



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: June 16, 2020

TO: Mayor Patz and Members of the City Council

FROM: Michael Guina, City Attorney

SUBJECT: **An Ordinance Of The City Council Of The City Of Emeryville Amending Section 5-40.03(e)(1)(i) Of The Emeryville Municipal Code, Which Requires Landlords To Provide A Repayment Plan For Rent In Arrears To Residential Tenants Impacted By COVID-19 Emergency; CEQA Determination: Exempt Pursuant to California Public Resources Code Section 21080(b)(4) and State CEQA Guidelines 15269(c) and 15061(b)(3)**

RECOMMENDATION

Staff recommends that the City Council adopt the second reading of the ordinance to amend Emeryville Municipal Code section 5-40.03(e)(1)(i), which will facilitate implementation of a rental repayment program for residential tenants impacted by COVID-19.

BACKGROUND

In response to COVID-19, at its special meeting on March 19, 2020, the City Council adopted an urgency ordinance (Ordinance No. 20-002) to establish a moratorium on residential rental evictions, and commercial evictions due to failure to pay rent for commercial tenants impacted by COVID-19. Subsequently, due to modifications to the residential rental eviction moratorium, the City Council adopted urgency Ordinance No. 20-008 on April 7, 2020, and Ordinance No. 20-007 on April 21, 2020, which repealed and replaced Ordinance No. 20-002. Ordinance Nos. 20-007 and -008 modified the moratorium on residential rental evictions and extended the time period to June 30, 2020 for all moratoriums. Ordinance Nos. 20-007 and -008 are collectively the "City Moratorium" ordinances.

At its April 7, 2020, regular meeting, the City Council considered and adopted the first reading of an ordinance to Chapter 40 of Title 5 of the Emeryville Municipal Code. The ordinance would require landlords to offer a reasonable repayment plan to residential tenants impacted by COVID-19 before evicting them for non-payment of rent. The City Council adopted a second reading of the ordinance on April 21, 2020, and the ordinance, Ordinance No. 20-006, became effective on May 21, 2020. Pursuant to Emeryville Municipal Code section 5-40.01(b), the City Manager anticipated issuing regulations to implement the new requirement that landlords offer a reasonable repayment plan to tenants impacted by COVID-19.

DISCUSSION

Ordinance No. 20-006 amends, in part, Emeryville Municipal Code section 5-40.03(e)(1)(i) to read as follows (emphasis added):

Failure to Pay Rent. Tenant failed to pay rent within three (3) days of receiving written notice from the landlord demanding payment in accordance with California Code of Civil Procedure Section 1161.2 ("3 Day Notice"). In the case of an affected residential tenant, as defined in Emeryville Municipal Code section 5-40.02(a), and prior to delivery of a notice of termination for nonpayment of rent, the landlord must offer the affected residential tenant a **reasonable repayment plan for the total sum of unpaid rent accruing between April 1, 2020 and the expiration of the Governor's COVID-19 State of Emergency.** The repayment plan must be presented in writing and may not be for less than a twelve-month period beginning from the expiration of the Governor's COVID-19 State of Emergency.

Note that the repayment plan is to cover unpaid rent for the period between April 1, 2020 and the expiration of the Governor's COVID-19 State of Emergency.

During development of the implementing regulations, staff has identified an issue with having the expiration of the Governor's State of Emergency for COVID-19 act as the triggering event for repayment of rent that was unpaid during the City Moratorium. The City Moratorium is set to expire on June 30, 2020. However, it is anticipated that the Governor's State of Emergency will extend well beyond the City's Moratorium, and may last until there is therapeutic treatment for COVID-19.

The discrepancy in the expiration date between the Governor's State of Emergency and the City Moratorium creates an unintended consequence of extending the City Moratorium. If the City's Moratorium has expired, then the landlord should be able to move forward with offering a reasonable rental repayment plan to an affected residential tenant. To do so, the landlord needs to be able to specify the term of the repayment (at least 12 months), and the monthly payments. The City Manager intends to issue regulations that the payments must be either equal payments or increasing payments, provided no payment exceeded 15% of the amount due.

For the landlord and tenant to implement either option, the landlord and tenant need to know the end date of the term of the repayment plan to calculate the amount due. Under the current regulations, the landlord effectively would have to wait until the expiration of the Governor's State of Emergency to offer a reasonable repayment plan prior to terminating for failure to pay rent. Such an interpretation has the effect of extending the City's Moratorium without taking express action to do so. Any extension of the City's Moratorium should be done by resolution, as provided for in Ordinances Nos. 20-007 and 20-008.

Accordingly, staff recommends that the City Council adopt the proposed ordinance to have the repayment plan tied to the City's Moratorium, opposed to the Governor's State

of Emergency for COVID-19. At its June 9, 2020, special meeting, the City Council adopted the first reading of the proposed ordinance, and a similar ordinance, as an urgency ordinance (Ordinance No. 20-011), so the clarification could take effect prior to the expiration of the City's moratorium.

FISCAL IMPACT

There is no fiscal impact to adopting this ordinance.

STAFF COMMUNICATION WITH THE PUBLIC

City Attorney's Office has not had any communications with the public over the proposed ordinance.

CONCLUSION

Staff recommends that the City Council adopt the second reading of the proposed ordinance.

PREPARED BY: Andrea Visveshwara, Assistant City Attorney

APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:



Michael Guina, City Attorney

ATTACHMENTS

- Draft Proposed Ordinance