DATE: April 27, 2020

SUBJECT

Study session to discuss and direct staff concerning a temporary moratorium on commercial evictions

RECOMMENDATION

Staff recommends that the City Council consider whether to agendize a moratorium on commercial evictions, similar to those enacted by the County of San Mateo, and provide direction.

STRATEGIC PLAN GUIDING PRINCIPLE

Economic Vitality

BACKGROUND

On April 6, 2020, the City Council directed City staff to agendize a future discussion concerning a temporary moratorium on commercial evictions. This report provides background on federal, state and local actions taken to date, feedback received from the Redwood City small business community, and what a temporary moratorium on commercial evictions might entail.

Local, State and Federal Actions Taken To Date

On March 3, 2020, the San Mateo County Health Officer declared a local health emergency throughout the County related to COVID-19. The Board of Supervisors ratified and extended this declaration of local health emergency, which remains in effect.

On March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency related to COVID-19 effective throughout the State of California.
On March 12, 2020, pursuant to Chapter 10 of the Redwood City Code, the City Council proclaimed a local emergency throughout the City related to COVID-19, and this local emergency remains in effect.

On March 16, 2020, the Governor issued Executive Order N-28-20, authorizing local agencies to prohibit residential and commercial evictions for failure to pay rent due to COVID-19, or the federal, state, and/or local response to the COVID-19, through May 31, 2020 (unless extended).

Also on March 16, 2020, the Health Officer issued an order that, among other things, directs all individuals currently living within San Mateo County to shelter in their place of residence (“Shelter-in-Place Order”), and authorizes individuals to leave their residences only for certain “Essential Activities,” “Essential Governmental Functions,” or to operate “Essential Businesses,” all as defined in the Shelter-in-Place Order.

On March 19, 2020, the Governor issued Executive Order N-33-20, which imposed a state-wide shelter-in-place order. (The state-wide order does not affect the validity of the County’s order.)

On March 23, 2020, San Mateo County adopted an urgency ordinance implementing a county-wide moratorium on residential evictions during the locally declared state of emergency. The Residential County Ordinance applies through the county, including within incorporated city jurisdictions.

On March 27, 2020, Governor Newsom issued Executive Order N-37-20 extending the time for a commercial or residential tenant to respond to an unlawful detainer complaint from 5 to 60 days, and prohibits enforcement of writs of possession until May 31, 2020, provided certain requirements are met by the tenant.

On March 31, 2020, the Health Officer issued an order that extended and revised the County’s Shelter-in-Place Order.

On March 31, 2020, the President signed into law the CARES Act. It contains $350 billion in forgivable loans for businesses to cover payroll, health care, salaries, interest on mortgages, rent, utilities, and interest on other debt obligations. These loans first became available from certain banks working with the Small Business Administration beginning on Friday, April 3.

On April 6, 2020, the California Judicial Council adopted new emergency rules for the court system that will be in effect during the state of emergency and 90 days afterward. The Judicial Rules prohibit: (1) the issuance of summons to all commercial and residential defendants in new unlawful detainer cases, which means eviction cases cannot proceed during the designated period; (2) a court entering default judgments against tenants which would result in evictions, unless the court determines that the action is necessary to protect public health and safety; and (3) any scheduled jury trials for already initiated actions from proceeding for at least 60 days.

On April 7, 2020, the County adopted another urgency ordinance providing additional protections for commercial tenants in unincorporated areas of the County grossing up to $2.5M a year. Because the County’s Commercial Ordinance does not regulate commercial evictions in Redwood City (it only applies
to unincorporated areas of the County), this Council on April 6 asked staff to look into an urgency ordinance imposing a local commercial eviction moratorium for consideration.

In addition, several cities in San Mateo County have adopted ordinances restricting the eviction of small businesses, summarized in the chart below along with the County’s regulations.

<table>
<thead>
<tr>
<th>City</th>
<th>Gross Receipts Threshold</th>
<th>Ordinance Expiration Date</th>
<th>Deadline to Pay Back Rent</th>
<th>Requirement to Document an Inability to Pay Rent</th>
<th>Requirement to Give Notice to Tenants of the Rent Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of East Palo Alto</td>
<td>Not more than $2.5 million</td>
<td>Until termination of the State of Emergency</td>
<td>Up to 180 days</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>City of Menlo Park</td>
<td>Not more than $2.5 million</td>
<td>May 31, 2020</td>
<td>Up to 180 days</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>City of Millbrae</td>
<td>Not more than $5 million</td>
<td>May 31, 2020</td>
<td>Up to 180 days</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>City of Pacifica</td>
<td>Not more than $2.5 million</td>
<td>May 31, 2020</td>
<td>Up to 90 days (unless an alternative schedule is mutually acceptable)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>City of San Mateo</td>
<td>Less than $25 million</td>
<td>May 31, 2020</td>
<td>Up to 180 days</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>City of South San Francisco</td>
<td>Less than $25 million</td>
<td>May 31, 2020</td>
<td>Up to 180 days</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>County of San Mateo</td>
<td>Not more than $2.5 million</td>
<td>May 31, 2020</td>
<td>Up to 180 days</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Town of Portola Valley</td>
<td>Less than $2.5 million</td>
<td>May 31, 2020</td>
<td>Up to 180 days</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

The following eleven cities have not yet adopted a commercial eviction moratorium (based on their recent agendas): Atherton, Belmont, Brisbane, Burlingame, Daly City, Foster City, Half Moon Bay, Hillsborough, San Bruno, Woodside, and the town of Colma. The City of San Carlos may adopt an ordinance on commercial evictions during its next meeting on April 27, 2020.
DISCUSSION

Feedback Received From the Redwood City Small Business Community
To help Redwood City’s business community mitigate the economic impact of coronavirus (COVID-19), City staff is actively coordinating with governmental agencies and regional partners to identify and connect local businesses to economic assistance programs. In order to share this information with businesses, a City Business Resources Call Center was created. City staff has been proactively contacting all businesses in the City’s business license database. During calls that staff has initiated with businesses, businesses have identified what type of assistance is needed. The most common responses (ranked in priority order) are as follows:

1. Is my business considered an essential business under the Shelter in Place Order, and may I remain open?
2. Can the City help me pay my rent?
3. Can the City help me pay my employees?
4. Can the City help me from getting evicted?
5. Can the City help me understand the Small Business Administration loan programs?

In addition to making proactive business calls, the Economic Development Division has received nearly 300 calls from small businesses seeking assistance. Many of these calls have been focused on commercial eviction protections, as the small business community has become aware of the eviction protection efforts of San Mateo County and surrounding Bay Area cities and counties. Some small businesses have notified City staff that they have received verbal threats of potential eviction due to the non-payment of rent.

Section 36937 of the Government Code authorizes the Council to adopt an urgency ordinance to protect the public peace, health, or safety, where there is a declaration of the facts constituting the urgency and the ordinance is adopted by a four-fifths vote of the Council. For Redwood City, this would require an affirmative vote by 6 members of the City Council in order to adopt the ordinance.

Potential Restrictions on the Eviction of Small Businesses in Redwood City.
A moratorium on evictions of small businesses, which would take effect immediately if adopted by the Council as an urgency measure, could prohibit an owner of commercial real property in the City from evicting a small business commercial tenant for non-payment of rent if the tenant establishes, through documentation, that their inability to pay rent is due to a decrease in net business income directly resulting from COVID-19 or the federal, state or local government response to COVID-19.

Examples of qualifying circumstances could include reduced business income caused by illness; an inability to work; a reduction in operating hours, in available workforce, or consumer demand; increases in the tenant’s health care expenses employee health care expenses for which the tenant is responsible; increases in the cost of supplies or other overhead expenses necessary to carry out the tenant’s business; or temporary closure of the tenant’s business.

Similar to the County’s ordinance, a qualifying small business could be one with annual gross receipts of not more than Two Million Five Hundred Thousand Dollars ($2,500,000) for the 2019 calendar year. This $2,500,000 figure is prorated if a business did not operate for the entire 2019 calendar year. For example,
a business that operated for only six months of 2019 would qualify if its gross receipts were $1,250,000 or less. In the case of a business that began operating after the 2019 calendar year, but before the adoption of the urgency ordinance, the $2,500,000 annual gross receipt figure is similarly prorated. For example, a business that began operating in January 2020 and operated for only three months before adoption of the urgency ordinance would qualify if its gross receipts were $650,000 or less.

Prior to evicting a commercial tenant based on nonpayment of rent during the time the moratorium remains in effect, the owner of the commercial property could be required to provide the tenant written notice of the urgency ordinance using a form developed by the City Manager’s Office or designee. The commercial tenant would then have at least 14 days, or more if reasonable under the circumstances, to provide the owner evidence of inability to pay rent due to COVID-19.

A local measure could be designed to not relieve qualifying commercial tenants of liability for unpaid rent. A commercial tenant, if able, could be required continue to make partial monthly rent payments while the urgency ordinance remains in effect.

A Redwood City ordinance could also contain the following components, like the County measure. A commercial tenant could have up to 180 days after the urgency ordinance expires to pay the full amount of rent payments missed as a direct result of COVID-19. Within 90 days after the urgency ordinance expires, the tenant would have to pay the full amount of missed payments, if able to do so. If the tenant is still unable to do so as a direct result of COVID-19, the tenant would then provide the owner of the commercial real property another written notice and additional documentation to extend the payment date an additional 30 days. The tenant may provide additional written notices and documentation every 30 days to further extend the deadline, but under no circumstances would the owner be required to extend the deadline beyond 180 days after the urgency ordinance expires. The owner could not charge or collect a late fee for any missed payment covered by adopted City regulations.

In the event of a knowing violation, a commercial tenant could be allowed to file an action seeking injunctive relief, money damages and any other relief the Court deems appropriate, and the prevailing party in that action is entitled to reasonable attorney’s fees and costs. In addition, City regulations could provide an affirmative defense to eviction in the event that an action to recover possession is commenced in violation of its terms.

Implementation of an urgency ordinance would result in a temporary increased workload for the City Manager’s Office (CMO) staff and Code Enforcement as it is expected that small business commercial tenants will contact the City with questions as potential violations are reported. When contacted, City staff would provide information about the urgency ordinance and make referrals to legal resources. It is difficult to assess what this increased workload would mean in relation to previously-planned staff activities: most planned activities for spring 2020 are now on hold in light of COVID-19 response.

The City Council may elect to move quickly to pass an ordinance on this issue. Per Government Code section 36937, urgency ordinances take effect immediately. The City Council would be required to declare there is a current and immediate threat to the public peace, health, and safety and to state the facts constituting the urgency. Such an ordinance requires six votes of the City Council. If the Council elects not
to adopt an urgency ordinance, the Council can introduce the ordinance at its next meeting, adopt the ordinance at the following Council meeting, then the ordinance becomes effective 30 days later.

Should the City Council direct staff to draft an uncodified urgency ordinance establishing a temporary moratorium in the City on eviction for non-payment of rent by small business commercial tenants, City staff would bring back a proposed ordinance for City Council action at the May 4, 2020 City Council meeting.

FISCAL IMPACT

There are no fiscal implications associated with Council’s discussion of this item.

ENVIRONMENTAL REVIEW

This study session is not a project under CEQA Guidelines Section 15378 because it has no potential for resulting in physical change to the environment, directly or indirectly.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

ALTERNATIVES

1. Provide staff with further direction on these issues; or
2. Do not provide staff with further direction on these issues.

ATTACHMENTS

Attachment A – County of San Mateo Urgency Ordinance – Small Business Commercial Tenants

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