



TOWN OF FAIRFAX

STAFF REPORT

June 16, 2021

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager

SUBJECT: Adopt Urgency Ordinance barring residential evictions due to impacts from the Public Health Emergency arising from the COVID-19 virus through September 30, 2021; CEQA exempt under CEQA Guidelines section 15061(b)(3)

RECOMMENDATION

Introduce and adopt an urgency ordinance entitled “An Urgency Ordinance of the Town Council of the Town of Fairfax Temporarily Prohibiting Residential Evictions Without Cause Through September 30, 2021.”

Note: A 4/5 vote of the Town Council is required to adopt an urgency ordinance and it takes effect immediately.

BACKGROUND

Councilmembers Coler and Goddard requested this item be added to the agenda.

Below is the chronology of actions taken by the County of Marin Board of Supervisors, Governor Newsom, and/or the State legislature to prevent residential evictions due to the significant and on-going impact from the COVID-19 pandemic.

On March 24, 2020, to reduce the spread of COVID-19 in the community, the Marin County Board of Supervisors adopted Resolution No. 2020-27, titled “Barring Evictions in Marin County Due to the Public Health Emergency Arising from COVID-19” (“the Eviction Ban Resolution”), temporarily barring evictions across Marin County to reduce the spread of COVID-19.

On March 27, 2020, Governor Newsom issued an executive order banning the enforcement of eviction orders for renters affected by COVID-19 through May 31, 2020, by extending the deadline for a tenant to formally respond to an eviction complaint from 5 days to 60.

In April through July 2020, the Marin County Board of Supervisors adopted a series of resolutions amending and updating the Eviction Ban Resolution and extending its protections for residential tenants through September 30, 2020.

On September 1, 2020, the Governor signed Assembly Bill 3088, the COVID-19 Tenant Relief Act of 2020 (“the Act”), which went into effect immediately. The Act prohibited residential tenants from being evicted for failure to pay rent because of a COVID-19-related hardship occurring between March 1 and August 31, 2020, if the tenant provided the landlord with a written declaration of hardship. Residential tenants who experienced a new COVID-19-related hardship

between September 1, 2020, and January 31, 2021, were also protected from eviction through this date if they pay 25 percent of the rent due by January 31, 2021.

In response to the late-2020 surge in COVID-19 cases, the Legislature adopted Senate Bill 91 (“SB 91”), approved by the Governor on January 29, 2021, extending the protections of AB 3088 through June 30, 2021.

With the pending expiration of the above rental protections on June 30, 2021, on June 8, 2021, the Marin County Board of Supervisors adopted Urgency Ordinance No. 3750 extending its protections for residential tenants in unincorporated Marin County through September 30, 2021.

DISCUSSION

To prevent housing displacement due to the significant and on-going impact from the COVID-19 pandemic, the proposed Urgency Ordinance (Attachment A) would prevent evictions of residential tenants for nonpayment of rent that are related to loss of income from COVID-19. The State eviction protections are currently scheduled to expire on June 30, 2021. This Urgency Ordinance would extend the moratorium on evictions for residential tenants in the Town of Fairfax through September 30, 2021.

The proposed Urgency Ordinance mimics the local eviction moratorium previously adopted by the Marin County Board of Supervisors that was superseded by the State Legislature adopting AB 3088 and SB 91.

The proposed Urgency Ordinance provides stability to the residential renter community in Fairfax who face on-going impacts from COVID-19, by preventing evictions and late fees for nonpayment of rent due to COVID-19 financial loss. Federal, state, and local rental assistance funding is available through September 30, 2021, to help mitigate the pandemic’s financial impacts on Fairfax property owners and renters, many of whom have not completely recovered. Extending the eviction moratorium would allow the Town, County and nonprofit partners to make funds available from these sources.

Because the impact of the public health emergency arising from COVID-19 is a fluid and on-going situation, staff will continue to monitor the situation and may come back to the Council with recommended amendments based on COVID-19 related circumstances affecting the stability of renters and property owners in Fairfax.

CEQA

The Town Council finds that the adoption and implementation of this Ordinance are exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15061(b)(3) in that the Town Council finds there is no possibility that the implementation of this Ordinance may have significant effects on the environment.

FISCAL IMPACT

There would be no fiscal impact on the general fund from this action.

ATTACHMENTS

Ordinance

ORDINANCE NO. ____

**AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN
OF FAIRFAX TEMPORARILY PROHIBITING RESIDENTIAL EVICTIONS
WITHOUT CAUSE THROUGH SEPTEMBER 30, 2021**

WHEREAS, on March 16, 2020, six Bay Area Health Officers, including Marin County’s Public Health Officer issued a shelter-in-place order in response to the global COVID-19 pandemic; and

WHEREAS, on March 17, 2020, the Town Council proclaimed the existence of a local emergency related to COVID-19; and

WHEREAS, on March 19, 2020, in response to the pandemic, Governor Newsom issued Executive Order N-33-20, directing all California residents to stay at their place of residence to protect the public health of all Californians; and

WHEREAS, on March 24, 2020, in order to reduce the spread of COVID-19 in the community, the Marin County Board of Supervisors adopted Resolution No. 2020-27, entitled “Barring Evictions in Marin County Due to the Public Health Emergency Arising from COVID-19” (“the Eviction Ban Resolution”), temporarily barring evictions across Marin County in order to reduce the spread of COVID-19; and

WHEREAS, on March 27, 2020, Governor Newsom issued an executive order banning the enforcement of eviction orders for renters affected by COVID-19 through May 31, 2020, by extending the deadline for a tenant to formally respond to an eviction complaint from 5 days to 60; and

WHEREAS, the Marin County Public Health Officer issued revised shelter-in-place orders on March 31, May 20, and October 27, 2020, extending restrictions on activities due to the continuing COVID-19 pandemic; and

WHEREAS, on April 6, 2020, the Judicial Council of California adopted temporary emergency rules, effectively suspending entry of default in eviction cases and suspending judicial foreclosures, except where necessary to protect public health and safety; and

WHEREAS, in April through July 2020, the Marin County Board of Supervisors adopted a series of resolutions amending and updating the Eviction Ban Resolution and extending its protections for residential tenants through September 30, 2020; and

WHEREAS, On September 1, 2020, the Governor signed Assembly Bill 3088, the COVID-19 Tenant Relief Act of 2020 (“the Act”), which went into effect immediately. The Act prohibited residential tenants from being evicted for failure to pay rent because of a COVID-19-related hardship occurring between March 1 and August 31, 2020, as long as the tenant provided the landlord with a written declaration of hardship. Residential tenants who experienced a new COVID-19-related hardship between September 1, 2020, and

January 31, 2021, were also protected from eviction through this date as long as they pay 25 percent of the rent due by January 31, 2021; and

WHEREAS, on December 3, 2020, as a result of a surge of COVID-19 cases, the Acting State Public Health Officer issued a Regional Stay at Home Order describing the unprecedented surge in level of community spread of COVID-19 and re-imposing broad restrictions on activities statewide; and

WHEREAS, in response to this late-2020 surge, the Legislature adopted Senate Bill 91 ("SB 91"), approved by the Governor on January 29, 2021, extending the protections of AB 3088 through June 30, 2021; and

WHEREAS, on June 8, 2021, the Marin County Board of Supervisors adopted Urgency Ordinance No. 3750 extending its protections for residential tenants in unincorporated Marin County through September 30, 2021; and

WHEREAS, the Town, pursuant to the police powers delegated to it by the State Constitution, has the authority to enact laws that promote the public health, safety, and general welfare of its residents; and

WHEREAS, Government Code section 8634 authorizes, during a local emergency, the Town Council, or officials designated thereby, to promulgate orders and regulations necessary to provide for the protection of life and property; and

WHEREAS, while the Town has experienced a reduction in COVID-19 cases since January 2021, many Town residential tenants continue to experience sudden and substantial income loss due to business and school closures, layoffs or reductions in work hours and extraordinary medical expenses, making it challenging for them to pay rent on time and thus, more likely to face the prospect of eviction; and

WHEREAS, all current federal and state evictions bans are scheduled to expire on June 30, 2021. However, housing instability continues to threaten the public peace, health and safety as eviction can lead to homelessness; loss of community; stress and anxiety caused by the experience of displacement; interruption of the education of any children in the home; increased incidence of families moving into overcrowded conditions creating greater risk for the spread of COVID-19; and

WHEREAS, the Town Council anticipates that the Legislature will extend the June 30, 2021 expiration of the state-wide moratorium provided by the Act and SB 91, but the Legislature has not yet acted and uncertainty surrounding possible evictions makes it difficult for individuals and families to plan how to keep themselves safely housed and protected from the pandemic; and

WHEREAS, without local protection, eviction notices for failure to pay rent are likely to surge as many Town residents are unable to earn income due to the pandemic or are forced to pay substantial medical expenses associated with the pandemic; and

WHEREAS, substantial federal, state, and local rental assistance funding is available through September 30, 2021, to help mitigate the impacts on property owners of not evicting tenants while COVID-19 cases continue, and while the financial repercussions of the COVID-19 pandemic are still being felt by the Town's renters; and

WHEREAS, if the current June 30, 2021, end to the statewide eviction moratorium stands and a local moratorium is not put in place, Town landlords and tenants eligible for rental assistance will lose the opportunity to receive these available funds to help mitigate their personal financial and business losses during the pandemic; and

WHEREAS, preventing displacement and homelessness due to evictions for non-payment of rent related to the COVID-19 emergency remains essential to protecting the health and safety of the Town's residents; and

WHEREAS, based upon the findings above, the Town Council finds and determines that a temporary moratorium on evictions based on non-payment of rent due to COVID-19 or the government response to COVID-19 is necessary to curb the spread of COVID-19 and contain the virus to the greatest extent possible and thereby serve the public peace, health and safety; and

WHEREAS, pursuant to California Government Code section 36937, the Town may adopt an urgency ordinance if it is for the immediate preservation of the public peace, health or safety; and

WHEREAS, based upon the findings above, the Town Council finds that this Urgency Ordinance is necessary for the immediate preservation of the public health, safety and welfare. The Town Council finds and determines that 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 take effect immediately upon adoption. As described above, all current federal and state evictions bans are scheduled to expire on June 30, 2021. However, housing instability continues to threaten the public peace, health and safety as eviction can lead to homelessness; loss of community; stress and anxiety caused by the experience of displacement; interruption of the education of any children in the home; increased incidence of families moving into overcrowded conditions creating greater risk for the spread of COVID-19. Without local protection, eviction notices for failure to pay rent are likely to surge as many Town residents are unable to earn income due to the pandemic or are forced to pay substantial medical expenses associated with the pandemic. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

NOW, THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

Section 1. The recitals above are each incorporated by reference and adopted as findings by the Town Council.

Section 2. Definitions.

For purposes of this Ordinance, the following words and phrases shall have the meanings respectively ascribed to them:

- A. "Declaration of COVID-19-related distress" means the following written statement:

I am currently unable to pay my rent or other financial obligations under the lease in full because of one or more of the following:

1. Loss of income caused by the COVID-19 pandemic.
2. Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic.
3. Increased expenses directly related to health impacts of the COVID-19 pandemic.
4. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit my ability to earn income.
5. Increased costs for childcare or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic.
6. Other circumstances related to the COVID-19 pandemic that have reduced my income or increased my expenses.

Any public assistance, including unemployment insurance, pandemic unemployment assistance, state disability insurance (SDI), or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of income and/or increased expenses.

Signed under penalty of perjury:

Dated:

- B. "Financial impacts" means a substantial loss of income due to business closure, loss of compensable hours of work or wages, layoffs, missing work, or childcare expenditures due to school closure, medical expenses related to being ill with COVID-19 or caring for a member of the residential tenant's household who is ill with COVID-19, or other similarly caused reason resulting in a loss of income due to COVID-19. A financial impact is "related to COVID-19" if it was directly or indirectly caused by the COVID-19 pandemic, the proclamation of Local Emergency, the Health Officer's Shelter-in-Place Order, or public health orders or recommended guidance related to COVID-19 from local, state, or federal authorities.
- C. "Landlord" includes owners, lessors, or sublessors (of any level) of residential rental property, and the agent, representative, or successor of any of the foregoing.

- D. "Local Emergency" includes any period of local emergency declared by the Town of Fairfax in response to the COVID-19 pandemic.
- E. "Notice of Termination" means the notice informing a Tenant of the termination of their right to occupy the residential unit in accordance with applicable California law, including but not limited to a 3- or 30-day notice to pay or quit.
- F. "Residential unit" is a unit that is occupied by a Tenant as their place of residence, including but not limited to apartments, houses, rooms, and residential hotels, within the Town of Fairfax. A unit is considered a residential unit if it is used for residential occupation regardless of its permitting status.
- G. "Tenancy" means the occupancy of residential unit(s).
- H. "Tenant" includes a tenant, subtenant, lessee, sublessee (of any level), or any other person entitled to use or occupancy of residential property, including occupants who are holding over after the expiration of the term of a written or oral lease and current occupant who occupied the property with the current or prior consent of the property's Landlord or a prior owner, in the Town of Fairfax.

Section 3. Temporary Moratorium on Evictions.

- A. No Landlord may lawfully terminate a residential Tenancy as a for cause termination for non-payment of rent pursuant to Fairfax Municipal Code Section 5.54.040 if the residential Tenant has provided a declaration of COVID-19-related financial distress to the Landlord within 15 days after receiving notice demanding payment of rent from the Landlord, that the Tenant is unable to pay rent due to financial impacts related to COVID-19.
- B. For Tenants that provide the declaration of financial impact due to COVID-19 provided in Section A, above, Landlords are prohibited from engaging in any of the following actions for non-payment of rent with respect to a Tenant of a residential unit between July 1, 2021 and September 30, 2021:
 - 1. Serving a notice of termination of tenancy;
 - 2. Filing or serving an unlawful detainer lawsuit, ejectment action, or other action to recover possession of a residential unit; or
 - 3. Evicting a Tenant or requiring a Tenant to vacate a residential unit, including by seeking the entry of an eviction judgment or by causing or permitting a writ of possession to be executed, including in the case of judgments entered prior to the date of this Ordinance.
- C. Actions to recover an unpaid COVID-19 rental debt, as defined in Section 1179.02 of the Code of Civil Procedure, are governed by SB 91, and nothing in this Ordinance shall be construed to supersede or conflict with SB 91.

- D. To the extent state law is more protective of a Tenancy than this section, those state law provisions shall apply to the Tenancy. Nothing in this section shall be construed to supersede any applicable requirements in Civil Code section 1946.2 pertaining to relocation assistance or rent waiver.
- E. The Town's just cause ordinance, codified at Fairfax Municipal Code Chapter 5.54 et seq. (the "Just Cause Ordinance") remains in effect, and to the extent the provisions of this Urgency Ordinance conflict with the Just Cause Ordinance, the provisions of this Urgency Ordinance shall govern.

Section 4. Affirmative Defense to Eviction.

A Landlord's failure to comply with any provision of this Ordinance shall constitute an affirmative defense in any unlawful detainer action based upon nonpayment of rent due to financial impacts related to COVID-19.

Section 5. Term.

This Ordinance shall remain in full force and effect until September 30, 2021, unless repealed or extended by the Town Council.

Section 6. Urgency Finding and Effective Date.

The Town hereby finds, determines and declares that there is a current and immediate threat to the public health, safety and welfare and a need for the immediate preservation of the public health and safety that warrants this Urgency Ordinance, based upon the facts, findings, and declarations stated in the findings of this Ordinance, and all oral and written testimony presented at the June 16, 2021, Town Council meeting. Therefore, the Town further finds, determines, and declares that this Ordinance shall take effect immediately upon adoption by a four-fifths vote of the Town Council pursuant to the authority conferred upon it by California Government Code section 36937.

Section 7. Publication.

The Town Clerk shall certify as to the adoption of this Ordinance and within fifteen (15) days of its adoption shall post a certified copy of this Ordinance in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women's Club Building, located at 46 Park.

Section 8. Severability.

If any provision of this Ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this Ordinance are severable. The Town Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

Section 9. California Environmental Quality Act.

The Town Council finds that the adoption and implementation of this Ordinance are exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15061(b)(3) in that the Town Council finds there is no possibility that the implementation of this Ordinance may have significant effects on the environment.

PASSED, APPROVED AND ADOPTED by the Town Council of Fairfax, California, at a regular meeting of the Town Council held on the 16th day of June 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

BRUCE ACKERMAN, Mayor

ATTEST:

Michele Gardner, Town Clerk