



City of San Leandro

Meeting Date: March 23, 2020

Staff Report

File Number: 20-126

Agenda Section: ACTION ITEMS

Agenda Number: 3.A.

TO: City Council

FROM: Jeff Kay
City Manager

BY: Tom Liao
Community Development Director

FINANCE REVIEW: Liz Warmerdam
Interim Finance Director

TITLE: Staff Report for a City of San Leandro City Council Urgency Uncodified 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 the Novel Coronavirus (COVID-19)

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council approve and adopt an urgency ordinance that establishes a temporary moratorium on evictions due to nonpayment of rent for mobile homeowners (which would include in the definition of mobile homeowners for the purposes of this Ordinance recreational vehicle (RV) owners), residential and commercial tenants where the failure to pay rent is from income loss resulting from the coronavirus (COVID-19). The ordinance would take effect immediately and would be in effect until May 31, 2020 or the expiration of the local emergency or the Governor's proclamation of a state of emergency, whichever is later.

BACKGROUND

The Centers for Disease Control and Prevention, the California Department of Health, and the Alameda County Department of Public Health have all issued recommendations including but not limited to social distancing, staying home if sick, canceling or postponing large group events, working from home, and other precautions to protect public health and prevent transmission of COVID-19. In addition, the President of the United States declared a national emergency, the Governor of the State of California declared a State of Emergency for the State and for all the counties in the State, and the San Leandro Director of Emergency Services proclaimed a local emergency and state of emergency, which the City Council ratified, to be reviewed in the next 30 days.

As a result of the state of emergency and the government-recommended precautions, many mobile homeowners, and residential and commercial tenants have experienced sudden income loss, and further income impacts are anticipated, 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, it is essential to avoid unnecessary displacement, business closures, and homelessness. Therefore, staff recommends that the City Council adopt an urgency ordinance imposing a temporary moratorium on mobile homeowners, and residential and commercial evictions due to a substantial loss of income resulting from COVID-19. The moratorium would be achieved by reason of the Ordinance providing to a mobile homeowner or tenant a substantive eviction defense if an eviction proceeding (an unlawful detainer) were filed against the mobile homeowner or tenant for non-payment of rent and the mobile homeowner or tenant could demonstrate that the non-payment of rent was due to the mobile homeowner's or tenant's substantial loss of income due to COVID-19.

As a result of the public health emergency related to COVID-19 and the precautions recommended by health authorities, mobile homeowners and tenants in San Leandro have experienced, or expect soon to experience, sudden and unexpected income loss due to temporarily being unable to report to work because of illness caused by COVID-19 or quarantines related to COVID-19, taking care of family members ill due to COVID-19, the closure of schools and daycare and the need to take care of children at home, taking care of elderly family members who are in quarantine, shelter-in-place or affected by COVID-19, and/or lay-offs due to business slow-downs and closures. Further economic impacts are anticipated, leaving mobile homeowners and tenants vulnerable to eviction during this local emergency. It is essential to avoid unnecessary housing and commercial displacement, to protect the City's affordable housing stock, to mitigate the economic effects on small and medium sized businesses, and to prevent housed individuals from falling into homelessness. A temporary moratorium on evictions from mobile home spaces, residential, and commercial rental units due to a substantial loss of income because of the COVID-19 pandemic will protect mobile homeowners and tenants from losing their housing and businesses, which will thereby protect the public health, safety and welfare, and prevent transmission of COVID-19.

Analysis/Discussion

The proposed urgency ordinance would take effect immediately and would apply to all eviction proceedings, such as notices to quit or pay rent or unlawful detainer actions served on or after the effective date of the Ordinance. By providing a substantive eviction defense to a mobile homeowner or tenant, the ordinance would place a temporary moratorium on eviction actions instituted for non-payment of rent where a mobile homeowners or tenant can demonstrate that the mobile homeowner or tenant suffered a substantial loss of income due to the COVID-19 pandemic. Impacts on loss of income include:

- the need to remain off work due to COVID-19 illness or symptoms
- the need to self-quarantine because of exposure to COVID-19
- a reduction in the number of work hours
- job loss due to closure of the business that employed the tenant
- the need to care for a child or children whose school is closed
- inability to operate because of the shelter-in-place order affecting a non-essential business
- lack of business due to no customers

The urgency ordinance, if adopted, will act as a deterrent to most landlords initiating eviction

proceedings if a mobile homeowner or tenant can show that the non-payment of rent was due to the mobile homeowner's or tenant's loss of income arising out of the consequences of COVID-19. If a landlord nevertheless filed eviction proceedings in court, the ordinance could be used as an affirmative defense in a court proceeding regarding an unlawful detainer. The ordinance will provide an additional aid to preserve housing for mobile homeowners and tenants, and loss of business relief during this pandemic. Staff would also work to notify landlords, mobile homeowners, businesses, and tenants about the new ordinance if adopted.

The urgency ordinance would be in effect until May 31, 2020, or the expiration of the local emergency or the Governor's proclamation of a state of emergency, whichever is later. If necessary due to a continuing state of emergency, the ordinance can be extended.

Staff recommends that the City Council adopt the urgency ordinance as described above.

Environmental Review

Adoption of this ordinance is exempt from review under the California Environmental Quality Act: Section 15378 (not a project); and Section 15061(b)(3) (no significant environmental impact).

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 from adopting an urgency ordinance establishing a moratorium on evictions due to loss of income resulting from the COVID-19 pandemic. The ordinance could be relied upon as an affirmative defense in a court proceeding for an unlawful detainer. Therefore, there is no staff work associated with implementing the ordinance other than providing notifications to the community.

ATTACHMENT(S)

Attachment(s) to Staff Report

- None

Attachment(s) to Related Legislative Files

- Urgency Ordinance

PREPARED BY: Tom Liao, Community Development Director

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City of San Leandro

Meeting Date: March 23, 2020

Urgency Ordinance

File Number: 20-127

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: Tom Liao
Community Development Director

FINANCE REVIEW: Liz Warmerdam
Interim Finance Director

TITLE: AN URGENCY ORDINANCE of the City of San Leandro under San Leandro Municipal Code Section 1-1-345(b) Enacting a Temporary Moratorium on Evictions Due to Nonpayment of Rent for Residential and Commercial Tenants Where the Failure to Pay Rent is from Income Loss Resulting from the Novel Coronavirus (COVID-19)

The City Council of the City of San Leandro does **ORDAIN** as follows:

WHEREAS, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named “SARS-CoV-2,” and the disease it causes has been named “coronavirus disease 2019,” abbreviated COVID-19 (“COVID-19”); and

WHEREAS, on January 30, 2020, the World Health Organization (“WHO”) declared COVID-19 a Public Health Emergency of International Concern, and on January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency; and

WHEREAS, on January 23, 2020 the CDC activated its emergency response system to provide ongoing support for the response to COVID-19 in the United States; and

WHEREAS, on January 31, 2020, the Secretary of the United States Department of Health and Human Services declared a public health emergency for the entire United States to aid the nation’s healthcare community in responding to COVID-19; and

WHEREAS, on February 25, 2020, the Centers for Disease Control and Prevention announced that community spread of COVID-19 is likely to occur in the United States; and

WHEREAS, on March 1, 2020, the Health Officer of Alameda County declared a public health emergency throughout the County of Alameda; and

WHEREAS, on March 4, 2020, the Governor of California proclaimed a state of emergency

exists in California after making determinations that:

1. The conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and
2. Local authority is inadequate to cope with the threat posed by COVID-19; and

WHEREAS, on March 12, 2020, the Alameda County Department of Public Health confirmed evidence of community-acquired transmission; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national state of emergency in response to the spread of COVID-19 within the United States of America; and

WHEREAS, on March 16, 2020, seven health officers within six Bay Area counties, including Alameda County, took a unified step to slow the spread of novel coronavirus (COVID-19) and preserve critical health care capacity across the region by issuing a legal order directing their respective residents to shelter at home for three weeks beginning March 17, 2020. The order limits activity, travel, and business functions to only the most essential needs. The guidance comes after substantial input from the U.S. Centers for Disease Control and Prevention (CDC) and best practices from other health officials around the world; and

WHEREAS, on March 16, 2020, due to an escalating increase in the number of cases in Alameda County, under San Leandro Municipal Code section 3-4-124, the Director of Emergency Services proclaimed a local emergency and a state of emergency related to COVID-19; and

WHEREAS, on March 16, 2020, at its regular meeting the San Leandro City Council ratified the Director of Emergency Services' proclamation of a local emergency and a state of emergency related to COVID-19; and

WHEREAS, on March 16, 2020, California Governor Gavin Newsom issued Executive Order N-28-20 ordering waiver of time limitations set forth in Penal Code section 396(f) concerning protections against residential evictions, and suspending any provision of state law that would preempt or otherwise restrict a local government's exercise of its police power to impose substantive limitations on residential or commercial evictions related to COVID-19. The order further suspended statutory causes of action for judicial foreclosure, including Code of Civil Procedure section 725a et seq. the statutory cause of action for unlawful detainer, Code of Civil Procedure section 1161 et seq., and any other statutory cause of action that could be used to evict or otherwise eject a residential or commercial tenant or occupant of residential real property after foreclosure; and

WHEREAS, both large and smaller events across the Bay Area and in San Leandro are cancelling or being postponed due to the County's and State's Orders and recommendations at all levels of government to cancel large gatherings are occurring amid concerns over spread of the virus. These cancellations and postponements cause loss in revenue for the event, as well as surrounding local businesses that rely on such events to bring in patrons to their businesses; and

WHEREAS, California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the public health, safety, and general welfare of their citizens; and

WHEREAS, San Leandro Municipal Code section 1-1-345(b) authorizes the City Council to

introduce and adopt an ordinance it declares to be necessary as an emergency measure to preserve the public peace, health, and safety at one and the same meeting; and

WHEREAS, this Ordinance is a temporary moratorium 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 serving the public peace, health, safety, and public welfare and to enable tenants in the City whose incomes and ability to work are affected by COVID-19 to remain in their homes and businesses; and

WHEREAS, displacement through eviction destabilizes the living situation of tenants, impacts the health of San Leandro residents, and detrimentally affects the conduct of commerce and business, disrupting the social ties and networks that are integral to citizens' welfare, businesses, and the stability of all communities within the City; and

WHEREAS, displacement through eviction creates undue hardship for tenants through additional relocation costs, and during the COVID-19 pandemic outbreak, affected tenants who have lost income due to impacts on the economy or their employment may be at risk of homelessness or business loss, closure or bankruptcy if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing or business operation space if evicted; and

WHEREAS, housing instability threatens the public peace, health, and safety as eviction from one's home can lead to prolonged homelessness; strain on household finances due to the necessity of paying rental application fees and security deposits; stress and anxiety experienced by those displaced; interruption of the education of children in the home; and increased exposure to, and spreading of COVID-19, in contradiction to the Alameda County Health Officer's orders; and

WHEREAS, businesses are also affected by COVID-19 and may be unable to pay rent. If businesses are unable to pay rent, they may be evicted, which will negatively impact the local economy by laying off employees and ceasing to provide services to residents of the City, and negatively impacting local health by forcing persons out of their shelter-in-place locations to prepare for business eviction, increasing potential COVID-19 exposure, and reducing the number of retail and commercial spaces available to provide essential services, also increasing potential COVID-19 exposure as a result of less retail and commercial spaces available for residents and thus less space available for social distancing; and

WHEREAS, the City Council finds and determines that regulating the relations between residential and commercial landlords and tenants is essential to preventing the spread of COVID-19 in the City and thereby serves the public peace, health, welfare and safety; and

WHEREAS, an urgency ordinance that is effective immediately is necessary to avoid the immediate threat to public peace, health, welfare, and safety as failure to adopt this urgency ordinance could result in the avoidable displacement or exposure to COVID-19 of the City's residents and community members.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN LEANDRO, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings The City Council of the City of San Leandro finds that all Recitals are true and correct and incorporated herein by reference. The provisions of the Governor's Executive Order N-28-20 (March 17, 2020), including its recitals, are incorporated herein as if fully set forth.

SECTION 2. Urgency Findings

The City Council of the City of San Leandro hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the

public peace, health, welfare and safety that warrants this urgency ordinance, which finding is based upon the facts stated in the recitals above, and in the staff report dated March 23, 2020, as well any oral and written testimony at the March 23, 2020 City Council meeting. This Ordinance and any moratorium that may be established thereunder is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health, welfare, or safety. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the City Council.

SECTION 3. Ordinance

The City Council hereby makes the findings contained herein and hereby adopts the uncodified Ordinance to read as follows.

COVID-19 Eviction Moratorium Ordinance

Section 1. Moratorium on Eviction for Nonpayment of Rent During the COVID-19 Emergency

A. During the term of this Ordinance, no landlord shall endeavor to evict a residential, mobile homeowner, or commercial tenant for nonpayment of rent, including but not limited to any such provision under Civil Code sections 798.56 et seq., 1940 et. seq., or 1954.25 et. seq., if the tenant, or mobile homeowner demonstrates that the inability to pay rent is:

1. Due to, or arising out of a substantial decrease in household or business income (including but not limited to the circumstances described in subsections B and C) or substantial out-of-pocket medical expenses; and
2. The decrease in household or business income, or out-of-pocket medical expenses, was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented in writing.

For the purposes of this Ordinance, mobile homeowner also means recreational vehicle (RV) owner.

B. "Substantial decrease in household income" includes but is not limited to income loss caused by COVID-19 illness or caring for a household or family member with COVID-19 illness, work closures, layoffs, job loss, a reduction in the number of compensable hours or other economic or employer impacts of COVID-19, missing work due to a minor child's school or day care closure, compliance with government health authority orders, or other similarly-caused reason resulting in loss of household income due to COVID-19, substantiated with written documentation or other objectively verifiable proof of same.

C. "Substantial decrease in business income" includes, but is not limited to, income loss caused by work closures, reduction in staff reporting to work, reduction in opening hours, or reduction in consumer demand, compliance with government health authority orders, or other similarly-caused reason resulting in loss of business income due to COVID-19, substantiated with written documentation or other objectively verifiable proof of same.

D. A landlord who knows that a tenant or mobile homeowner cannot pay some or all of the rent temporarily for the reasons set forth above shall not serve a notice pursuant to Code of Civil Procedure sections 1161 or 1162, as applicable, file or prosecute an unlawful detainer action based on a three-day pay or quit notice, or otherwise seek to evict for nonpayment of rent.

E. A landlord knows of a tenant's or mobile homeowner's inability to pay rent within the meaning of this Ordinance if the tenant or mobile homeowner, within 30 days after the date that rent is due, notifies the landlord in writing of tenant's or mobile homeowner's inability to pay full rent because of a substantial decrease in household or business income or out-of-pocket medical expenses was caused by the COVID-19 pandemic, or by any local, state, or federal government response

to COVID-19, and provides documentation to support the claim. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's or mobile homeowner's claim.

F. Nothing in this Ordinance relieves the tenant or mobile homeowner of liability for the unpaid rent, which the landlord may seek after the expiration of this Ordinance, and the tenant or mobile homeowner must pay within ninety (90) days of the date of expiration of this Ordinance, unless a state law or order is amended or adopted providing for a longer period, in which case this subsection shall be so superseded.

G. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance, nor may a landlord seek rent that is delayed for the reasons stated in this Ordinance through the eviction process.

H. This Ordinance may be asserted as an affirmative defense in any unlawful detainer action or other action brought by an owner or landlord to recover possession. A tenant or mobile homeowner may bring a civil suit seeking owner or landlord compliance with any provisions of this Ordinance.

Section 2. Moratorium on Judicial Foreclosures During the COVID-19 Emergency

As provided for in Executive Order N-28-20 and consistent with the other provisions in this ordinance, the statutory cause of action for judicial foreclosure, Code of Civil Procedure section 725a et seq.; the statutory cause of action for unlawful detainer, Code of Civil Procedure section 1161 et seq.; and any other statutory cause of action that could be used to evict or otherwise eject a residential, or mobile homeowner, or commercial tenant or occupant of residential real property after foreclosure is hereby suspended as applied to any tenancy, or residential real property and any occupation thereof, to which a limitation on eviction is imposed pursuant to this Ordinance.

SECTION 4. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 5. Effective Date

This Urgency Ordinance shall become effective immediately upon its adoption pursuant to City of San Leandro Municipal Code section 1-1-345(b) and shall remain in effect until May 31, 2020 or the expiration of the local emergency or the Governor's proclamation of a state of emergency, whichever is later.