowing a landlord to leave the rental business (i.e. exercising an Ellis Act eviction).

It does not violate the U.S. Constitution's Contracts Clause because the elimination of the eviction remedy does not extinguish landlords' contractual rights such that tenants may be evicted for breach of contract. It does not violate due process and equal protection under the Fourteenth Amendment because landlords are not denied a hearing or prevented from litigation; the ordinance allows tenants to raise a defense in an eviction proceeding.

ATTACHMENT

Attachment A: Ordinance of the City of San Leandro City Council to Extend the City's Residential Eviction Moratorium to February 28, 2024

Attachment B - Sample City Landlord Notification Form for Tenant Non-Payment

Attachment C - Threat to Displacement Analysis 2016-2019

Attachment D - Powerpoint

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