

**CITY OF ALBANY  
CITY COUNCIL AGENDA  
STAFF REPORT**

Agenda Date: April 5, 2021  
Reviewed by: NA

**SUBJECT:** Extending the Commercial Moratorium on Evictions for Nonpayment of Rent and Rent Increases during COVID-19 Pandemic

**REPORT BY:** Mala Subramanian, City Attorney

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**SUMMARY**

This urgency ordinance would extend the local commercial eviction and rent increase moratorium through June 30, 2021 and automatically upon further extension of the Governor’s Executive Order.

**STAFF RECOMMENDATION**

That the Council adopt Urgency Ordinance No. 2021-05, extending the temporary moratorium on evictions due to nonpayment of rent and rent increases for certain commercial tenants during the COVID-19 pandemic and setting forth the facts constituting such urgency.

**BACKGROUND**

In March 2020, federal, state and local government officials issued various declarations of public health states of emergency in response to the global spread of COVID-19. State and county public health officials also issued shelter-in-place orders, which have been revised and extended several times over the past year. The purpose of the orders is to limit gathering of persons and require closures of non-essential businesses in an effort to slow the spread of the virus.

The restrictions have been in place for over a year, although there have been many adjustments. Under Governor Newsom’s “Blueprint for a Safer Economy” every county is assigned to a tier based on its COVID-19 adjusted case rate and test positivity from the last two weeks. Counties can progress through four tiers, ranging from “widespread” (Purple Tier 1) to “minimal” (Yellow Tier 4) community disease transmission. As of the writing of this report, Alameda County is assigned to the Red Tier (Tier 2), which has substantial limitations on activities. Tier 2 mandates that some non-essential indoor business operations remain closed and those non-essential indoor businesses that are open are subject to limitations and protocols to limit the spread of COVID-19.

The degree of the health and economic impact of the pandemic is unprecedented and unknown. Millions of people have filed for unemployment, further fueling a decline in business revenues.

State and local leaders have taken various actions to address the impacts of the pandemic, including a number of emergency measures to avoid a so-called “wave of evictions.”

During the period from April 6, 2020 to September 1, 2020, the Judicial Council of California adopted emergency rules to effectively suspend most unlawful detainer (eviction) and foreclosure actions. On August 31, 2020, the California adopted the COVID-19 Tenant Relief Act (AB 3088) enacting statewide eviction protections for residential tenants experiencing a financial hardship relating to COVID-19. Those statewide residential tenant protections have been extended under Senate Bill 91 through June 30, 2021.

At the federal level, the Center for Disease Control (CDC) issued a nationwide eviction moratorium, which is currently set to expire on March 31, 2021. There are reports that the federal moratorium may be further extended by the Biden Administration.

The City Council may find that many of the recitals and findings for the City’s urgency eviction moratoria ordinances remain applicable. When the City Council first adopted the local eviction moratorium (Urgency Ordinance No. 2020-03) on March 26, 2020, there were 239 confirmed cases of COVID-19 and two deaths in Alameda County. As of March 23, 2021, Alameda County reported 82,680 cases of COVID-19 (with 318 cases in Albany) including 1,369 deaths, while the stay at home orders have been in place. As of the writing of this report, California reported 3,549,101 cases of COVID-19, including 56,596 deaths.

Unemployment numbers also remain high. A recent State Employment Development Department report indicates a 7.4 percent unemployment rate in Alameda and Contra Costa Counties for January 2021, while the year-ago estimate was 3.2 percent.<sup>1</sup>

The City of Albany continues to have a strong interest in preventing widespread homelessness, joblessness, loss of business and supporting the purpose behind safer-at-home directives issued by federal, state and county health authorities.

## **DISCUSSION**

To help cities and counties combat widespread evictions, the California Governor’s Executive Order N-28-20 authorized local governments to halt evictions by suspending the preemptive effect of applicable state laws regulating residential and commercial evictions. The protections of Order N-28-20 have been extended multiple times. Most recently, Executive Order N-03-21 extends authorization for local governments to limit evictions for *commercial tenants only* through June 30, 2021.

The City of Albany’s current eviction moratorium protects commercial tenants from eviction for failure to pay rent or rent increases due to financial impacts related to COVID-19 until March 31, 2021. The proposed ordinance would extend these commercial eviction protections through June 30, 2021 and automatically upon further extension of the Governor’s Executive Order.

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<sup>1</sup> <https://www.labormarketinfo.edd.ca.gov/file/1fmonth/oak%24pds.pdf>

Due to the passage of the COVID-19 Tenant Relief Act (AB 3088, SB 91), local residential eviction moratoria are currently preempted and Albany's residential eviction moratorium was required to lapse on September 30, 2020.

### *Conclusion*

The degree of the health and economic impact of the pandemic is unprecedented and unknown. Eviction protections are still very much warranted and an important part of slowing the spread of COVID-19 and recovery from this global health pandemic.

### **Attachments**

1. Urgency Ordinance No. 2021-05

1   **ORDINANCE NO. 2021-05**

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3                   **AN URGENCY ORDINANCE OF THE CITY OF ALBANY AMENDING**  
4                   **URGENCY ORDINANCE 2020-03, AS AMENDED BY URGENCY ORDINANCE**  
5                   **NOS. 2020-06, 2020-12 AND 2020-13, TO EXTEND THE TEMPORARY MORATORIUM**  
6                   **ON EVICTIONS DUE TO NONPAYMENT OF RENT AND RENT INCREASES FOR**  
7                   **CERTAIN COMMERCIAL TENANTS DURING THE COVID-19 PANDEMIC AND**  
8                   **SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY**

9                   THE ALBANY CITY COUNCIL ORDAINS AS FOLLOWS:

10                   **SECTION 1. FINDINGS**

11                   A.         The findings set forth in Ordinance No. 2020-03, No. 2020-06, No. 2020-12, and  
12                   No. 2020-13 are still applicable and incorporated herein by reference.

13                   B.         The California Legislature has adopted statewide eviction protection for residential  
14                   tenants pursuant to the COVID-19 Tenant Relief Act (Chapter 5 (commencing with Section  
15                   1179.01) of Title 3 of Part 3 of the Code of Civil Procedure (CCP)) through June 30, 2021. The  
16                   California Legislature has not adopted equivalent statewide protections for commercial tenants.

17                   C.         On March 4, 2021, the California Governor issued Executive Order N-03-21  
18                   extending the timeframe for the protections in Executive Order N-28-20, Paragraph 2 (previously  
19                   extended via Executive Order N-66-20, Executive Order N-71-20 and Executive Order N-80-20),  
20                   thereby extending authorization for local governments to limit evictions for commercial tenants  
21                   impacted by the COVID-19 pandemic through June 30, 2021.

22                   D.         The unemployment rates in Alameda County remain high due to the COVID-19  
23                   pandemic. According to the California Employment Development Department, the  
24                   unemployment rate in Alameda and Contra Costa Counties' (covered by the Oakland-Hayward-  
25                   Berkeley Metropolitan Division) was 7.4 percent in January 2021, above the year-ago estimate of  
26                   3.2 percent.

27                   E.         Since March 9, 2021, Alameda County has been in the Red Tier of California's  
28                   Blueprint for a Safer Economy framework, where many non-essential indoor business operations  
                    remain closed and the COVID-19 virus remains a substantial threat. As of March 9, 2021,  
                    Alameda County's adjusted daily new case rate was 4.8 per 100,000 residents and vaccinations of  
                    vulnerable residents and our frontline workers are progressing. However, as more activities and

1 businesses open indoors and more people from different households mix, the risk of becoming  
2 infected increases. The majority of Alameda County residents have not been vaccinated and there  
3 are reports of vaccine shortages and distribution issues. In addition, new variants of COVID-19  
4 are being studied, and these variants may spread more easily, may carry increased risk of death,  
5 or may have mutations which could affect the virus' ability to be recognized by antibodies.

6 F. As of March 23, 2021, the World Health Organization reported a global total of  
7 123,419,065 cases of COVID-19, including 2,719,163 deaths; California reported 3,549,101 cases  
8 of COVID-19, including 56,596 deaths; Alameda County reported 82,680 cases of COVID-19  
9 (with 318 cases in Albany) including 1,369 deaths.

10 G. The City Council desires to extend the Albany commercial eviction moratorium  
11 provisions of urgency ordinance Nos. 2020-03, 2020-06, 2020-12 and 2020-13 to prevent  
12 widespread unemployment and loss of business during the COVID-19 pandemic, which could  
13 increase homelessness, loss of health care among workers, and further the spread of COVID-19.

14 H. Public health is served by allowing businesses to follow the public health orders to  
15 close or limit operations without fear of imminent eviction.

16 I. The City Council desires to maintain economic infrastructure so that all businesses  
17 have the ability to recover from the impacts of the COVID-19 pandemic outbreak and continue to  
18 provide employment and so that economic recovery is possible after the emergency is over, all of  
19 which are in the interest of the public peace, health, safety and welfare.

20 J. This Ordinance is adopted pursuant to the City's police powers and powers  
21 afforded to the city in the time of a national, state, county and local emergency during an  
22 unprecedented health pandemic, such powers being afforded by the State Constitution, State law  
23 and Section 2-16 of the Albany Municipal Code to protect the peace, health, and safety of the  
24 public. The Albany City Council finds that this ordinance is necessary for the preservation of the  
25 public peace, health, and safety of businesses and workers working within the City and finds  
26 urgency to approve this ordinance immediately based on the facts described herein and detailed in  
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1 the staff report. Under Government Code Section 8634, this ordinance is necessary to provide for  
2 the protection of health, life and property.

3 **SECTION 2. DURATION; SUSPENSION**

4 Section 9 of Ordinance 2020-03, as amended by Ordinance Nos. 2020-06, 2020-12 and  
5 2020-13, is amended to read as follows:

6 “Section 3, Section 6, Section 8 and Section 9 of Ordinance 2020-03,  
7 as amended, shall remain in effect until June 30, 2021; provided,  
8 however that this Ordinance shall be automatically extended if  
9 Executive Order N-28-20, Paragraph 2, is extended or the  
10 commercial tenant protections therein are extended pursuant to  
11 another Governor’s Executive Order. In order to prevent  
12 inconsistencies, the Director of Emergency Services may suspend the  
13 effectiveness of any provision in this ordinance in the event that the  
14 President of the United States, Congress, Governor of the State of  
15 California or California State Legislature or other body with  
16 jurisdiction adopts an order or legislation that similarly prohibits  
17 evictions for failure to pay rent by individuals impacted by the  
18 COVID-19 crisis.”

13 **SECTION 3. SEVERABILITY.**

14 If any section, subsection, sentence, clause, phrase or word of this Ordinance is found to  
15 be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision  
16 shall not affect the remaining provisions of this Ordinance.

17 **SECTION 4. ENVIRONMENTAL REVIEW.**

18 The City Council finds that adoption and implementation of this ordinance is not a  
19 “project” for purposes of the California Environmental Quality Act (CEQA), as that term is  
20 defined by CEQA guidelines (Guidelines) sections 15061(b)(3), and 15378(b)(5). The effect of  
21 the proposed Ordinance will be to maintain the status quo and extend the existing commercial  
22 eviction moratorium for an additional time period consistent with Executive Order N-03-21, and  
23 any subsequent extension. No new development will result from the proposed action. No impact  
24 to the physical environment will result. The City Council also alternatively finds that the adoption  
25 and implementation of this ordinance is exempt from the provisions of CEQA as an  
26 administrative activity by the City of Albany, in furtherance of its police power, that will not  
27 result in any direct or indirect physical change in the environment, per sections 15061(b)(3), and  
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1 15378(b)(5) of the CEQA Guidelines, as well as CEQA Guidelines section 15064(e) (economic  
2 regulations).

3 **SECTION 5. URGENCY DECLARATION; EFFECTIVE DATE.**

4 The City Council finds and declares that the adoption and implementation of this  
5 Ordinance is necessary for the immediate preservation and protection of the public peace, health  
6 and safety as detailed above and as the City and public would suffer potentially irreversible  
7 displacement of commercial tenants and loss of employment resulting from evictions for failure  
8 to pay rent during the COVID-19 crisis. During this local emergency, and in the interest of  
9 protecting the public health and preventing transmission of COVID-19, it is essential to avoid  
10 unnecessary loss of business and jobs which could lead to housed individuals falling into  
11 homelessness during a time of abnormal economic conditions, especially given continuing state  
12 and county directives to stay at home. Promoting stability amongst commercial tenancies is also  
13 conducive to public health by allowing businesses to follow the advice and directives of public  
14 health officials to close or limit operations and allowing employees to avoid or limit public  
15 contact during times of a public health crisis without fear of imminent eviction or foreclosure.  
16 Loss of income as a result of COVID-19 may inhibit City residents and businesses from fulfilling  
17 their financial obligations, including payment of rent. The length of the period of federal, state  
18 and local emergency is unknown at this time. By extending the Local Commercial Eviction  
19 Moratorium Ordinance through June 30, 2021 and automatically upon further extension of the  
20 Governor's Executive Order, the City Council desires to provide stability for commercial tenants  
21 while orders of the Alameda County Public Health Officer and the State continue to mandate  
22 significant limitations and closures of businesses and to provide certainty to landlords on the  
23 processes in place to repay deferred rent after the initial period of moratorium. These amendments  
24 require immediate action so that commercial eviction protections do not expire. Under  
25 Government Code Section 8634 and Section 2-16 of the Albany Municipal Code, this ordinance  
26 is necessary to provide for the protection of life and property for the reasons set out herein. The  
27 Council therefore finds and determines that the immediate preservation of the public peace, health  
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1 and safety, and protection of life and property, require that this Ordinance be enacted as an  
2 urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon  
3 adoption by four-fifths of the City Council.

4 **SECTION 6. CERTIFICATION**

5 The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause  
6 the same, or the summary thereof, to be published or posted in the manner required by law.

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8 PASSED, APPROVED AND ADOPTED this 5th day of April 2021.

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11 AYES:

12 NOES:

13 ABSENT:

14 ABSTAIN:

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GE'NELL GARY, MAYOR

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