



# CITY COUNCIL AGENDA STATEMENT



July 28, 2020

File ID: 20-0324

## **TITLE**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA EXTENDING THE CITY'S EVICTION MORATORIUM ORDINANCE (EMERGENCY ORDINANCE NO. 3489-A) UNTIL SEPTEMBER 30, 2020

## **RECOMMENDED ACTION**

Council adopt the resolution.

## **SUMMARY**

The COVID-19 pandemic, along with the physical distancing and other public health measures undertaken in response to it, continue to affect individuals, businesses, schools, and governmental agencies alike. More, specifically, minimizing evictions and foreclosures during this period is critical to reducing the spread of COVID-19 in vulnerable populations by allowing those most vulnerable to COVID-19 to self-quarantine, self-isolate, or otherwise remain in their homes to reduce the transmission of COVID-19. On March 17, 2020, Chula Vista City Council adopted an Eviction Moratorium Ordinance (the "Eviction Moratorium") as a temporary measure during this state of emergency to help stabilize and avoid unnecessary displacement of financially impacted residential and commercial tenants in the interests of protecting the public health and preventing transmission of the coronavirus. San Diego County and Chula Vista continue to see a rise in positive COVID-19 cases. These health and economic impacts are anticipated to continue leaving tenants (both commercial and residential) and homeowners vulnerable to eviction and foreclosures. Council is requested to extend the Eviction Moratorium until September 30, 2020.

## **ENVIRONMENTAL REVIEW**

The activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

## **BOARD/COMMISSION/COMMITTEE RECOMMENDATION**

Not applicable.

## **DISCUSSION**

In January 2020, countries around the world began dealing with a historic global pandemic, known as COVID-19. On March 13, 2020, the United States declared a national emergency as a result of the COVID-19 virus.

Locally, on March 13, 2020, due to the escalating number of COVID-19 virus cases, the City of Chula Vista Director of Emergency Services issued a Proclamation declaring a Local Emergency, which was subsequently ratified and adopted by the City Council on March 17, 2020.

As of July 20, 2020, there were 384,692 confirmed cases in California, including 23,684 cases in San Diego County or 6 percent of the total cases and 478 deaths. The number of cases has continued to grow with San Diego County placed on the State's monitoring list on July 6, 2020, with San Diego County reporting 706 cases per 100,000 on July 19, 2020, well above the State's metric of 100 per 100,000. Chula Vista's rates of infection have been among the highest in San Diego County, with 3,058 positive COVID-19 cases as of July 19, 2020, representing 13.1 percent of the County's cases, and reporting 1,127 cases per 100,000 well above the San Diego County rate and the State's metrics; and,

Based upon significant scientific evidence regarding the most effective approaches to slow the transmission of communicable diseases in general and specifically, COVID-19, the State issued stay-at-home orders, with the exception of critical public safety and businesses beginning March 19, 2020, with the Public Health Officer of San Diego County issuing consistent Orders of the Health Officer and Emergency Regulations (the "Orders"). While both the State's and the County of San Diego's Orders have since been amended, many restrictions still apply with the State and San Diego County moving slowly towards economic re-opening.

#### State Protections for Evictions and Foreclosures During COVID-19

On March 16, 2020, Governor Newsom issued [Executive Order N-28-20](#) for the purpose of protecting residential and commercial tenants and homeowners suddenly facing financial hardship as a result of the COVID-19 pandemic. The order authorizes local governments to halt rental and foreclosure related evictions when the eviction is based on nonpayment of rent because of documented and substantial decrease in income caused by layoffs or reduction in paid work hours as a result of the COVID-19 pandemic or by any local, state, or federal government response to COVID-19. Subsequently on March 27, 2020, the Governor issued [Executive Order N-37-20](#) banning the enforcement by law enforcement or courts of eviction orders against residential tenants affected by COVID-19. Executive Order N-37-20 requires tenants to declare in writing, no more than seven days after the rent comes due, that the tenant cannot pay all or part of their rent due to COVID-19. Under Executive Order N-37-20, tenants are required to retain documentation but not required to submit such documentation to the landlord in advance of notification of eviction protection. On June 30, 2020, the Governor issued [Executive Order N-71-20](#) extending local jurisdictions' authority to enact eviction moratoria through September 30, 2020 (. The Executive Orders explicitly state tenants remain obligated to repay full rent in a timely manner. Landlords still can recover rent that is due once the enforcement moratorium is lifted, and tenants still can face eviction at that time.

Consistent with the Governor's Executive Orders, the Judicial Council of California adopted California Rules of Court, Emergency Rules 1 and 2, effective April 6, 2020 and until such time 90 days after the State of Emergency is lifted. Emergency Rule 1 suspends eviction of tenants for any cause, unless such action is needed to protect public health and safety. Emergency Rule 2 stays all actions for judicial foreclosures on mortgages and deeds of trust and extend all deadlines related to such actions.

There are pending legal challenges both to the Governor's Executive Orders, and the Judicial Council Rules regarding evictions. It is difficult to predict at this time when and how these challenges will be resolved.

## Federal Protections

On a Federal level, legislative protections for tenants and homeowners are provided through the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act enacted by the United States Congress on March 27, 2020. In accordance with the CARES ACT, the U.S. Department of Housing and Urban Development (HUD) issued guidance on April 1, 2020 and April 10, 2020, respectively, for both single family properties and multifamily properties insured by the FHA, Multifamily HUD loans, risk share, and HUD-held loans. As specified in Mortgage Letter 2020-06, owner-occupied single-family mortgages may receive an initial forbearance period of up to 6 months for those mortgagees with up to a 90-day extension. If needed, an additional forbearance period of up to 6 months may be requested, for a total of 12 months with a 90-day extension.

Under Mortgage Letter 2020-09, a multifamily borrower experiencing a financial hardship during the COVID-19 emergency may request a forbearance for up to 30 days, with an additional two (2) extensions for a 30-day period but must provide for renter protections during the forbearance period as set forth in Section 4024(b) and (c) of the CARES ACT. These guidelines are in effect during the covered period of the CARES Act, which begins March 27, 2020 and continues until the earlier of the termination date of the national emergency declared by the President on March 13, 2020 or December 31, 2020.

The tenant protections apply to any multifamily property receiving federal assistance, FHA insured, risk share mortgages and HUD held mortgages. Tenants are provided protection for nonpayment of rent for a 120-day period from enactment (through July 25, 2020), no fees, penalties, or other charges can be charges against a tenant for the nonpayment of rent. Additionally, property owners may not issue a notice to vacate for any cause during the 120-day period, and a minimum 30 days-notice to vacate the property must be provided to the tenant, effectively extending until after August 24, 2020 (i.e., 120 days after enactment, plus 30 days after notice to vacate is provided).

## Local Regulations

For those tenants and homeowners not covered by the federal protections, they may rely on State protections and in some cases local regulations. To date, 12 of the 19 San Diego County jurisdictions have adopted their own local ordinance providing tenants and homeowners with eviction and foreclosure protection consistent with and in some cases providing additional clarity and guidance for both tenants and property owners. Of those 12 local jurisdictions with local ordinances, five will remain in place until such time the State of Emergency is terminated, or the Governor’s Executive Orders are rescinded.

Following [Executive Order N-28-20](#), on March 17, 2020, the Chula Vista City Council adopted Ordinance 3483A (the “Ordinance”) to provide eviction protections during this volatile period of time for vulnerable residents and commercial enterprises. Amendments to this Ordinance were made on April 7, 2020 to remain consistent with [Executive Order N-37-20](#), provide greater clarity to tenants and landlords in implementing the eviction moratorium and protections provided by the Ordinance, and extend the Ordinance through May 31, 2020. The City Manager, acting as the Director of Emergency Services, has additionally signed Order 03-2020 approving and adopting Eviction Moratorium Regulations (the “Regulations” to assist in implementing the Ordinance, effective April 1, 2020. Subsequently on May 26, 2020, the Ordinance was amended to extend the Moratorium though June 30, 2020 and further extended through July 31, 2020 by the Chula Vista Director

of Emergency Services through Emergency Order No. 005-2020 and as ratified by resolution of the City Council on July 14, 2020.

A summary of the various Federal, State and local protections enacted to forestall eviction actions is provided for your information as Attachment 1 to this report.

## **ANALYSIS**

While both federal and state actions have been taken to alleviate concerns and financial burdens to tenants, borrowers, and mortgagees impacted by the COVID-19 pandemic, Chula Vista's business community and residents are more particularly susceptible to the financial impacts of the pandemic. According to the U.S. Department of Housing and Urban Development's (HUD) [Comprehensive Housing Affordability Strategy \(CHAS\)](#) released in August 2019 for the 2012-2016 planning period, 47 percent of Chula Vista's total households are of lower income, earning 80 percent of the Area Median Income or less (\$68,000 annual income for a family of four). Thirty-seven percent of lower income homeowners pay more than 50 percent of their income towards housing costs. When looking at the rental housing market, 42 percent of Chula Vista's housing stock is rental housing. A significant portion of renters (59 percent) are lower income, with 44 percent of them paying more than 50 percent of their income towards housing costs. Given average pre-COVID-19 salaries and the existing high cost of housing in San Diego County, further reductions in income only exacerbate existing housing affordability issues and place these vulnerable population groups on the brink of homelessness.

An increase in COVID-19 cases has led to a reversal in reopenings and closures beginning July 1, 2020 of bars, breweries, and wineries that do not serve food and a stop of indoor operations of restaurants, wineries, movie theaters, family entertainment centers (including bowling alleys, miniature golf, batting cages, and arcades), zoos, museums, and card rooms on July 6, 2020. Together, these activities represented more than 160,000 jobs, or 11 percent of the region's employment pre-COVID.

Chula Vista residents are harder hit as evidenced by its higher current unemployment rate (based on zip code) than the region's at 14.3 percent. For zip codes 91910 and 91911, the unemployment rate varies between 16 and 19 percent. In the far eastern area of the City, the 14 to 16 percent unemployment rate is more consistent with the County's.<sup>1</sup>

With over 90 percent of Chula Vista's businesses considered small businesses, with 10 employees or less, this community is also susceptible to the financial impacts of COVID-19. It is anticipated that another wave of layoffs may come as funding from Paycheck Protection Program loans and State and local assistance are exhausted.

Reliance on Federal protections of tenants is risky. Under the CARES Act, tenants' protections are set to expire July 24, 2020. Additionally, it is estimated that only 12.3 million residential units have federally backed loans, representing only 28 percent of all renters.<sup>2</sup>

While the Judicial Council of California Rules, and certain Federal protections, currently remain in place, application was made on July 8, 2020 by representatives of apartment owners, property management and other related associations to immediately rescind Emergency Rule 1 of the Judicial Council based upon a violation of the California Constitution and the Governor's inability to suspend unlawful detainers actions

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<sup>1</sup> [https://www.sandag.org/uploads/publicationid/publicationid\\_4686\\_27696.pdf](https://www.sandag.org/uploads/publicationid/publicationid_4686_27696.pdf)

<sup>2</sup> <https://crsreports.congress.gov/product/pdf/IN/IN11320>

(i.e. evictions) during a State of Emergency. Legal challenges to other federal and state protections are also pending.

Therefore, at this time, reliance on both Federal and State protection actions presents a risk to the significant number of vulnerable Chula Vista residents at a critical time during the COVID-19 pandemic.

### Eviction Moratorium Effects on Rental Properties

The intent of the various tenant and homeowner protections was to keep residents in place to slow the transmission of COVID-19 and to prevent those economically vulnerable from falling into homelessness and at greater risk for COVID-19. Statistics thus far, show that tenants are prioritizing rent payments. According to the National Multi-Housing Council (NMHC) rent payment tracker, since April of 2020, over 94 percent of all tenants have paid their rent.<sup>3</sup> California's statistics appear to be in line with those of the NMHC. A recent survey showed that 94 percent of tenants in Orange County and Los Angeles County paid their rent in the month of May 2020. A Coldwell Banker Richard Ellis (CBRE) survey also found that 91 percent of tenants in Southern California were able to pay their rent in April 2020.<sup>4</sup>

On July 8, 2020, utilizing contact information provided through City business licenses, City staff emailed 375 rental properties and mobile home communities. The purpose of this email was to outreach to property managers/owners with the following: 1) The extension of the City's Eviction Moratorium through July 31, 2020 and the availability of rental assistance offered through South Bay Community Services (SBSC) for low income renters, along with program and contact information for SBSC; and 2) Survey properties to gauge the number of tenants having difficulty with paying rent to inform future policy decisions by the City.

As of July 14, 2020, only 35 properties of the 375 (9 percent) responded to the survey. Of which, nearly 49 percent of the respondents have no problems with tenants paying their rent. The median number of tenants seeking eviction protection was one, with the maximum number of tenants in a property seeking protection from eviction was 41 tenants. The vast majority of the respondents, 84 percent, have 0 to three tenants unable to pay rent due to COVID-19 or simply not paying rent. A total of 139 tenants for the 35 properties are utilizing eviction protection and an additional 50 tenants of these properties are just not paying their rent due. With continued rising positive COVID-19 cases in San Diego County and Chula Vista and particularly the \$600 a week in emergency unemployment benefits ending July 24, 2020, those renters and homeowners currently unemployed may have difficulty paying for housing expenses come August 1, 2020.

### Chula Vista Rental Assistance Program

To combat the economic effects on lower income residents, on May 12, 2020 and subsequently in June 2020, the City approved the use of its local housing funds totaling \$1,250,000 and an additional \$200,000 from the County of San Diego CARES funding to provide these residents with rental assistance for any back rent owed and to assist with future rent. Of the City's housing funds allocated, \$1,000,000 is from the City's Federal HOME Investment Partnership program and \$250,000 from the Chula Vista Housing Authority's Low and Moderate Income Housing Asset fund (the maximum allowed by State regulations) specifically for rental assistance for households at risk of homelessness.

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<sup>3</sup> <https://www.nmhc.org/research-insight/nmhc-rent-payment-tracker/>

<sup>4</sup> Collins, Jeff. "94% of local tenants paid May rent, surveys showed." Pasadena Star-News, 29 May, 2020.

Pasadenastarnews.com, <https://www.pasadenastarnews.com/2020/05/29/94-of-local-tenants-paid-may-rent-surveys-show/>

South Bay Community Services (SBCS), in partnership with the City, is administering a Rental Assistance program. Information related to the rental assistance program can be found on SBCS’ website at <https://southbaycommunityservices.org/rental-assistance-for-chula-vista-families-affected-by-covid-19/>. In addition, SBCS has forwarded program information to all local school districts, Southwestern Community College, the Community Collaborative and its Family Resource Centers, Pacific Southwest Association of Realtors, advertised on its own social media accounts for Facebook, Instagram, and Twitters and email distribution lists, outreach to local affordable housing property owners/managers, and local media announcements and interviews.

SBCS began active implementation of the Rental Assistance program in mid-June 2020. Federal and State regulations governing the funding sources still apply. As of July 2, 2020, SBCS has received 246 total calls requesting assistance. The following represents the outcomes of the contacts:

No. of Households	Outcomes
132	Did not meet eligibility requirements or unable to contact after 3 attempts
40	Eligible but did not return program application
31	Application in process
<b>43</b>	<b>Receiving rental assistance</b>

The majority of households (54 percent) seeking assistance who did not meet program requirements were either over income (not low-income) or did not have unpaid rent and others did not follow through with the process.

It is anticipated that by July 31, 2020, SBCS will have expended a total of \$250,000 in the allocated funding with approximately 70 tenants receiving assistance.

**Conclusion**

Further economic impacts resulting from COVID-19 are anticipated to continue beyond July 31, 2020, leaving tenants (both commercial and residential) and homeowners vulnerable to eviction and foreclosure. With the uncertainty of continuing State protections and Federal protections and assistance soon to expire, staff recommends that the City’s Eviction Moratorium remain in place. While the available funds the City has allocated towards residential rental assistance and small business assistance is not likely to offset all financial burdens stemming from the COVID-19 pandemic, such funding will assist in mitigating the financial impact of missed rent payments. Therefore, staff recommends the approval of a resolution of the City Council extending those protections afforded to tenants and homeowners against eviction or foreclosure as set forth in Ordinance No. 3489-A of the City of Chula Vista until September 30, 2020. If circumstances change, for better or for worse in this area, or if the legal landscape changes, the proposed Resolution allows the City’ Director of Emergency Services (the City Manager) to modify, further extend, or earlier terminate the City’s eviction moratorium protections. Any such action would come back to the City Council for Council ratification, modification or rejection.

### **DECISION-MAKER CONFLICT**

Staff has reviewed the decision contemplated by this action and has determined that Councilmember McCann has a disqualifying conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.) due to his ownership of rental properties that may be foreseeably impacted by the proposed extension of the Eviction Moratorium. Accordingly, staff is recommending that Councilmember McCann recuse himself from deliberating or voting on this item

Staff is not independently aware and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision-maker conflict of interest in this matter.

### **CURRENT-YEAR FISCAL IMPACT**

All costs associated with preparing this staff report are included in the fiscal year 2020-21 operating budget.

### **ONGOING FISCAL IMPACT**

There is no ongoing fiscal impact as a result of this action.

### **ATTACHMENTS**

1. Summary of Eviction and Foreclosure Protections

*Staff Contact: Leilani Hines, Housing Manager*