



DATE: May 14, 2020
TO: City Council and Members of the Public
FROM: Councilmember Nikki Fortunato Bas
Council President Pro Tempore Dan Kalb
City Attorney Barbara Parker
SUBJECT: Eviction Moratorium Extension Emergency Ordinance

RECOMMENDATION

We Respectfully Request That The City Council: Adopt An Emergency Ordinance Amending Ordinance No. 13589 C.M.S. To (1) Extend The Moratorium On Residential Evictions During The Local Emergency Proclaimed In Response To The Novel Coronavirus (COVID-19) Pandemic; And (2) Extend The Moratorium On Commercial Evictions Based On Nonpayment Of Rent That Became Due During The Local Emergency When Tenant Suffered A Substantial Loss Of Income Due To COVID-19.

EXECUTIVE SUMMARY

This emergency ordinance will extend two protections which are set to expire on May 31, 2020 --- one for residential tenants and one for small businesses and nonprofits --- in the Eviction Moratorium Emergency Ordinance, passed unanimously by this Council on March 27, 2020. The first is the Residential Eviction Moratorium, which prohibits all evictions through May 31, and the second is the Commercial Eviction Moratorium, which prohibits commercial evictions based on non-payment of rent through May 31.

The COVID-19 public health crisis continues to require extraordinary government measures to protect the health and safety of our community, our state and nation, and the entire world. As governments at all levels grapple with this emergency, it is incumbent upon Oakland and other cities to take steps to protect the health and welfare of our residents, especially seniors, homeless people and individuals with chronic medical conditions, who are the most vulnerable. With “Shelter in Place” mandates issued by six Bay Area counties and a statewide “Stay at Home” order from California Governor Newsom, the City of Oakland has a duty to assist residents in safely staying in their homes and “sheltering in place.”

This emergency ordinance can alleviate the number of evictions, a leading cause of homelessness in Oakland, and create greater housing stability for the majority of Oaklanders who are renters. Additionally, small businesses employ the majority of Oakland’s workers. The shelter in place order has severely impacted small businesses,

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forcing many to close their doors, while some maintain a fraction of their regular operations. This emergency ordinance can help to ensure the public's health and safety during this emergency and crisis.

For the foregoing reasons, it is critical that Oakland adopt the emergency ordinance.

BACKGROUND

The City Council unanimously passed an Eviction Moratorium Emergency Ordinance at a Special Meeting of the Council on March 27, 2020.¹ On April 6, 2020, the Judicial Council adopted emergency rules to suspend evictions and judicial foreclosures until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic has been lifted. On April 29, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP extended the Shelter-in-Place Order, requiring all Alameda County Residents to stay in their homes and leave only for specified essential purposes, through the end of May 2020.

If the Council does not enact an emergency ordinance extending the above measures for the duration of the local emergency, the City's announcement of its intent to act would create an incentive for residential and commercial landlords to evict tenants after provisions of the existing eviction moratorium expire on May 31, 2020. This would go against the clear intent of the City to protect such resident and small business tenants to promote the health, welfare, and safety of the City. In the time after a non-emergency ordinance was introduced, received a second reading, and became effective, many residential tenants could be subject to displacement, and small business tenants could be subject to closure, furthering the need for the Council to enact an emergency ordinance that is effective immediately.

ANALYSIS

This emergency ordinance extending the previously passed eviction moratorium will prevent displacement, reduce transmission of the novel Coronavirus (COVID-19), and promote the stability and the health and safety of the residents of Oakland during the Local Emergency declared by the City Administrator on March 9, 2020, and ratified by the Oakland City Council on March 12, 2020, in response to the COVID-19 pandemic.

¹ Eviction Moratorium Emergency Ordinance available at:
<https://oakland.legistar.com/LegislationDetail.aspx?ID=4406542&GUID=EAF35294-F356-4895-A87A-0C1B9CE4D0C3&Options=&Search=>.

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This emergency ordinance extends the moratoriums as follows (changes underlined):

1. **Residential Evictions.** Except when the tenant poses an imminent threat to the health or safety of other occupants of the property, and such threat is stated in the notice as the grounds for the eviction, it shall be an absolute defense to any unlawful detainer action filed under Oakland Municipal Code 8.22.360A subsections (1) – (10) that the notice was served or expired, or that the complaint was filed or served, during the Local Emergency. . . This Section shall remain in effect until the Local Emergency declared on March 9, 2020, has been terminated by the City Council.

2. **Commercial Evictions.** In any action for unlawful detainer of a commercial unit based on non-payment of rent, it shall be an absolute defense if the failure to pay rent during the local emergency was the result of a substantial decrease in income (including but not limited to a decrease caused by a reduction in hours or consumer demand) and the decrease in income was caused by the COVID-19 pandemic or by any local, state, or federal government response to COVID-19, and is documented. This section shall only apply to small businesses as defined by Government Code Section 14837(d)(1)(A) and to nonprofit organizations. . . . This section shall remain in effect until the expiration of the Governor’s suspension of state law limitations on local government’s exercise of its police power to impose substantive limitations on commercial eviction in Executive Order N-29-20 and any extensions of such suspension. Nothing in this section shall relieve the tenant of liability for the unpaid rent.

The City Council further adds “suspension or forgiveness of rent for tenants” to its requests and urges Governor Newsom, California State legislators and U.S. Senators and Representatives to enact comprehensive legislation to further protect residents, tenants, homeowners and small businesses from the adverse health, safety and economic impacts of this crisis. This includes, but is not limited to, the following:

- A moratorium on mortgage foreclosures;
- A moratorium on commercial rent increases;
- Suspension or forgiveness of rent for tenants;
- Creation of emergency direct assistance programs for rent and mortgage payments, and other housing-related expenses such as utilities, property taxes, and insurance;
- Urging banks and financial institutions to suspend rents and mortgages;
- Creation of emergency grant programs to small businesses and nonprofits;

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- Creation of emergency programs that provide homes and expanded services for people experiencing homelessness.

FISCAL IMPACT

This legislation would extend moratoriums on residential evictions and commercial evictions for nonpayment of rent that became due during the Local Emergency and would not result in additional staffing cost increases to the City.

PUBLIC OUTREACH / INTEREST

The authors engaged with several Oakland-based community and business organizations and individual residential and commercial renters as well.

COORDINATION

The City Attorney's Office was extensively consulted for this legislation. The City Administrator's Office, the Department of Housing and Community Development, the Department of Economic and Workforce Development, and the Mayor's Office were consulted in the original eviction moratorium emergency ordinance. The Housing and Community Development Department Rent Program staff has conducted outreach about the moratorium with tenants and landlords, and the Economic and Workforce Development Department has been assisting small businesses regarding the moratorium.

SUSTAINABLE OPPORTUNITIES

Economic: This ordinance will increase housing and small business rental stability in Oakland, alleviating financial and economic pressures during the state of emergency on residents and small business owners and increasing their ability to contribute to the local economy.

Environmental: Protecting tenants and allowing primarily lower income individuals and families to remain housed effectively prevents displacement and homelessness, reducing waste and greenhouse gas emissions that may be increased if individuals are forced to move further away from their workplaces or forced to live on the streets.

Social Equity: This ordinance protects communities of color in Oakland. The 2018 City of Oakland Equity Indicators Report showed that 74 percent of African American residents are renters, 69 percent of Latinx residents are renters, and 48 percent of Asian residents are renters. Fifty-eight (58) percent of African American and 53 percent

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of Latino residents are rent burdened in Oakland, and African American residents are twice as likely to receive an eviction notice than all residents. Roughly 90 percent of Oakland's businesses have fewer than 25 employees.

ACTION REQUESTED BY THE CITY COUNCIL

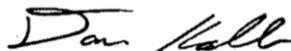
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For questions regarding this report, please contact Miya Saika Chen, Chief of Staff, Office of Councilmember Nikki Fortunato Bas, at mchen@oaklandca.gov.

Respectfully Submitted,



Nikki Fortunato Bas
Councilmember, District 2



Dan Kalb
Council President Pro Tempore, District 1



Barbara J. Parker
City Attorney