



## CITY ATTORNEY'S OFFICE

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## CITY COUNCIL STAFF REPORT

Meeting: March 24, 2020

### Subject

Urgency Ordinance Imposing a Moratorium on Evictions for Nonpayment of Rent by Tenants Impacted by the COVID-19 Pandemic

### Recommended Action

1. Adopt Ordinance No. \_\_\_\_\_, An Urgency Ordinance of the City of Cupertino Enacting an Immediate Temporary Moratorium on Evictions Due to Nonpayment of Rent for Residential Tenants Where the Failure to Pay Results from Income Loss Resulting from the Novel Coronavirus (COVID-19), and Setting Forth the Facts Constituting Such Urgency.

Specifically, the ordinance would:

A. Invoke the urgency provisions in Government Code section 36937, as an urgency measure for immediate preservation of the public peace, health or safety, to temporarily prohibit the eviction of a tenant for nonpayment of rent, if that tenant meets the criteria listed in the ordinance regarding COVID-19; and

B. Provide that the moratorium will be in effect as provided in the Council's adoption of a resolution declaring the commencement and making findings regarding COVID-19 and that such moratorium will expire in forty-five days unless extended.

2. Adopt Resolution No. \_\_\_\_\_, A Resolution of the Council of the City of Cupertino Declaring the Commencement of a Forty-Five Day Moratorium on Evictions Due to Nonpayment of Rent for Residential Tenants Where the Failure to Pay Rent Results from Income Loss Resulting from the Novel Coronavirus (COVID-19), and Setting Forth the Facts Constituting Such Urgency.

3. Conduct the first reading of Ordinance No. \_\_\_\_\_, An Ordinance of the City of Cupertino Enacting a Temporary Moratorium on Evictions Due to Nonpayment of Rent for Residential Tenants Where the Failure to Pay Rent Results from Income Loss Resulting from the Novel Corona Virus (COVID-19).

Specifically, the ordinance would:

A. Temporarily prohibit the eviction of a residential tenant for non-payment of rent, if that tenant meets the criteria listed in the ordinance regarding COVID-19; and

B. Provide that the moratorium will be in effect as provided in the Council's adoption of a resolution declaring the commencement and making findings regarding COVID-19 and that such moratorium will expire in forty-five days unless extended.

### Discussion

On March 10, 2020, the City Council directed the City Attorney to prepare an ordinance, and a companion urgency ordinance establishing a temporary moratorium on (1) evictions in the City of Cupertino for renters on the basis of nonpayment of rent where that failure to pay rent results from wage loss resulting from the novel coronavirus (COVID-19) pandemic, and (2) no-fault evictions, unless necessary for the health and safety of tenants, neighbors, or the landlord. The urgency ordinance and companion ordinance contain the provisions of the eviction moratorium, including the purpose, scope and type of protection offered to affected tenants. The resolution contains provisions activating the ordinances.

The purpose of this legislation is to provide housing stability in the Cupertino community during the COVID-19 pandemic, preventing avoidable homelessness, and maintaining the public health. The temporary moratorium on evictions will protect the health, safety, and welfare of Cupertino residents.

1. **Urgency Moratorium Ordinance** The Urgency Ordinance provides the underlying authority for the City Council to act on the eviction moratorium resolution. The City Attorney has prepared the urgency ordinance for immediate consideration by the City Council, setting forth the facts that constitute the urgent action by the City Council. The ordinance becomes effective immediately upon its adoption pursuant Government Code section 36937. It requires a 4/5 majority for passage and will be in effect for 60 days. The 60-day timeframe is needed so that there is sufficient time for the regular Moratorium Ordinance to take effect. To enact the Urgency Moratorium Ordinance, the City Council must pass the Eviction Moratorium Resolution.

2. **Eviction Moratorium Resolution** To enact the Moratorium, the City Attorney has also prepared a resolution which essentially activates the temporary moratorium on evictions. The eviction moratorium will be effective on the date the proposed resolution is approved by the City Council and will continue for a period of forty-five days. This period may be extended by the City Council. To extend the term, the City Council will need to pass a new resolution.
3. **Moratorium Ordinance** The City Attorney has prepared a companion Ordinance that mirrors the urgency ordinance in its substantive effect. It requires both a first and second reading as typical for non-emergency ordinances. If the proposed ordinance is passed, it will become effective 30 days after the second reading. It requires a simple majority for passage and it will be repealed automatically after six months of its effective date. The ordinance allows the City Council to extend the moratorium past the original 45 days provided under the Urgency Ordinance. The City Council will need to pass a resolution to extend the moratorium.

#### *Residents Covered by the Legislation*

The legislation will apply to all tenants renting in Cupertino. Tenants who owe back rent today that is unrelated to COVID-19 can still be evicted under the Ordinance.

#### *Eviction Protections*

The ordinance will allow tenants to defend themselves against evictions for nonpayment of rent if they can demonstrate their income has been reduced due to the COVID-19 pandemic.

- **Landlord Responsibility** – Under the proposed legislation, a landlord is required to provide tenants with written notice of the identity and mailing address of the landlord (as is already required under state law), notice of the moratorium and the amount of rent due. If a tenant has failed to pay rent after it is due, the landlord may serve a notice to pay rent or quit setting forth the amount of rent and required to be paid within a period specified in the notice of not less than three days.

- **Tenant Responsibility** – Affected tenants must prove that they have suffered a substantial loss of income due to COVID-19 in order to receive eviction protections under the moratorium:

- 1) **Income Impacted by COVID-19** – a tenant must present documentation that supports job loss, reduction of hours, missing work due to a minor child's school closure or a state/local requirement or recommendation to stay indoors for those over 65 years old, or other sensitive groups.

2) Evidence of Loss of Income – In order to show loss of income, a tenant must provide documentation or other objectively verifiable proof. Examples of that are providing copies of bank statements that illustrate a drop in income, employer pay stubs showing the same, a letter from an employer notifying tenant of reduction of compensable hours, or other documentation that proves that tenant has not been generating the same level of income due to COVID-19.

- Timing of Notification and Documentation –The tenant has an obligation to provide their landlord with notice that they are a protected tenant as a result of COVID-19 before the expiration of the Notice of Termination. The tenant may argue as an affirmative defense in an unlawful detainer action that they are a protected tenant by, at any point in time, providing documentation to the Landlord that they have lost substantial income. Examples of documentation may include, but are not limited to, a letter from their employer citing COVID-19 as a reason for reduced work hours or termination, employer paycheck stubs, or bank statements.

- Recovery of Back Rent -- While the ordinance will protect tenants from eviction, rent will continue to be due under the rental contract. The Ordinance establishes a 180-day (approx. 6 month) period for affected tenants to become current on past due rent after the expiration of the moratorium. Until 180 days after the eviction moratorium ends, a landlord will not be allowed to exercise their right to demand the past due rent by serving a notice to pay rent or quit.

During the moratorium, landlords and tenants are encouraged to discuss with each other the impacts of COVID-19 on their income and to negotiate a reasonable plan to pay the rent.

### **Enforcement**

The City would not directly enforce the ordinance. A tenant could raise the ordinance as a defense to an unlawful detainer action filed in court by the landlord, or a tenant file a private civil lawsuit against the landlord to enforce the provisions of the ordinance.

In the event Council approves the ordinance, staff will immediately prepare outreach materials to publicize the tenant protection measures in the ordinance.

### **Sustainability Impact**

No sustainability impact. The ordinance provides tenant protection measures during a period when tenants are at a heightened risk of eviction or significant rent increases.

### **Fiscal Impact**

No new fiscal impacts are anticipated at this time from the issues discussed in this report. There may be a slight increase in requests for information or referrals to help

resolve tenant and landlord issues; it is anticipated that these requests would be handled through the existing operating budget.

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