

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of June 23, 2020

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Thomas Lloyd Smith, City Attorney *TLS*

SUBJECT: Urgency Ordinance Effecting the Expiration of the City of Antioch Eviction Moratorium Urgency Ordinance in Recognition of the Contra Costa County Moratorium on Evictions and Rent Increases

RECOMMENDED ACTION

It is recommended that the City Council adopt the urgency ordinance effecting the expiration of the City of Antioch's temporary moratorium on evictions ("**Attachment A**").

FISCAL IMPACT

The recommended action has no fiscal impact on the City.

DISCUSSION

At its meeting on March 31, 2020, the City Council adopted an urgency ordinance establishing a temporary moratorium on residential and commercial evictions due to nonpayment of rent ("**Attachment C**"). The eviction moratorium applies where the failure to pay rent was from income loss resulting from COVID-19. Under the urgency ordinance tenants have a 90-day grace period per month of unpaid rent, due to COVID-19 related reasons under the eviction moratorium after expiration or other termination of the term of the Ordinance, to repay such unpaid rent or utilities, unless a state law or order is amended or adopted providing for a longer repayment period, in which case the payment period provided by the state law or order shall apply under the Ordinance.

Shortly after the City Council adopted the eviction moratorium, the Contra Costa County Board of Supervisors adopted an urgency ordinance imposing a moratorium on evictions and rent increases ("**Attachment B**").

The County's eviction and rent increase moratorium prohibited the eviction of residential and commercial tenants to due to nonpayment of rent caused by COVID-19, and included certain other related provisions. The County's ordinance was set to expire on May 31. However, on May 26, the County extended and amended its eviction moratorium through July 15. The County's ordinance applies in both incorporated and unincorporated areas

of Contra Costa County, except for cities that have adopted their own ordinances covering the same subject matter. Accordingly, if the City Council effects the expiration of its eviction moratorium, the County's eviction and rent increase moratorium will apply in the City of Antioch.

The County's eviction and rent increase moratorium contains the following provisions which are generally similar to the City's previous eviction moratorium: (1) a residential or commercial tenant may not be evicted for failure to pay rent when such failure is due to COVID-19. The commercial eviction moratorium only applies to small businesses and nonprofits. A small business is defined as a business with fewer than 100 employees and an average annual gross receipts of \$15 million or less over the previous three years; (2) the tenant must notify the landlord within 14 days of the rent being due that he or she is unable to pay, and provide adequate documentation; (3) no late fees may be charged for rent paid late pursuant to the eviction moratorium; and (4) the eviction moratorium applies through July 15, 2020, and thereafter tenants have 120 days to repay any back due rent. In addition to the provisions listed above, the County's eviction moratorium also limits other types of evictions.

Specifically, the County's eviction and rent increase moratorium prohibits any "no-fault" evictions through July 15, 2020 unless: (1) the eviction is necessary for health and safety reasons, (2) the unit is being removed from the rental market, or (3) an immediate family member of the owner is moving into the unit. A "no-fault" eviction is when a tenant is evicted for a reason other than its breach of the rental agreement or state law. In addition, the County's eviction moratorium prohibits evictions based on an unauthorized occupant living in the unit if that occupant is an immediate family member of the tenant.

The County's eviction and rent increase moratorium is contained in County Ordinance No. 2020-16. That ordinance also prohibits a landlord from increasing the rent on any residential unit through July 15, 2020 unless: (1) the increase is pursuant to a preexisting written agreement, (2) the increase occurs after a vacancy, or (3) the unit is covered by the Costa Hawkins Act (generally single family homes and units built after February 1, 1995). This portion of County Ordinance No. 2020-16 appears to apply in the City of Antioch unless the City adopts its own ordinance regulating rent increases. The City does not have any such ordinance.

The County's eviction moratorium will apply in the City of Antioch unless the City keeps its own eviction moratorium in place.

ATTACHMENTS

- A. [Proposed] City of Antioch Urgency Ordinance
- B. Contra Costa Urgency Ordinance No. 2020-14
- C. City of Antioch Urgency Ordinance No. 2182-C-S

URGENCY ORDINANCE NO. 2020-_____

AN URGENCY ORDINANCE OF THE CITY OF ANTIOCH EFFECTING THE EXPIRATION OF A TEMPORARY MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT FOR RESIDENTIAL AND COMMERCIAL TENANTS WHERE THE FAILURE TO PAY RENT RESULTS FROM INCOME LOSS RESULTING FROM THE NOVEL CORONAVIRUS DISEASE 2019 (COVID-19)

WHEREAS, on March 31, 2020, the City Council of the City of Antioch approved an Ordinance No. 2181-C-S, an Urgency Ordinance Enacting a Temporary Moratorium on Evictions Due to Nonpayment of Rent for Residential and Commercial Tenants Where the Failure to Pay Rent Results from Income Loss Resulting From the Novel Coronavirus Disease 2019 (COVID-19);

WHEREAS, Ordinance No. 2181-C-S prohibits landlords from seeking to evict or instituting unlawful detainer proceedings against residential or commercial tenants who demonstrate a substantial decrease in household or business income;

WHEREAS, Ordinance No. 2181-C-S also provides tenants with a 90-day “grace period” for each month of rent that accumulates in arrears as a result of their inability to pay due to the reduction in their household or business income;

WHEREAS, in enacting Ordinance No. 2181-C-S, the City Council found, among other things, that the potential for displacement of residential and commercial tenants following evictions during the COVID-19 pandemic would adversely affect the public health and safety and contribute toward increased homelessness;

WHEREAS, the City Council’s enactment of Ordinance No. 2181-C-S was a lawful exercise of its police and emergency powers in accordance with Article XI, § 7 of the California Constitution and California Government Code § 36937;

WHEREAS, on March 16, 2020, the Governor of the State of California issued Executive Order N-28-20, imposing a moratorium on residential evictions involving those affected by the COVID-19 pandemic and suspending any state law that could be construed to preempt or otherwise restrict a city’s exercise of its police power to impose a moratorium on residential or commercial evictions during the COVID-19 pandemic;

WHEREAS, on March 27, 2020, and again on May 29, 2020, the Governor through Executive Orders N-37-20 and N-66-20 extended his residential-eviction moratorium and suspension of any state law that could be interpreted to preempt or otherwise restrict the municipal police power concerning evictions through July 28, 2020;

WHEREAS, on April 6, 2020, the Judicial Council of the State of California enacted an Emergency Rule prohibiting superior courts from issuing summonses in any unlawful detainer actions, except in cases involving public health and safety, until 90 days after

ATTACHMENT A

Governor's declaration of emergency concerning the COVID-19 pandemic has been lifted;

WHEREAS, the Governor's declaration of emergency concerning the COVID-19 pandemic, issued on March 4, 2020, remains in effect as of the date of this ordinance;

WHEREAS, on April 22, 2020, the Board of Supervisors of the County of Contra Costa enacted an urgency ordinance, Ordinance No. 2020-014 ("County Urgency Ordinance"), imposing a countywide prohibition on residential and commercial evictions and certain rent increases in light of the COVID-19 pandemic;

WHEREAS, the provisions of the County Urgency Ordinance apply in incorporated cities located within Contra Costa County except to the extent cities have adopted their own ordinances, in which case any more restrictive city provisions are to be enforced;

WHEREAS, the County Urgency Ordinance includes a provision conferring a "grace period" of 120 days following its expiration for tenants to repay unpaid rent that accumulates in arrears due to their inability to pay;

WHEREAS, on May 26, 2020, the Board of Supervisors of Contra Costa County extended the County Urgency Ordinance through July 15, 2020;

WHEREAS, the City Council finds that the Governor's Executive Orders, Judicial Council Emergency Rule, and County Urgency Ordinance, as described above, extend the same or substantially similar protections and seek to promote the same goals as Ordinance No. 2181-C-S;

WHEREAS, the City Council finds that in light of the existence and extension of the Governor's Executive Orders, the Judicial Council Emergency Rule, and the County Urgency Ordinance, which equally and amply apply to and protect all residences and businesses within the City of Antioch, continuing the provisions of Ordinance No 2181-C-S is not necessary;

WHEREAS, the City Council finds that residences and businesses that continue to suffer from the economic impacts of the COVID-19 pandemic will continue to have protections from eviction and adequate "grace periods" to repay unpaid rent that accrues in arrears under the Governor's Executive Orders, Judicial Council Emergency Rule, and the County Urgency Ordinance; and

WHEREAS, the City Council finds that recognizing the expiration of Ordinance No. 2181-C-S will provide clarity and certainty to landlords, businesses, and residents as to the applicable laws, regulations, and standards that govern evictions during the continuing COVID-19 public-health emergency.

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

Section 1. Expiration of Ordinance No. 2181-C-S.

The City Council of the City of Antioch hereby recognizes the expiration of Ordinance No. 2181-C-S, an Urgency Ordinance Enacting a Temporary Moratorium on Evictions Due to Nonpayment of Rent for Residential and Commercial Tenants Where the Failure to Pay Rent Results from Income Loss Resulting From the Novel Coronavirus Disease 2019 (COVID-19).

Section 2. Compliance with the California Environmental Quality Act.

The City Council hereby finds approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines") under Section 15061(b)(3) of the CEQA Guidelines.

Section 3. Severability.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid or unconstitutional.

Section 4. Effective Date and Publication.

This Urgency Ordinance shall become effective immediately upon its adoption by not less than a four-fifths vote of the Antioch City Council pursuant to California Government Code Section 36937. Prior to the expiration of fifteen days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law.

THE FOREGOING URGENCY ORDINANCE was INTRODUCED, ADOPTED AND ORDERED published at a regular meeting of the City Council held on June 23, 2020 and passed by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTACHMENT A

Sean Wright, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch

ORDINANCE NO. 2020-14

AN URGENCY ORDINANCE TEMPORARILY PROHIBITING EVICTIONS OF
RESIDENTIAL AND COMMERCIAL REAL PROPERTY TENANTS IN
CONTRA COSTA COUNTY IMPACTED BY THE COVID-19 PANDEMIC AND
ESTABLISHING A MORATORIUM ON RENT INCREASES

The Contra Costa County Board of Supervisors ordains as follows:

Section 1. Findings.

- A. On January 30, 2020, the World Health Organization declared the outbreak of a novel coronavirus that causes the disease named coronavirus disease 2019 (“COVID-19”), a public health emergency of international concern.
- B. On January 31, 2020, as the result of confirmed cases of COVID-19, the U.S. Secretary of Health and Human Services declared a public health emergency nationwide.
- C. On March 3, 2020, Contra Costa Health Services announced the first case of local transmission of the virus causing COVID-19 in Contra Costa County.
- D. On March 4, 2020, Governor Gavin Newsom proclaimed the existence of a state of emergency in California under the California Emergency Services Act, Gov. Code § 8550 et seq., and reported that as of that date, there were more than 94,000 cases of COVID-19 worldwide, resulting in more than 3,000 deaths, with 129 confirmed cases of COVID-19 in the United States, including 53 in California.
- E. On March 10, 2020, the Board of Supervisors found that due to the introduction of COVID-19 in the County, conditions of disaster or extreme peril to the safety of persons and property had arisen, commencing on March 3, 2020. Based on these conditions, pursuant to Government Code section 8630, the Board adopted Resolution No. 2020/92, proclaiming the existence of a local emergency throughout the County.
- F. The legislative bodies of a number of cities in Contra Costa County have also adopted local emergency proclamations due to COVID-19 pursuant to Government Code section 8630.
- G. On March 16, 2020, the County Health Officer issued an order requiring County residents to shelter at their places of residence through April 7, 2020, in order to slow community transmission of COVID-19, subject to exceptions for the provision and receipt of essential services while complying with social distancing requirements to the maximum extent possible. All businesses with a facility in the County, except Essential Businesses as defined in the order, were required to cease all activities at facilities located within the County except for Minimum Basic Operations, as defined in the order.

- H. On March 31, 2020, the County Health Officer extended the shelter-in-place order through May 3, 2020, and clarified and strengthened its requirements.
- I. On March 16, 2020, Governor Gavin Newsom issued Executive Order N-28-20, which authorizes local jurisdictions to suspend the evictions of residential and commercial tenants for the non-payment of rent if the non-payment is a result of the COVID-19 pandemic. The protections in Executive Order N-28-20 extend through May 31, 2020.
- J. On March 19, 2020, Governor Gavin Newsom issued Executive Order N-33-20, which directs residents of California to follow state public health directives to stay home or at their place of residence to preserve the public health and safety and capabilities of the healthcare delivery system.
- K. On March 27, 2020, Governor Gavin Newsom issued Executive Order N-37-20, which prohibits landlords throughout California from evicting residential tenants for nonpayment of rent when the inability to pay is due to COVID-19, and the tenant has provided notice to the landlord and has documentation showing the nonpayment is because of the COVID-19 pandemic. The protections in Executive Order N-37-20 extend through May 31, 2020.
- L. The COVID-19 pandemic and associated public health orders have resulted in the closure of many local businesses until at least May 3, 2020, and have imposed extreme restrictions on other local businesses until then, and possibly thereafter.
- M. The COVID-19 pandemic and associated public health orders are expected to result in a loss of income to a widespread portion of the local population that depend on wages or business income to pay rent and result in medical expenses for certain Contra Costa County residents.
- N. Contra Costa County and the cities within the County are also experiencing a housing affordability crisis, which is driving homelessness and displacement of residents.
- O. Many County residents are experiencing or will experience losses of income as a result of the local emergency and shelter-in-place orders, hindering their ability to pay rent and leaving them vulnerable to eviction.
- P. Many of the County's renters are rent-burdened, paying over 30 percent of their income on rent, and some renters are severely rent-burdened, paying over 50 percent of their income on rent, which leaves less money for families to spend on other necessities like food, healthcare, transportation, and education.
- Q. Without local protection, eviction notices, including notices for failure to pay rent, are likely to surge as residents and businesses are unable to earn income due to the COVID-

19 pandemic, or are forced to pay medical expenses associated with the COVID-19 pandemic.

- R. Housing displacement due to rent increases and evictions occurring during the local emergency would hinder individuals from complying with state and local directives to shelter in place, and would lead to increased spread of COVID-19, overburdening the healthcare delivery system and potentially resulting in greater loss of life.
- S. There is an urgent need for the County to enact substantive limitations on evictions and enact a temporary moratorium on rent increases to protect the health, safety, and welfare of its residents in light of the emergency declared regarding the COVID-19 pandemic, including the need to keep residents in their homes during the time that they need to shelter-in-place.

Section 2. Definitions. For purposes of this ordinance, the following words and phrases have the following meanings:

- (a) “Commercial real property” means any developed real property that is used as a place of business.
- (b) “Immediate family” means a person’s spouse, domestic partner, children, grandchildren, parents, or grandparents.
- (c) “No fault cause for eviction” means any eviction for which the notice of termination of tenancy is not based on an alleged fault of the tenant.
- (d) “Owner” means any natural person, partnership, corporate or fictitious entity, acting as a lessor or sublessor, whether as a principal or through an agent, who receives or is entitled to receive rent in exchange for the use or occupancy of any residential or commercial real property for rent.
- (e) “Rent” means the financial obligation or monetary payment a tenant owes an owner for the occupancy or use of commercial or residential real property whether by written or oral agreement.
- (f) “Residential real property” means any dwelling unit that is intended or used for human habitation.
- (g) “Tenancy” means the lawful occupancy of residential or commercial real property by agreement on a month-to-month basis or for a fixed term in excess of 30 days.
- (h) “Tenant” means the lawful occupant of residential or commercial real property whether by lease, sublease, or other agreement.

Section 3. Prohibitions on Residential and Commercial Evictions.

- (a) Through May 31, 2020, and any subsequent extensions approved by the Board of Supervisors, an owner of residential real property or commercial real property shall not terminate a tenancy for failure to pay rent if the tenant demonstrates that the failure to pay rent is directly related to a loss of income or out-of-pocket medical expenses associated with the COVID-19 pandemic or any local, state, or federal government response to the pandemic.

For the protections of this subsection (a) to apply, a tenant must demonstrate through documentation or other objectively verifiable means:

- (1) Loss of income from: (i) job loss; (ii) layoffs; (iii) a reduction in the number of compensable hours of work; (iv) a store, restaurant, office, or business closure; (v) a decrease in business income caused by a reduction in opening hours or consumer demand; (vi) the need to miss work to care for a homebound school-age child or a family member infected with coronavirus; or (vii) other similarly-caused loss of income, where the conditions listed in (i) through (vii) resulted from the COVID-19 pandemic or related guidance or public health orders from local, State, or federal authorities; or
- (2) Out-of-pocket medical expenses for themselves or their immediate family related to the COVID-19 pandemic.

“Adequate documentation” of lost income or out-of-pocket medical expenses from the COVID-19 pandemic includes but is not limited to a declaration signed by the tenant under penalty of perjury, letters from employers citing the COVID-19 pandemic or related government action as the basis for termination of employment or reduced work, employer paycheck stubs, bank statements, or letters or notifications from schools in which the tenant has a dependent enrolled regarding COVID-19-related closures that affected the tenant’s income.

The tenant must notify the owner in writing before the rent is due, or within a reasonable period of time afterwards not to exceed 14 days, that the tenant needs to delay all or some payment of rent because of an inability to pay the full amount due to reasons related to COVID-19.

- (b) Through May 31, 2020, and any subsequent extensions approved by the Board of Supervisors, an owner of residential real property or commercial real property shall not terminate a tenancy for any no fault cause for eviction.
- (c) Through May 31, 2020, and any subsequent extensions approved by the Board of Supervisors, an owner of residential real property shall not terminate a tenancy on the basis of a tenant allowing an unauthorized occupant to live in the dwelling unit, if the

occupant is a member of the tenant's immediate family living in the dwelling unit as a result of the COVID-19 pandemic.

- (d) Notwithstanding the foregoing, nothing in this section limits an owner's ability to terminate a tenancy for any of the following reasons:
 - (1) The termination is necessary to protect the owner's health or safety or any other tenant's health or safety.
 - (2) The termination is necessary where the owner or a member of the owner's immediate family intends to occupy the residential real property.

Section 4. Notices of Termination of Tenancy.

- (a) An owner's failure to comply with this ordinance shall render any notice of termination of tenancy, where the termination would be in violation of this ordinance, void. Any notice of termination served on a tenant during the COVID-19 pandemic must contain the reason for the termination of the tenancy. Any notice of termination served on a tenant during the COVID-19 pandemic must also include a notice of the tenant's rights under this ordinance and a notice of emergency rental assistance programs. The owner shall provide these notices to the tenant on a form approved by the Contra Costa County Employment and Human Services Department.
- (b) A tenant eligible for protection under this ordinance must provide written notice of that eligibility to the owner within 14 days after receiving a notice of termination of tenancy from the owner.

Section 5. Late Fees. For a period of 120 days after this ordinance expires, including any subsequent extensions approved by the Board of Supervisors, an owner may not charge or collect a late fee for unpaid rent due from a tenant who demonstrated loss of income or out-of-pocket medical expenses as required under this ordinance.

Section 6. Grace Period. A tenant who demonstrated loss of income or out-of-pocket medical expenses as required under this ordinance shall pay all past due rent within 120 days after this ordinance expires, including any subsequent extensions approved by the Board of Supervisors, unless the owner agrees to a longer repayment period. This ordinance does not relieve a tenant of the obligation to pay rent and does not restrict an owner's ability to recover rent due, and shall not prevent a tenant who is able to pay all or some of the rent due from paying that rent in a timely manner.

Section 7. Moratorium on Rent Increases. An owner may not increase rent through May 31, 2020, and any subsequent extensions approved by the Board of Supervisors. A residential real property that is exempt from the rent limits imposed by Civil Code section 1947.12 is exempt from this section.

Section 8. Remedies.

- (a) The provisions of this ordinance may be asserted as an affirmative defense in an unlawful detainer action.
- (b) If an owner attempts to recover possession or recovers possession of residential real property or commercial real property in violation of this ordinance, retaliates against a tenant for the exercise of any rights under this ordinance, or attempts to prevent a tenant from acquiring any rights under this ordinance, the tenant may institute a civil proceeding for injunctive relief, money damages of not more than three times actual damages (including damages for mental or emotional distress), and whatever other relief a court deems appropriate. If damages are awarded for mental or emotional distress, the award shall only be trebled if the trier of fact finds that the owner acted in knowing violation of or in reckless disregard of the provisions of this ordinance. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.

Section 9. Retroactivity. This ordinance applies to eviction notices, and unlawful detainer actions based on these notices, served or filed on or after March 16, 2020, except to the extent a tenant has surrendered possession of its premises, or an unlawful detainer lawsuit was finally adjudicated before March 16, 2020. The facts justifying the retroactive application of this ordinance are set forth in Section 1.

Section 10. Applicability. Government Code section 8634 authorizes the Board of Supervisors to promulgate countywide orders and regulations necessary to provide for the protection of life and property during a local emergency. Pursuant to Government Code section 8634, the regulations in this ordinance shall apply to cities within Contra Costa County and unincorporated Contra Costa County. To the extent that the governing body of a city enacts an ordinance or adopts a regulation that governs the subject matter of this ordinance, that city ordinance or regulation shall supersede this ordinance within that jurisdiction.

Section 11. Severability. If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other ordinance provisions or clauses or applications thereof that can be implemented without the invalid provision or clause or application, and to this end the provisions and clauses are declared to be severable. The Board of Supervisors hereby declares that it would have adopted this ordinance and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional, or otherwise unenforceable.

Section 12. Declaration of Urgency. This ordinance is hereby declared to be an urgency ordinance necessary for the immediate preservation of the public peace, health, and safety of the County. The facts constituting the urgency of this ordinance's adoption are set forth in Section 1.

Section 14. Publication. Within 15 days after passage, this ordinance shall be published once with the names of the supervisors voting for and against it in the East Bay Times, a newspaper published in this County.

PASSED ON April 21, 2020, by the following vote:

AYES: John Giola, Candace Andersen, Diane Burgis, Karen Mitchoff

NOES: None

ABSENT: None

ABSTAIN: None

ATTEST: DAVID J. TWA,
Clerk of the Board of Supervisors
and County Administrator



Board Chair Candace Andersen

By:



Deputy June Mchuen

[SEAL]