



Legislation Text

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Staff Report for a City of San Leandro City Council Urgency Ordinance Amending Ordinance No. 2020-003 to Change the Termination Date of the Moratorium on Evictions Due to Nonpayment of Rent for Commercial Tenants Where the Failure to Pay Rent is from Income Loss Resulting from the Novel Coronavirus (COVID-19) to Align with the State of California's Commercial Eviction Moratorium

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council approve and adopt an Urgency Ordinance Amending Ordinance No. 2020-003 to Change the Termination Date of the Moratorium on Evictions Due to Nonpayment of Rent for Commercial Tenants Where the Failure to Pay Rent is from Income Loss Resulting from the Novel Coronavirus (COVID-19) to align with the State of California Commercial Eviction Moratorium, which is scheduled to expire September 30, 2021.

BACKGROUND

On March 4, 2020, Governor Newsom proclaimed a state of emergency in California, and on March 16, 2020 the San Leandro City Council ratified the Director of Emergency Services' proclamation of a local emergency related to the novel Coronavirus ("COVID-19").

On March 16, 2020, under Executive Order N-28-20, the Governor allowed individual cities and counties to enact eviction moratoriums to protect residents and commercial tenants suffering COVID-19 related financial hardship. The Executive Order suspended provisions of state law that would preempt or otherwise restrict a local government's exercise of its police power to impose substantive limitations on residential and commercial evictions due to specified financial burdens caused by COVID-19. The pertinent portions of Executive Order N-28-20 related to commercial evictions have been extended several times, most recently through September 30, 2021 via Executive Order N-08-21.

On March 23, 2020, the City of San Leandro City Council adopted an Urgency Ordinance imposing within the City of San Leandro a temporary moratorium on evictions due to nonpayment of rent for mobile homeowners, and residential and commercial tenants where the failure to pay rent is from income loss resulting from COVID-19. The ordinance went into effect immediately, with the ability to remain in effect until May 31, 2020 or the expiration of the local state of emergency or the Governor's proclamation of a state of emergency, whichever is later.

As a result of the state of emergency and resulting government restrictions surrounding COVID-19, many residential and commercial tenants experienced income loss, leaving tenants vulnerable to eviction. During this state of emergency, and in the interests of protecting the public health and welfare, and to help prevent transmission of the coronavirus, the eviction moratorium helped to avoid unnecessary displacement, business closures, and homelessness. The eviction moratorium acts as a deterrent to landlords initiating eviction proceedings, as it provides a tenant a substantive defense if an eviction proceeding (an unlawful detainer) were filed against the tenant for non-payment of rent

and they could demonstrate that the non-payment of rent was due to the substantial loss of income due to COVID-19.

As outlined in the ordinance, once the eviction moratorium expires, the following terms will apply:

- Notification - In order to be protected under the moratorium, tenants must notify their landlord within 10 days after the rent is due of their inability to pay full rent because of a substantial decrease in household or business income, or increase in out-of-pocket medical expenses, due to the pandemic and/or governmental response, and provides documentation to support the claim.
- Rent Due - Nothing in the ordinance, would relieve tenants from the obligation to pay past due rent. Tenants would have 120 days to repay past due rent ('repayment period'). However, a tenant could have an additional 60 days, for a total of 180 days, if within 10 days after the repayment period, the tenant notifies the landlord in writing of the tenant's inability to pay full rent due to a COVID-19 related decrease in income, as defined in the ordinance.
- Fees - A landlord may not charge or collect a late fee for rent that is delayed due to COVID-19 related income loss.
- Alternate Arrangements - The ordinance allows landlords and tenants to voluntarily negotiate payment agreements which may be longer or more lenient than outlined in the ordinance.

NOTE - The proposed amendment does *not* impact San Leandro's *residential* eviction moratorium. While the State of California's *residential* eviction moratorium is set to expire on September 30, 2021, San Leandro's *local residential* eviction moratorium may remain in effect until the later of the expiration of the local state of emergency or the Governor's proclamation of a state of emergency. A 60-day extension of San Leandro's local state of emergency is proposed for approval at this meeting of September 7, 2021.

Analysis/Discussion

Approval of this ordinance aligns the date of expiration of San Leandro's *commercial* eviction moratorium to that of the State of California, consistent with the Governor's Executive Order N-08-21. If approved, the protections of the local eviction moratorium for commercial tenants would apply through September 30, 2021; and would be extended automatically if any future state Executive Orders are enacted to extend the local authority to enact local eviction moratoriums further.

With ever changing regulations at the national, state and county level over the past year, there has been confusion amongst commercial landlords and tenants as to the timing and applicability of San Leandro's commercial eviction moratorium. Aligning the expiration of the commercial eviction moratorium with that of the state will provide consistency and certainty for commercial tenants and landlords in San Leandro. Additionally, this timeline will be consistent with that of other Bay Area municipalities, including those surrounding San Leandro, and unincorporated Alameda County.

The goal of the local *commercial* eviction moratorium was to reduce the risk of business closures due to the pandemic, particularly while businesses were required to be closed for many months, and to allow businesses additional time to generate business income to stay current with rent owed, as well as pay any deferred rent.

On June 11, 2021, the Governor issued Executive Order N-07-21, which formally ended the Stay-at-Home Order and removed restrictions on businesses and activities that were in place under the 'Blueprint for a Safer Economy' framework, allowing businesses to fully reopen. The ending of restrictions had a particular impact on service, retail, and other customer-facing businesses, which were first required to close, then had various levels of customer and operating restrictions, such as occupancy and indoor dining restrictions, respectively.

On April 15, 2021, vaccines became widely available to all Californians 16 and over, and on May 12, 2021, the vaccine became available to all 12 and over. Since that time, millions of Californians have become fully vaccinated, including over 56,600 San Leandrans, which is 73.7% of residents 12 and over.

While the number of vaccinated individuals continues to increase, the rise of the COVID-19 Delta variant has led to a rapid increase in case rates. As of August 23, 2021, the case rate in Alameda County is approximately 6,400 per 100,000 in population. While vaccinated individuals are known to have contracted the Delta variant, the vaccine has been shown to protect against serious disease and the vast majority of those hospitalized are unvaccinated.

Health officials have found that, with proper precautions, in particular masking, individuals may visit businesses. As such, businesses in Alameda County are permitted to fully operate in line with State of California regulations. However, Alameda County has required that all individuals, regardless of vaccination status, must wear masks indoors and recommended that they do so in certain outdoor settings. It is not anticipated that there will be further business restrictions or a shelter-in-place order at this time. However, if the state puts additional businesses restrictions in place, the state, and in turn the local, commercial eviction moratorium may be extended as well.

Business Support

In preparation for the ending of the *commercial* eviction moratorium, Economic Development staff are working diligently to gather resources and information to support businesses who are behind on rent.

Among the next steps that staff will take to help businesses and property owners prepare for the ending of the commercial eviction moratorium are:

- Notification - perform broad outreach to let businesses and property owners know about the end date of the moratorium.
- Information - provide information on the details of the eviction moratorium, what the procedures are to participate, what tenant's rights are, etc.
- Assistance - connect businesses with no or low-cost assistance in working with their landlords, including free legal resources, webinars, etc.
- Funding - inform businesses of available funding and programs to assist in rent repayment, increasing customer base, marketing/online presence, and more. This includes information on the California Small Business Grant program.

It is unclear exactly how many businesses are behind on rent in San Leandro. However, a national small business survey done by Small Business Majority in early 2021 found that 25% of respondents were 3 or more months behind on rent. Similar results were seen in the San Leandro Small Business

Survey, where 22% of respondents indicated that they were behind on rent. If this rate were applied to all 'brick-and-mortar' businesses in San Leandro, over 1,000 businesses could be behind on rent.

While technical and financial assistance is available, more is needed. With many small service businesses required to be totally closed and not receiving income for over 8 months, and the high costs to operate in the Bay Area, businesses' needs greatly exceed available funding. While many San Leandro businesses participated in available federal, state, and local grant and loan programs, many have not successfully utilized the programs or found the funding to be only 'a drop in the bucket' of their needs. This is seen in San Leandro's Small Business Survey, where 23% of respondents had received no COVID-19 financial assistance and the top two areas that businesses said it would be helpful to receive assistance with going forward were additional grant funds (69%) and assistance applying for funds (44%).

Staff continues to evaluate businesses' needs and available funding and in the coming month will propose an allocation of San Leandro's available federal and state funding, such as that from the American Rescue Plan Act (ARPA), to assist businesses. This is expected to include small business grants, technical assistance, and online marketing assistance, among other things.

Legal Analysis

The City Attorney drafted the urgency ordinance. This Ordinance is proposed and drafted pursuant to the City's general police powers, section 1-1-345(b) of the City of San Leandro Municipal Code, and Article XI of the California Constitution.

Fiscal Impacts

There is no impact to the General Fund. The ordinance could be relied upon as an affirmative defense in a court proceeding for an unlawful detainer action. Therefore, there is no staff work associated with implementing the ordinance other than providing notifications to the community, the cost of which will be absorbed by existing departmental budgets.

ATTACHMENT(S)

Attachment(s) to Staff Report

- None

Attachment(s) to Related Legislative Files

- None

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