

Staff Report

DATE: March 24, 2020

TO: City Council

FROM: Mike Webb, City Manager
Inder Khalsa, City Attorney

SUBJECT: Urgency Ordinance Adopting Emergency Eviction Regulations

Recommendation:

Adopt an urgency ordinance enacting emergency regulations related to evictions.

Fiscal Impact:

The cost to prepare, administer, implement, and enforce the urgency ordinance will be paid out of the existing City Manager's Office budget.

Council Goal:

Ensure a Safe, Healthy, Equitable Community.

Background and Analysis:

An outbreak of respiratory illness due to a novel coronavirus, now known as COVID-19, was identified in Wuhan City, China in December 2019. Symptoms of the virus include fever, cough, and shortness of breath, and infected individuals have experienced a range of outcomes, from mild sickness to severe illness and death. The Centers for Disease Control and Prevention ("CDC") believes that symptoms appear within two to fourteen days after exposure. Currently, there is no vaccine to prevent COVID-19.

The first case of COVID-19 in Yolo County was confirmed on March 6, 2020, with the second case confirmed on March 13, 2020. The City Council proclaimed the existence of a local emergency in response to the COVID-19 pandemic at its March 17, 2020 meeting.

On March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19. On March 16, 2020, the Governor of the State of California issued Executive Order N-28-20, which suspended "[a]ny 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" of certain tenants affected by the COVID-19 pandemic.

On March 18, 2020, the Yolo County Public Health Officer issued a countywide health order for residents to shelter in place from March 19, 2020, to April 7, 2020, unless extended by the Public Health Officer. On March 19, 2020, the Governor of the State of California issued

Executive Order N-33-20, which requires all individuals living in the State of California to stay home or at their place of residence, except as needed to maintain continuity of operation of the federal critical infrastructure sectors.

As a result of the public health emergency and the precautions recommended by health authorities, many tenants in Davis have experienced or expect soon to experience sudden and unexpected income loss. Further economic impacts are anticipated in the coming weeks and months, leaving tenants vulnerable to eviction. Such impacts are also expected to be felt by the City's commercial tenants, most of which are now required to cease (or at least substantially limit) their operations for the duration of the pandemic.

The proposed temporary moratorium on eviction for non-payment of rent by residential and commercial tenants impacted by the COVID-19 pandemic is intended to avoid unnecessary housing displacement, to protect the City's affordable housing stock, and to prevent housed individuals from falling into homelessness. Specifically, the urgency ordinance provides that:

- During the period of local emergency declared in response to COVID-19, landlord are prohibited from evicting a residential or commercial tenant in either of the following situations:
 - For nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19; or
 - For a no-fault eviction unless immediately necessary because of the existence of a hazardous condition affecting tenants or neighbors (Note: a “hazardous condition” does not include the presence of individuals who have been infected by or exposed to COVID-19).
- The phrase “fiscal impacts related to COVID-19” includes, but is not limited to, a substantial decrease in a tenant's household or business income as a result of any of the following:
 - Being sick with COVID-19, or caring for a household or family member who is sick with COVID-19;
 - Lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19;
 - Compliance with a recommendation from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency;
 - Extraordinary out-of-pocket medical expenses; or
 - Child care needs arising from school closures related to COVID-19.
- During the period of local emergency declared in response to COVID-19, a residential or commercial tenant shall pay the portion of the rent that the tenant is able to pay. The tenant is not relieved of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency and the tenant must pay within six months of the expiration of the local emergency.

In response to comments from the Council and members of the public during and after the March 17, 2020 meeting, staff has updated the urgency ordinance as follows:

- Adding recitals that describe (1) the anticipated impacts of the COVID-19 pandemic on commercial tenants' developments, and (2) actions taken by the City, Yolo County, and Governor Newsom since the previous Council meeting;
- Modifying the restrictions on the eviction of commercial tenants, so that a landlord is no longer prohibited from pursuing a no-fault eviction of a commercial tenant (note: this prohibition would still apply to *residential* tenants unless the no-fault eviction is immediately necessary because of the existence of a hazardous condition affecting tenants or neighbors); and
- Clarifying that a residential or commercial tenant shall pay the portion of the rent that the tenant is able to pay during the period of local emergency declared in response to COVID-19.

This revised Ordinance was shared with the Rental Resources Stakeholders group for comment. The stakeholder group includes the California Apartment Association (former Rental Housing Association of Sacramento Valley), local property managers including Boschken Properties, Lyon Property Management, Star Crossed Properties, Tandem Properties, and Zabace Property Management; The Arbors apartment complex; Legal Services of Northern California; ASUCD and a neighborhood representative from Oeste Manor. Comments received by the end of March 23rd will be summarized for the March 24th City Council meeting.

Attachments:

1. An Urgency Ordinance of the City of Davis Adopting Emergency Regulations Related to Evictions and Declaring the Urgency Thereof.

ORDINANCE NO. _____

**AN URGENCY ORDINANCE OF THE CITY OF DAVIS ADOPTING
EMERGENCY REGULATIONS RELATED TO EVICTIONS AND
DECLARING THE URGENCY THEREOF**

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 March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19; and

WHEREAS, on March 6, 2020, the first case of COVID-19 in Yolo County was confirmed, with the second case confirmed on March 13, 2020; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, on March 16, 2020, the Governor of the State of California issued Executive Order N-28-20, which suspended “[a]ny 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” of certain tenants affected by the COVID-19 pandemic; and

WHEREAS, on March 17, 2020, the City Council proclaimed the existence of a local emergency in response to the COVID-19 pandemic; and

WHEREAS, on March 18, 2020, the Yolo County Public Health Officer issued a countywide health order for residents to shelter in place from March 19, 2020, to April 7, 2020, unless extended by the Public Health Officer; and

WHEREAS, the Centers for Disease Control and Prevention, the California Department of Health, and the Yolo County Health Officer 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 this communicable virus; and

WHEREAS, as a result of the public health emergency and the precautions recommended by health authorities, many residential and commercial tenants in Davis have experienced or expect soon to experience sudden and unexpected income loss; and

WHEREAS, as a result of the Yolo County Public Health Officer's countywide health order for residents to shelter in place, many potential customers of commercial tenants in Davis are unable to patronize the tenants' businesses; and

WHEREAS, the eviction of commercial tenants results in the loss of local, family owned businesses, the loss of jobs for employees, and negative impacts surrounding to businesses, potentially leading to urban decay; and

WHEREAS, the Governor of the State of California has stated that individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19 and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks; and

WHEREAS, further economic impacts are anticipated, leaving residential and commercial tenants vulnerable to eviction; and

WHEREAS, during this local emergency, and in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement, to protect the City's affordable housing stock, and to prevent housed individuals from falling into homelessness; and

WHEREAS, in the interest of public peace, health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary for the City Council to exercise its authority to issue these regulations related to the protection of the public peace, health or safety.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS HEREBY ORDAINS AS FOLLOWS:

Section 1. Findings. The City Council finds that each fact set forth in the preceding recitals is true and correct and incorporated by reference.

Section 2. Eviction Moratorium. A temporary moratorium on eviction of residential and commercial tenants impacted by the COVID-19 pandemic is imposed as follows:

1. **Eviction of Residential Tenants.** During the period of local emergency declared in response to COVID-19, no landlord shall endeavor to evict a residential tenant in either of the following situations: (1) for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19 or (2) for a no-fault eviction unless immediately necessary because of the existence of a hazardous condition affecting tenants or neighbors. For the purposes of this section, a hazardous condition shall not include the presence of individuals who have been infected by or exposed to COVID-19.
2. **Eviction of Commercial Tenants.** During the period of local emergency declared in response to COVID-19, no landlord shall endeavor to evict a commercial tenant for

nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19.

3. Landlord's Knowledge of Inability to Pay Rent. A landlord who knows that a residential or commercial tenant 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 section 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for nonpayment of rent. A landlord knows of a tenant's inability to pay rent within the meaning of this Ordinance if the tenant, within 30 days after the date that rent is due, notifies the landlord in writing of lost income and inability to pay full rent due to financial impacts related to COVID-19, and provides documentation to support the claim. For purposes of this Ordinance, "in writing" includes email or text communications to a landlord or the landlord's representative with whom the tenant has previously corresponded by email or text. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim.
4. Tenant's Liability for Rent. During the period of local emergency declared in response to COVID-19, a residential or commercial tenant shall pay the portion of the rent that the tenant is able to pay. Nothing in this Ordinance shall relieve the residential or commercial tenant of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency and the tenant must pay within six months of the expiration of the local emergency. 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.
5. Financial Impacts related to COVID-19. For purposes of this Ordinance, "financial impacts related to COVID-19" include, but are not limited to, a substantial decrease in a residential or commercial tenant's household or business income as a result of any of the following: (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (2) lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19; (3) compliance with an order or directive from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (4) extraordinary out-of-pocket medical expenses; or (5) child care needs arising from school closures related to COVID-19.
6. No-fault Eviction. For purposes of this Ordinance, "no-fault eviction" refers to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant, including but not limited to eviction notices served pursuant to Code of Civil Procedure sections 1161(1), 1161(5), or 1161c.
7. Implementation of Temporary Moratorium. This Ordinance applies to nonpayment eviction notices, no-fault eviction notices, and unlawful detainer actions based on such

notices, served or filed on or after the date on which the local emergency was proclaimed.

Section 3. Urgency. The City Council finds that the COVID-19 pandemic has increased the risk of housing displacement, loss of income, and homelessness for many people in the City of Davis and surrounding areas, as more fully described in the recitals of this Ordinance. The City Council further finds that, unless this Ordinance is effective and its regulations are immediately put in place, the public health, safety and welfare will be at risk. Therefore, the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937(b) and that it take effect immediately upon adoption pursuant to Government Code section 36934, and its urgency is hereby declared.

Section 4. Violations. Violations of this Ordinance shall be punishable as set forth in Chapter 1 of the Davis Municipal Code. In addition, this Ordinance grants a defense in the event that an unlawful detainer action is commenced in violation of this Ordinance.

Section 5. Duration. This Ordinance shall remain in effect for the duration of the local emergency.

Section 6. Uncodified. This Ordinance shall not be codified.

Section 7. Severability. If any provision of this Ordinance is held invalid by a court of competent jurisdiction, such provision shall be considered a separate, distinct and independent provision and such holding shall not affect the validity and enforceability of the other provisions of this Ordinance.

Section 8. Effective Date. Based upon the findings in Section 3 of this Ordinance, this Ordinance shall take effect immediately upon its adoption by a minimum 4/5 vote of the City Council.

Section 9. Certification. The City Clerk shall certify to the adoption of this Ordinance, and the City Clerk shall cause this Ordinance or a summary thereof to be published as required by law.

PASSED AND ADOPTED this ___th day of March, 2020, by the following vote:

AYES: COUNCILMEMBERS _____

NOES: COUNCILMEMBERS _____

Brett Lee
MAYOR

ATTEST:

Zoe S. Mirabile, CMC
CITY CLERK