



STAFF REPORT

MEETING

DATE: January 26, 2021

TO: City Council

FROM: Adam McGill, City Manager
Jeffrey Walter, City Attorney

SUBJECT: URGENCY ORDINANCE ENACTING A TEMPORARY MORATORIUM ON RENT INCREASES FOR TENANTS RESIDING IN CERTAIN RESIDENTIAL UNITS AND IN U.S. CENSUS TRACTS MOST DISPROPORTIONATELY IMPACTED BY COVID-19 AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY



REQUEST

Adopt an urgency ordinance enacting a temporary moratorium on rent increases for tenants residing in certain residential units and in census tracts most disproportionately impacted by COVID-19 and setting forth the facts constituting such urgency.

DISCUSSION

The proposed urgency ordinance would temporarily prohibit rent increases for tenants residing in certain residential units and in specific census tracts in Novato in order to support the long-term recovery of those most disproportionately impacted by COVID-19, lower the risk of displacement through eviction, and limit the accumulation of debt related to COVID-19. The temporary prohibition on rent increases (i.e., rent freeze) would take effect on February 1, 2021, and would expire on December 31, 2021.

The County of Marin passed a resolution that implemented a countywide eviction moratorium that was in effect from March 27, 2020 through September 30, 2020. The resolution specified that landlords could not recover possession of a rental unit if the tenant provided notice to the landlord that they were unable to pay within 30 days after the date that rent was due because of financial impacts related to COVID-19. Then, on August 31, 2020 the State passed AB 3088, which established a statewide eviction moratorium that is set to expire on January 31, 2021. Both the County and State eviction moratoriums are limited to evictions based on non-payment of rent due to COVID-19 and do not prohibit other types of evictions.

In August 2020, a coalition of community organizations representing health, education, and non-profit sectors came together to encourage action by policy makers and to specifically address the economic and public health crises facing those most impacted by COVID and the economic conditions it has caused.

The State legislature is currently considering a new bill, AB 15, which would extend the statewide eviction moratorium through the end of 2021 and would prohibit late fees on rent owed during this period. Additionally, the State is considering a second bill, AB 16, which would provide funding and a framework for disbursing rental assistance. The California State legislature returned to

session on January 11, 2021. However, the upcoming expiration of AB 3088’s protections on January 31, 2021 has created uncertainty for tenants, and some are warning that without reassurance at the local level that eviction protections will stay in place, some residents will choose to self-evict. Self-evictions result in negative outcomes for the community at large; landlords suffer financial losses due to the property’s vacancy and residents of the community may choose to leave Novato due to financial hardship.

In December 2020, the County, with the support of city staff, began disbursing \$2.8 million in rental assistance funding. Approximately half of the \$2.8 million was allocated from emergency Community Development Block Grant (CDBG) funding with the remaining funds provided by the Marin Community Foundation. This is in addition to the \$2.9 million in rental assistance that was disbursed by the County in April and May of 2020, of which the City of Novato contributed \$364,000.

Tables 1 and 2 show detail on sources and distribution of the rental assistance funding for the program. Table 3 provides a breakdown of the number of households that have received/will receive rental assistance through the above-mentioned County program

Table 1: Rental Assistance Funding Sources

| | CDBG Funding | MCF Funding | County Funding | Total Available |
|---|---------------------|--------------------|-----------------------|------------------------|
| Rental Assistance Distributed in April and May | \$900,000 | \$1,000,000 | \$1,000,000 | \$2,900,000 |
| Current Round of Rental Assistance | \$1,343,246 | \$1,500,000 | | \$2,843,246 |
| Total Funding | \$2,243,246 | \$2,500,000 | \$1,000,000 | \$5,743,246 |

Table 2: Number of Households Receiving County Rental Assistance

| | Total - Countywide |
|---|---------------------------|
| Rental Assistance Disbursed in April and May: Total households that received assistance | 1,476 |
| Current Round of Rental Assistance: Includes those who have received assistance and those who have been processed by the County and are waiting for funds | 383 |
| Waiting to be Processed | 1,537 |

Additionally, the County has a second program, the COVID-19 Positive Disaster Relief program, that provides resources to lower income residents who are either presumed or confirmed COVID-19 positive in order to reduce the spread of COVID-19 in our community. The program provides direct payments as well as food to help low-income tenants stay home during their time of quarantine and slow community transmission. The direct payments are to be used for rent, food, and other critical expenses. As of January 12, 2021, the County has distributed over \$1.6 million in direct payments, serving 1,265 Marin County residents with an average relief payment of about \$1,300. They have also provided food to 3,005 residents in order to support them during their period of isolation and quarantine.

On January 12, 2021, the County Board of Supervisors reinstated the [local eviction moratorium](#) to become effective on February 1, 2021. This countywide moratorium applies to incorporated areas and prohibits evictions based on non-payment of rent due to COVID-related financial impacts and prohibits property owners from charging late fees on rent owed in this period. It will be effective through June 30, 2021, unless superseded by local action, or state or federal law. If AB 15 passes, the County will evaluate how that law impacts the local countywide eviction moratorium.

ANALYSIS:

Approximately 10,700 households in Marin are at imminent risk of displacement and/or eviction, with an estimated 8,270 children living in those households. Attachment 2 provides additional data on the eviction risk, rent burdens, and equity measures in Marin County. In addition to the threat of eviction, many households are facing an overwhelming accumulation of rental debt due to pandemic-related job and income loss. In normal times, it is very difficult to gather data on evictions because most evictions take place informally, without being processed through the courts. During the pandemic, this has been especially true.

With employment and income decreasing over the course of the pandemic, any rent increase compounds the accumulated debt which renters that have been disproportionately impacted by COVID-19 face. As of October 15, 2020, unemployment rates for low wage earners in Marin have increased more than 40% since the beginning of the year.¹ National trends further show those that are still employed are experiencing wage stagnation and even declines in income.² Even before the crisis, 52.3% of renter households in Marin paid more than 30% of their income towards rent, and 27.7% paid more than 50%.³ These households were rent burdened before the COVID-19 pandemic, and now are facing rent increases that they cannot afford, putting them at further risk of falling behind financially and possible future eviction if they cannot return to work.

While the countywide eviction moratorium which goes into effect on February 1, 2021 is critical to keeping residents housed, it does not address the growing burden of rental debt that tenants, particularly low-income tenants, are facing. To provide relief beyond the moratorium, the City is proposing a 'rent freeze' through the end of 2021 in Novato census tracts with high housing instability and that have been disproportionately impacted by COVID-19. The goal of this action is to limit the accumulation of debt and to support the long-term recovery of these historically marginalized communities.

Currently, rent increases in Marin are limited by the California Tenant Protection Act of 2019 ("AB 1482"). AB 1482 establishes a statewide rent cap on certain residential units which is set at 5% plus a Cost-of-Living-Adjustment (COLA) based on regional CPI through 2025. In Marin, this figure is currently 6.1% (5% base + 1.1% CPI), meaning that rent cannot be increased by more than 6.1% within the calendar year on residential units subject to the AB 1482.⁴ For a household that is experiencing declining employment, declining or no income, and a growing burden of debt, any rent increase would make financial recovery even more difficult.

The City recognizes the burden placed upon local property owners. The rental assistance provided through the CDBG and Marin Community Foundation funding is targeted at supporting tenants in greatest need; it also provides financial relief to landlords as the payments are made

¹ <https://tracktherecovery.org/>

² https://bfi.uchicago.edu/wp-content/uploads/BFI_WP_202058-1.pdf

³ [2018 American Community Survey](#).

⁴ AB 1482's statewide rent cap applies to residential units in multifamily properties constructed more than 15 years ago (this is a rolling date meaning units built in 2006 are covered by AB 1482 in 2021, units built in 2007 would be covered in 2022, and so on); duplexes if the owner does not live in either unit; units in condominiums and single family homes if they are owned by a corporation or REIT; and units in which the tenant has resided for one year or more.

directly to the property owner. Additionally, as mentioned above, the State is considering adopting AB 16, which would secure additional financial assistance for tenants and property owners.

On January 6, Governor Newsom announced plans to quickly and accountably deploy \$2.6 billion in federal rental assistance, with Marin County expected to receive an estimated \$7.7 million of that funding. At the local level, the County has cancelled tax penalties for qualifying small businesses, including property owners, allowing them to delay tax payments into 2021.

Based on this analysis, the City is proposing the adoption of an urgency ordinance that would establish a temporary rent freeze in census tracts that have been most disproportionately impacted by COVID-19 and that have the greatest level of housing instability (see Attachment 1). The ordinance would take effect on February 1, 2021 and would expire on December 31, 2021. In addition, per the Costa Hawkins Rental Housing Act of 1995, the rent freeze would not apply to single family homes, properties containing only one or two units, accessory dwelling units, and units for which an initial certificate of occupancy was dated on or after February 1, 1995.

Because the City already has rent control in place for all mobile homes within the City pursuant to Chapter XX of the Novato Municipal Code, the rent freeze would not apply to mobile homes.

The proposed rent freeze would be applied only in three census tracts in Novato (1032, 1042, 1022.03). To make this determination, staff utilized the same indicators that were used by the County to determine the allocation of the recent round of CDBG rental assistance, which was approved by the Novato City Council on October 27, 2020; those factors are those census tracts with the highest rates of COVID-19 and the highest rates of overcrowding. Per the U.S. Department of Housing and Urban Development, which administers CDBG funding, this round of CDBG funding was to be allocated based on public health need, COVID-19 risk and case rates, economic and housing market disruptions, and other factors. The County chose to use COVID-19 case rates and overcrowding indicators as measures of COVID-19 impact and housing market instability in allocating CDBG funding which is consistent with the HUD's allocation requirements.

In Novato, only census tracts 1032, 1042, and 1022.03 are in the top 10% of Marin census tracts in terms of COVID-19 case rates *and* in the top 10% in terms of overcrowding. Overcrowded households are more likely to include individuals who are essential workers which cannot be performed their jobs remotely, increasing the likelihood of COVID-19 exposure. High overcrowding rates also indicate that additional income streams are required to sustain a household's rental costs, putting them at greater risk of housing instability should income be reduced.

The combination of overcrowded housing, occupations that can only be performed in person, and increase risk of displacement creates a cycle where overcrowded households are at increased risk for COVID-19 exposure, are financially unable to respond to the quarantine requirements if exposed and are more likely to be displaced to a situation at even greater risk of COVID-19 exposure. Based on these factors, staff have determined that the three census tracts identified have been disproportionately impacted by COVID-19 and are at greatest risk for housing instability. The proposed rent freeze provides targeted support to these tracts, which are detailed in the map provided as Attachment 3.

While the rent freeze would not apply to areas of the City outside of the identified census tracts renters would still have access to a suite of additional renter protections. These protections include the recently adopted Countywide eviction moratorium which extends until June 30, 2021; a statewide rent cap of 5% + CPI (which would limit current rent increases in Marin to 6.1%); rental assistance provided through County, State and federal funding sources; and long-term rent cap policies established for mobile homes in Novato.

Enforcement

Enforcement of the proposed rent freeze will be relatively straightforward, as any rent increase in the affected census tracts would be considered a violation of the ordinance. Legal Aid of Marin would serve as the first point of contact for tenants that believe their rent has been illegally increased. If the urgency ordinance is approved, the City of Novato will provide Legal Aid of Marin with a database/tool to help determine whether a tenant is in a census tract that is covered by the rent freeze or not.

Right to Fair Return

The proposed urgency ordinance includes a provision for a “fair return” hearing, which allows a landlord to petition the City for a rent increase, despite the rent freeze, on the grounds that the increase is needed to allow the landlord a fair and reasonable rate of return. This provision is included because the City’s denial of such a fair and reasonable return on investment would constitute an unconstitutional taking of property requiring compensation. The ordinance provides that the landlord’s petition would be heard by a hearing officer appointed by the City Manager, and the landlord would have the burden to present evidence demonstrating that the increase is necessary to provide the landlord with a fair rate of return. The ordinance provides that the hearing officer’s decision would be final, subject only to challenge in court. The ordinance also provides that the City Council delegates to the City Manager the authority to establish the specific policies and procedures implementing the fair return hearing petition process.

Conclusion

If adopted, this urgency ordinance would provide covered tenants with a measure of needed financial relief. However, it is important that this action is viewed in the broader context of complementary actions that are being taken at the County, State, and Federal levels, as well as to recognize that more will be needed to address the crisis facing those most impacted by COVID-19. In addition, it is important to note that the intention of this action is to provide temporary relief to those most disproportionately impacted by COVID-19, from a public health perspective, as well as economic.

The proposed ordinance would be adopted as an urgency ordinance under Government Code section 36937(b). Ordinarily, to adopt a City ordinance, the City Council would introduce the ordinance and hold a public hearing, and then schedule the final adoption for a second meeting, with publication of a summary of the ordinance in between. The ordinance would not go into effect until 30 days after the final adoption. As an urgency ordinance however, the proposed ordinance would be adopted in a single meeting and could become effective immediately, if it is approved by 4/5 of the City Council. In this case, instead of taking immediate effect upon adoption, the urgency ordinance provides that it will go into effect on February 1, 2021. In order to be adopted under section 36937(b), the ordinance must include findings explaining that the urgency ordinance is necessary to protect the public peace, health or safety. The ordinance includes these findings which mirror the analysis described in this staff report and establish that residents of certain census tracts in the City have been disproportionately impacted by COVID-19 and are subject to greater risks of housing instability, displacement, debt, and health risks related to higher rates of COVID-19.

FISCAL IMPACT

There is no immediate financial impact to the City’s budget; however, costs to potentially hire a hearing officer, resources to promulgate administrative rules, and potential litigation regarding the ordinance are undetermined at this time.

RECCOMENDATION

Adopt, by 4/5 vote of the City Council, the urgency ordinance enacting a temporary moratorium on rent increases for tenants residing in certain rental units and in specific census tracts most disproportionately impacted by COVID-19 and setting forth the facts constituting such urgency.

ALTERNATIVES

1. Approve the ordinance.
2. Approve the ordinance with modifications.
3. Do not approve the ordinance; provide direction to staff

ATTACHMENTS

1. Urgency Ordinance
2. A Crisis Deferred COVID-19 Evictions
3. Census Map