



**BOARD OF SUPERVISORS
AGENDA LETTER**

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Board of Supervisors
Department No.:
For Agenda Of: 01/26/21
Placement: Departmental
Estimated Time:
Continued Item: No
If Yes, date from:
Vote Required: 4/5 Vote required

TO: Board of Supervisors

FROM: Second District Supervisor Hart, 805-568-2191
Fifth District Supervisor Lavagnino, 805-346-8400

GAN
CS for SL

Contact Info: Second District Supervisor, Gregg Hart
Fifth District Supervisor, Steve Lavagnino

SUBJECT: Urgency Ordinance to Temporarily Prohibit Commercial Evictions

County Counsel Concurrence

As to form: Yes

Other Concurrence:

As to form: N/A

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

- a) Pursuant to Government Code sections 25123 and 25131 and California Governor Newsom's Executive Orders N-28-20 and N-80-20, adopt an Urgency Ordinance Amending County Code Chapter 44 Article III to Temporarily Prohibit Commercial Evictions through March 31, 2021, for commercial evictions arising from loss of income or substantial medical expenses related to COVID-19, Coronavirus pandemic. This Urgency Ordinance does not relieve a tenant's obligations to pay rent or restrict a landlord's ability to recover rent due.
- b) Read the title and waive further reading of the Urgency Ordinance; and,
- c) Determine that adoption of the Urgency Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15269(c), 15061(b)(3), and 15378(b)(5).

Summary Text:

This Urgency Ordinance would temporarily prohibit and suspend commercial evictions arising from loss of income or substantial medical expenses related to COVID-19, Coronavirus pandemic. There is currently an Urgency Ordinance that temporarily prohibits commercial evictions that is set to expire on

expire on January 31, 2021. The California State legislator is considering Assembly Bill 15 that would extend the residential eviction moratorium through the end of 2021. Consistent with the Governor's September 23, 2020 Executive Order N-80-20, the County is authorized to temporarily prohibit commercial evictions through March 31, 2021 as proposed in this Urgency Ordinance. When the Board last considered the Urgency Ordinance prohibiting commercial evictions, there was Board discussion about including more protections for landlords. This updated Urgency Ordinance addresses these concerns because it: does not relieve a tenant's obligations to pay rent or restrict a landlord's ability to recover rent due in the future; requires tenants to provide documentation of an inability to pay under penalty of perjury; and, requires tenants to pay 25% of rental payments due under the existing lease between September 1, 2020 and March 31, 2021. The requirement for payment of 25% of rental payments is not intended to restrict or alter any existing contractual obligations between landlord and tenant, only to require 25% of payments consistent with the existing payment schedule (Example: 25% each month in an underlying lease that requires payment each month).

Background:

On March 4, 2020, Governor Gavin Newsom declared a State of Emergency in California due to the threat of Coronavirus Disease 19 ("COVID-19"). As numbers of positive cases increased in other California counties, Santa Barbara County Public Health Officer declared a public health emergency in Santa Barbara County due to COVID-19 on March 12, 2020. Additionally, Governor Newsom issued statewide Executive Order N-33-20 on March 19, 2020 directing all California residents to "stay at home" except for essential workers and except for certain essential activities, as specified.

Restaurant and retail business have significantly declined, tens of thousands of Santa Barbara County residents have lost their jobs, and parents have missed work to care for homebound school-age children, resulting in workers impacted by lost wages and layoffs. The loss of wages caused by the effects of COVID-19 will affect commercial tenant's ability to pay rent when due, leaving commercial tenants vulnerable to eviction and loss of their businesses.

On March 16, 2020, Governor Gavin Newsom issued an Executive Order that authorizes local governments to halt evictions for renters and homeowners, slows foreclosures, and protects against utility shutoffs for Californians affected by COVID-19. The Executive Order came as Californians were increasingly experiencing substantial loss of hours or wages, or layoffs related to COVID-19, affecting their ability to keep up with their rents, mortgages, and utility bills. The original Executive Order was set to expire on May 31, 2020 and was extended for another 60 days by Governor Newsom until July 28, 2020 with a new Executive Order issued on May 29, 2020. With Executive Order N-71-20 issued on June 30, 2020, the authority granted to local governments to issue temporary eviction moratoriums was extended through September 30, 2020. Then, on September 23, 2020, Governor Newsom issued Executive Order N-80-20, which further extended N-28-20 for commercial evictions only through March 31, 2021.

Starting on May 4, 2020, Governor Newsom began to open certain segments of the economy with restrictions. However, on June 28, 2020, the Governor announced the release of State guidance regarding closure of bars for counties on the County Monitoring List. This guidance required counties which had

been on the County Monitoring list for 14 days or longer, to immediately close bars. On July 13, 2020, California Department of Public Health (CDPH) mandated that all CDPH industry or sector guidance issued must be followed including all infectious control measures, and the use of face coverings both indoors and outdoors in certain settings.

On August 28, 2020, the State Public Health Officer ordered an update to the framework for reopening, which is known as California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe. Governor Newsom introduced this framework as the Blueprint for a Safer Economy, with a four-tiered color-coded county classification system: (1) purple represents the highest widespread risk level; (2) red represents substantial risk; (3) orange represents moderate risk; and, (4) yellow the lowest level, represents minimal risk. Counties are prohibited from moving through the tiers more than one tier at a time and must stay at the same tier for at least three weeks. As of January 2021, the County remains classified as a Tier One county, in the "purple," highest risk tier and is under the State's Regional Stay At Home Order and Limited Stay At Home Order. In December 2020, the State Public Health Officer ordered additional closures and retail restrictions in regions that have an intensive care unit (ICU) capacity of less than 15 percent. Santa Barbara County is part of the Southern California region which is experiencing a recent surge in cases and hospitalizations. Additional restrictions under the State's Regional Stay At Home Order and Limited Stay At Home Order will remain in place until the State's four-week projections of the Region's total available adult ICU bed capacity is greater than or equal to 15 percent. Due to the extreme uncertainty and inconsistency of employment brought on by the COVID-19 pandemic, it is reasonable to expect Santa Barbara County businesses may have difficulty making rent or buying back owed rent.

On August 31, 2020, the Governor approved and filed Assembly Bill 3088. Assembly Bill 3088 has two broad areas of legislative changes:

- The "Homeowner Act," which primarily involves procedures that a mortgage servicer must follow if the borrower asserts that financial hardship from the COVID-19 emergency prevented them from making timely mortgage payments; and
- The "COVID-19 Tenant Relief Act of 2020," or "Tenant Act," which places significant limits on landlords using the eviction remedy against residential tenants who do not pay their rent because of the COVID-19 emergency.

Within AB 3088's Tenant Act:

There is a preemption against extension of the County's own prohibition against evictions, which presently provides protection where failure to pay rent involves a substantial loss of income or substantial medical expenses from the COVID-19 emergency.

- Although Santa Barbara County Code Chapter 44 applied to both residential and commercial leases, the State's Tenant Act does not apply to commercial tenants.

In response to AB 3088 and Executive Order N-80-20, this Urgency Ordinance temporarily prohibits commercial evictions. Consistent with Executive Order N-80-20, the proposed ordinance will be effective through March 31, 2021. In addition, for commercial tenants unable to pay rent between September 1, 2020 and March 31, 2021, the tenant cannot be evicted so long as: the tenant provides written notice through a “Declaration of COVID-19-related financial distress” under Cal. Code Civil Procedure section 1179.02(d) (AB 3088), that the failure to pay is due to COVID; and, the tenant pays 25% of each rental payment due from September 1, 2020 to March 31, 2021.

State law allows the County to adopt an Urgency Ordinance for “the immediate preservation of the public peace, health, or safety.” (Gov. Code section 25123.) This Urgency Ordinance is necessary to preserve public health and safety. In addition to preventing additional business closures, this measure would lessen economic stress that further compounds residents’ health and vulnerability to COVID-19.

Performance Measure:

N/A

Contract Renewals and Performance Outcomes:

N/A

Fiscal and Facilities Impacts:

Budgeted: Select_Budgeted

Fiscal Analysis:

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
General Fund			
State			
Federal			
Fees			
Other:			
Total	\$ -	\$ -	\$ -

Narrative:

Key Contract Risks: N/A

Staffing Impacts: N/A

Legal Positions:

FTEs:

Special Instructions:

Before the expiration of 15 days after passage of this Ordinance, a summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in the *Santa Barbara News-Press*, a newspaper of general circulation published in the County of Santa Barbara in compliance with Government Code Section 25124.

Following Board approval, Clerk of the Board to please post the Notice of Exemption and forward a stamped copy to the Second District Office, Attention: Supervisor Hart and the Fifth District Office, Attention: Supervisor Lavagnino.

Request the Clerk of the Board to return a copy of the Ordinance and Minute Order to: Second District Office, Attention: Supervisor Hart and the Fifth District Office, Attention: Supervisor Lavagnino.

Attachments:

Attachment A: Urgency Ordinance

Attachment B: CEQA Notice of Exemption

Authored by:

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 Fifth District Supervisor Lavagnino, 805-346-8400