



Agenda Submittal

Agenda #: 36 **Status:** Regular Calendar
Type: Resolution **Department:** County Counsel
File #: 20-336 **Contact:** Bernadette S. Curry, 784-6140
Agenda date: 4/28/2020 **Final action:** 4/28/2020
Title: Consider adopting a resolution adopting an Emergency Regulation establishing a temporary, countywide moratorium on eviction for non-payment of rent by residential or commercial tenants directly impacted by the COVID-19 pandemic
Governing body: Board of Supervisors
District: All
Attachments: 1. A - Resolution, 2. B - Exhibit A to Emergency Regulation, 3. C - Comparison of Various Eviction Regulations, 4. Adopted Resolution, 5. Minute Order

| Date | Ver. | Action By | Action | Result |
|-----------|------|----------------------|--------|--------|
| 4/28/2020 | 1 | Board of Supervisors | | |

Published Notice Required? Yes _____ No X
Public Hearing Required? Yes _____ No X

DEPARTMENTAL RECOMMENDATION:

It is recommended that the Board adopt a resolution adopting an Emergency Regulation establishing a temporary, countywide moratorium on eviction for non-payment of rent by residential or commercial tenants directly impacted by the COVID-19 pandemic.

SUMMARY:

The proposed Emergency Regulation would establish a moratorium for non-payment of rent by residential or commercial tenants directly impacted by the COVID-19 pandemic and no-fault terminations of tenancy unless the eviction is necessary for the health and safety of the tenant or the landlord. The moratorium would remain in effect until the termination of the State of Emergency.

FINANCIAL IMPACT:

The cost associated with preparing the agenda item are nominal and absorbed by the department's FY 2019/20 Adopted Budget while the financial impact of the State Emergency is anticipated to be the steepest economic downturn since the Great Depression. The effect of this moratorium merely delays a tenant's obligation to pay rent due to financial hardship related to COVID-19 and will not waive rental payments otherwise due to landlords.

DISCUSSION:

On Thursday, February 27, 2020, in response to the U.S. Centers for Disease Control and Prevention confirmation that the first person-to-person transmission of the Novel Coronavirus (COVID-19), had affected a Solano County resident, the County Administrator, issued a Proclamation of Local Emergency due to extreme threat to the public health that had arisen throughout Solano County COVID-19. On March 3, 2020, your Board ratified that proclamation. On March 4th, Governor Newsom proclaimed a statewide State of

Emergency.

Since that time, there has been a flurry of proclamations and orders issued in response to the COVID-19 pandemic. Those related to evictions include the following:

- On March 16th, Governor Gavin Newsom issued Executive Order N-28-20, which authorized local jurisdictions to enact temporary moratoria on residential and commercial evictions based on non-payment of rent if the non-payment is a result of the COVID-19 pandemic.
- On March 16th, the Health Officers of six Bay Area counties issued orders that directed all individuals living within those counties to shelter in their place of residence (“Shelter-in-Place” Orders) and authorizing individuals to leave their residences for defined essential activities.
- On March 17th, Solano County Superior Court Civil Supervising Judge Getty issued a directive to suspend the processing of any new evictions in Solano County, legally referred to as unlawful detainers, through April 3, 2020.
- On March 18th, the Solano County Health Officer issued his own order directing residents in Solano County to “shelter at home” through April 6, 2020 and prohibiting any public or private gatherings, including places of work, that do not allow for participants to maintain a minimum of six feet distance apart.
- On March 19th, Governor Newsom issued Executive Order N-33-20 which, among other things, directs all California residents to immediately heed current State public health directives and shelter in their homes, with certain exceptions.
- On March 27th, Governor Newsom issued Executive Order N-37-20 which prohibits landlords from evicting residential tenants for nonpayment of rent through May 31, 2020 when the inability to pay is due to COVID-19.
- On March 30th, the Solano County Public Health Officer extended his Order through April 30, 2020.
- On April 2nd, Judge Getty issued a standing order prohibiting the processing of any unlawful detainers through May 1st.
- On April 5, 2020, the Judicial Council adopted an emergency court rule that suspends all evictions statewide, other than those necessary to protect the public health and safety, for the duration of the COVID-19 emergency. The rule applies to all courts and to all residential and commercial cases, not just those cases based on a missed payment due to COVID-19, through the current State of Emergency and for a period of 90 days once the Emergency is lifted, or until it is amended or repealed by the Judicial Council.

The Judicial Council rule specifically affords the following:

- Prohibits any superior court from issuing a summons after a landlord files an eviction case, unless necessary to protect public health and safety, which means that, even if a landlord files an eviction case, most tenants will not need to respond until the emergency rule expires, guaranteeing that tenants will not lose their right to appear in court due to the emergency.
 - The time for a tenant to respond to a new eviction case does not begin until the tenant is serviced with a court issued summons, and in nearly all unlawful detainers cases, no summons will be issued during this emergency period.
 - Landlords who are attempting to evict a tenant due to public health or safety reasons may still file, and if a court finds on the record that such eviction is necessary to protect public health and safety, the court will issue a summons during this emergency period. Only in these rare cases will a tenant be required to respond in court after being served with the summons and complaint.
- Prohibits a court from entering a default judgment against the tenant because the tenant failed to file a response, unless the court finds on the record:
 - The eviction is necessary to protect public health and safety; and
 - The tenant failed to respond in the time required by law, including any extension that may apply due to the Governor’s Executive Order regarding evictions during the COVID-19 emergency.
- For eviction cases where the tenant has responded or appeared, prohibits a court from setting the case

for trial earlier than 60 days after a trial is requested, unless necessary to protect public health and safety.

- Requires any trial in an eviction case that was already scheduled as of April to be postponed until at least 60 days after the initial trial date.

In addition, the Judicial Council adopted an emergency rule related to judicial foreclosures. This rule also applies until 90 days after the Governor lifts the COVID-19 state of emergency. The rule:

- Prohibits a court from taking any action or issuing any decisions or judgments unless necessary for public health and safety.
- Postpones any legal deadlines for filing judicial foreclosure cases.
- Extends the period for exercising any rights in a judicial foreclosure case, including any right of redemption from a foreclosure sale, or petitioning the court in relation to such a right.

Note, that this rule does not impact non-judicial foreclosures, which comprise the vast majority of foreclosures in California. Non-judicial foreclosure sales are conducted by private parties outside the courthouse and are not effected by these new emergency rules.

While the Judicial Council rule affords significant renter protections, it is recommended that the Board adopt the attached resolution adopting its own emergency moratorium on residential and commercial evictions related to non-payment of rent during the COVID-19 local emergency. Cal. Government Code section 8634 authorizes a board of supervisors to “promulgate orders and regulations necessary to provide for the protection of life and property.” The California Attorney General has interpreted this section to extend the Board’s authority countywide in cases of local emergencies.

The proposed countywide regulation mirrors the Judicial Council 90-day moratorium while also prohibiting the imposition of late fees or penalties for late payments, presumes that any loss of income is due to the COVID-19 pandemic, allows residential tenants to terminate a lease with cause related to COVID-19, and prohibits landlords from refusing to renew a lease with a tenant who has unpaid rent without first attempting to negotiate a reasonable repayment plan.

The cities of Benicia, Suisun City, Vacaville, and Vallejo have each adopted their own local regulations. The attached table provides a comparison of these and what other Bay Area counties have included in their regulations. The table also shows which counties have adopted ordinances or regulations that apply only in the unincorporated area and which counties have adopted regulations that apply countywide.

ALTERNATIVES:

The Board could choose not to approve this Emergency Regulation or could choose to impose alternative timelines. This is not recommended because a countywide moratorium provides for equal protections for all Solano County tenants. A 90-day moratorium is proposed as a reasonable estimate of time necessary for the majority of tenants to recover their ability to pay rent once the State Emergency has been lifted.

OTHER AGENCY INVOLVEMENT:

The seven cities were consulted on the proposed moratorium. Benicia, Vacaville and Vallejo have adopted their own moratoriums through May 31, 2020. Should the Board approve this Emergency Regulation, the County’s moratorium would supplement the actions taken by those cities.

CAO RECOMMENDATION:

APPROVE DEPARTMENT RECOMMENDATION