



Agenda Item B.1
DISCUSSION/ACTION ITEM
Meeting Date: October 6, 2020

TO: Mayor and Councilmembers

FROM: Michael Jenkins, City Attorney

CONTACT: Winnie Cai, Assistant City Attorney

SUBJECT: Consideration of Termination or Amendment to Residential and Commercial Evictions and Foreclosures Moratoria

RECOMMENDATION:

- A. Provide direction to staff to return with an ordinance either retaining the residential eviction moratorium with modifications or terminating the moratorium thereby allowing the provisions of the newly enacted State law, AB 3088, to replace the City's ordinance;
- B. Provide direction to staff as to whether Goleta's commercial eviction moratorium should stay in place or be terminated;
- C. Provide direction to staff as to whether Goleta's residential and commercial foreclosure moratorium should stay in place or be terminated.

BACKGROUND:

Residential & Commercial Eviction Protections During COVID-19 Emergency

On March 4, 2020, California Governor Gavin Newsom declared a State of Emergency to address the global pandemic caused by a respiratory disease which has been named "COVID-19". On March 14, 2020, the City Manager, as the Director of Emergency Services, declared an existence of local emergency. On March 17, 2020, the City Council adopted Resolution 20-18 that ratified the City Manager's emergency declaration and issued attendant orders.

The City has adopted moratoria, first in Resolution 20-18 and then in Ordinance 2020-07U on April 21, 2020, that prohibited landlords from evicting tenants for nonpayment of rent due to COVID-19 financial distress. This moratorium applied to both residential and commercial tenants. The moratoria set up a system of rent deferral, not forbearance. Tenants are still required to pay back the rent once the repayment period begins. In the City's ordinance, repayment for residential tenants must occur within 12 months after the end of the moratorium and commercial tenants must occur within 6 months after the end

of the moratorium. The City's ordinance did not provide for a specific date that the moratoria would end.

On April 6, 2020, the Judicial Council of California adopted emergency rules amending the California Rules of Court to effectively suspend all unlawful detainer (eviction) and foreclosure actions, unless necessary to protect public health and safety, until 90 days after the state's declaration of emergency is lifted. The Judicial Council recently voted to sunset those rules on September 1, 2020.

Assembly Bill 3088: New State Legislation Affecting Residential Eviction Moratorium

To prevent a wave of evictions with the sunset of the Judicial Council rules, Governor Newsom signed Assembly Bill 3088 (AB 3088) on August 31, 2020. The bill, which took immediate effect, enacted the COVID-19 Tenant Relief Act of 2020 (Act) to provide statewide eviction protections for residential tenants (including mobile home tenants) experiencing a financial hardship relating to COVID-19.

The Act's preemptive effect on local ordinances varies depending on their expiration dates, if any. The Act provides that any extension, expansion, renewal, or reenactment of a current ordinance or enactment of a new ordinance adopted in response to the COVID-19 pandemic to protect residential tenants from eviction for nonpayment of rent will have no effect "before February 1, 2021". As such, cities with ordinances set to expire on a fixed date (e.g. many eviction moratorium ordinances expired on September 30) cannot extend their moratoria and, upon their expiration, the Act will control. However, for residential eviction moratorium ordinances that have no specific expiration dates, such as Goleta's, with the exception of the repayment start and end dates described below, their residential eviction protections may remain in force if the existing ordinances are not expanded.

Further, that a city's extension or enactment of a residential eviction moratorium ordinance is to have no effect "before February 1, 2021" suggests that cities may revise existing ordinances to reflect the new state law and again adopt residential tenant protections for COVID-19-related non-payment of rent beginning next February. We will monitor the state law and report back on any extensions of the schedule in the state law, or any renewed authorization to regulate locally.

Based on the following discussion, staff requests direction from City Council on whether to prepare an ordinance (1) to retain the residential eviction moratorium and clarify the repayment period, or (2) to repeal existing residential eviction protections and allow state law to control.

The Act Sets Forth Requirements to Receive Protection from Non-Payment Eviction

The Act prohibits residential tenants from being evicted for failure to pay rent due to a COVID-19-related hardship occurring between March 1 and August 31, 2020, so long as the tenant, upon request, provides the landlord with a written declaration of hardship.

Residential tenants experiencing COVID-19-related financial hardships between September 1, 2020 and January 31, 2021 are also protected from eviction under the Act provided, upon request, they return written declarations of hardship and pay at least 25 percent (25%) of the total rent due during this period. In addition, a “high-income tenant” with a household income of not less than \$100,000 per year and whose household income is 130 percent (130%) of the county median household income, whichever is higher, may be asked to submit additional documentation to support their hardship declarations. The table below shows what the 130% Median Household income limits currently are for Santa Barbara County.

130 Percent (130%) Median Household Income Santa Barbara County, 2020

Members in Household	Income Limit
1	\$79,900
2	\$91,300
3	\$102,750
4	\$114,150
5	\$123,250
6	\$132,400
7	\$141,550
8	\$150,650

Instead of providing documentation of financial hardship from COVID-19 like the City’s ordinance requirements, the Act requires tenants to return to their landlords a signed declaration of hardship within 15 days of receiving a notice of eviction from their landlords. Tenants do not have to initiate provision of this declaration. Landlords must provide a blank declaration to each tenant when serving a 15-day notice to pay rent.

Landlords who have evidence that a tenant is a high-income tenant may require the provision of documentation, including proof of income, tax return, W-2, written statement from tenant’s employer, pay stubs, documentation showing regular distributions from a trust, annuity, 401k, pension or other financial instrument, documentation of spousal and child support, and documentation from a government agency showing public assistance benefits (social security, unemployment, disability, or paid family leave).

The new law introduces a requirement for tenants who seek eviction protection to pay at least 25% of total rent from September 2020 through January 31, 2021, to avoid eviction based on nonpayment of rent that came due during that period. The bill provides that the 25% of rent due for those covered months must be paid by January 31, 2021. Although not encouraged, a tenant could potentially wait until January 31, 2021 to pay 25% of five-months' worth of rent (i.e. one month and a quarter of monthly rent).

The law also makes it easier for tenants to obtain eviction protection in a different regard. As opposed to the current ordinance's documentation or explanation requirements, a tenant (other than a "high- income tenant") need only sign a declaration of hardship to avoid eviction moving forward for a given month of deferred rent. This also provides consistency and certainty for landlords on what documentation is required.

Though nonpayment of rent due between March 1, 2020 through January 31, 2021 is not grounds for eviction for tenants who comply with the Act's preconditions for protection (timely returning signed hardship declarations and paying at least 25% of rent owed between September 1, 2020 and January 31, 2021), residential tenants are still obligated to pay back all deferred rent that came due during that period. If a residential tenant fails to take the steps needed to qualify for eviction protection by January 31, 2021, the landlord may serve an eviction notice to file an unlawful detainer action to evict the tenant as early as February 1, 2021.

Finally, the Act allows courts to resume processing unlawful detainer (or eviction) actions starting on October 5, 2020, whether or not the action is based in whole or in part on nonpayment of rent or other charges. The Act does not affect the moratorium on commercial tenant evictions; but rather, sets forth a process for residential tenants who have been financially impacted by COVID-19 to avoid eviction for non-payment of rent.

The Act Automatically Establishes a Rent Repayment Period Based on Local Ordinances

The Act does not specify a specific repayment period but imposes repayment time limits depending on a city's existing ordinance. Local ordinances with a repayment start date conditioned on termination of a local emergency, such as Goleta's, must adopt the start date of March 1, 2021 and not allow for any repayment period to exceed March 31, 2022. Goleta's ordinance imposes a 12-month repayment period; therefore, by operation of the Act, the repayment period is now March 1, 2021 through March 1, 2022.

The Act allows landlords to start recovering deferred rent beginning March 1, 2021 by filing claims in small claims court. Under the Act, it is possible for a landlord to successfully recover some or all deferred rent if:

1. For rent that came due between 3/1/20 and 8/31/20, the tenant did not timely return a hardship declaration; or
2. For rent that came due between 9/1/20 and 1/31/21, the tenant did not return a hardship declaration and pay 25% of the total rent from that period.

In Goleta, landlords should not utilize the small claims remedy until the repayment period ends on March 1, 2022. Although the repayment period would still be pending, the Act permits a landlord to bring a small claims case against a tenant as early as March 1, 2021; that is, before Goleta's repayment period ends. However, if a landlord were to do so, a tenant would have a defense in small claims court by asserting that no debt accrues until March 2, 2022 (after the repayment period ends).

In addition, the Act would not preempt provisions in Goleta's ordinance that *encourage* repayment plans between landlords and tenants. However, parties should note that any agreements between landlords and tenants must not conflict with or waive provisions of the Act. Subject to this limitation, tenants and landlords could still draw down on a security deposit to pay due or past-due rent, provided it is replenished by March 1, 2022 (the end of the repayment period), or at a later date if mutually agreed upon in writing by the parties. Parties are advised to seek the advice of an attorney when entering into a private agreement.

Commercial Evictions

AB 3088 does not affect commercial moratoria passed by local entities. Goleta's Ordinance 2020-07U prohibits commercial evictions so long as a commercial tenant provides notice and documentation or explanation of closure or partial closure of the business due to COVID-19. Currently, commercial tenants could provide documentation of COVID-related financial hardship to receive protection under the City's moratorium and pay a pro-rated share of their rent if they suffered only a partial loss of net income. The amount of time to repay rent in arrears would continue to be six months after the end of the moratorium period, and landlords would not be allowed to evict a tenant during that six-month period if the tenant is paying rent that is due in a timely manner and repaying past due rent.

The Governor's Executive Order N-28-20 that authorized local entities to pass commercial evictions regulations was recently extended to March 31, 2021. (Governor's Executive Order N-80-20.)

Residential Landlord Foreclosure Protections Under AB 3088

AB 3088 also enacted the COVID-19 Small Landlord and Homeowner Relief Act of 2020 (Homeowner Act). The Homeowner Act extends certain foreclosure protections to small

landlords that would not otherwise apply to them under existing law. In general, a “small landlord” is a landlord that owns a residential property with no more than four dwelling units and that is occupied by one or more residential tenants. Among other protections created under the Homeowner Act, if a landlord has submitted a loan modification application to a lender, the lender cannot start or continue a foreclosure on a first lien mortgage or deed of trust that is secured by the landlord’s residential real property if certain conditions are met. Those conditions require that the property be occupied by a tenant, contain no more than four dwelling units, and meet certain other criteria, including that the tenant occupying the property is unable to pay rent due to reduction in income resulting from COVID-19. These foreclosure protections will be in effect until January 1, 2023.

DISCUSSION:

In light of the new legislation, staff seeks direction from Council on whether:

1. Goleta’s residential eviction moratorium should stay in place but be restated to clarify the repayment period imposed by AB 3088, or be terminated and replaced by AB 3088;
2. Goleta’s commercial eviction moratorium should stay in place or be terminated and, if kept in place, a sunset date be added;
3. Goleta’s residential and commercial foreclosure moratorium should stay in place or be terminated.

Any direction provided by Council will be incorporated into an ordinance amendment to be brought back to Council at a later public meeting.

A. Residential Eviction Moratorium

The Act does not preempt Goleta’s ordinance with regard to its residential tenant protections, except for the start and end date of the repayment period. Therefore, Goleta’s residential eviction moratorium can continue in light of the Act. Staff brought this item forward so that Council can collectively consider whether the City should continue its residential eviction moratorium or default to the State framework. If Council elects to terminate the moratorium, staff suggests that it sunset on October 31, 2020 at 11:59 pm. This best coincides with standard rental due dates that are typically the first day of the month.

The following table summarizes the key points of comparison between Goleta’s ordinance and what would happen if Goleta ended its moratorium and defaulted to the State framework.

RESIDENTIAL TENANCIES	City Ordinance	City Ends Moratorium Effective 11/1/20* and Defaults to AB 3088 Framework *If clarification ordinance is adopted at next Council meeting on 10/20/20 with sunset date of 10/31/20.
Evictions parameters	<p>Tenants can't be evicted until local emergency ends for nonpayment of rent owed 3/14/20-1/31/21.</p> <p>Tenant must notify landlord within 7 days after rent is due and provide documentation or explanation to support claim of COVID-19 related financial impacts by the time back rent is due.</p> <p>Tenants CANNOT be evicted for nonpayment of rent starting on 2/1/21 if above conditions are met. AB 3088 says amendments or new ordinances passed have no effect until 2/1/21.</p>	<p>Tenant can't be evicted between now and 2/1/21 for nonpayment of rent owed 3/1/20-1/31/21 if:</p> <ol style="list-style-type: none"> 1. For period 3/4/20-10/31/20: tenant returns hardship declaration (no documentation required except from high income tenants upon request) 2. For period 11/1/20-1/31/21: tenant returns hardship declaration and pays back 25% (no documentation required except from high income tenants upon request) <p>If tenants do not comply with the above requirements, tenants CAN be evicted for nonpayment of rent starting on 2/1/21. Caveat: Legislature could extend this date in the future. Additionally, AB 3088 says amendments or new ordinances passed have no effect until 2/1/21. Cities could enact new eviction moratorium to be effective 2/1/21 (i.e. when AB 3088's eviction protections expire).</p>
Repayment Requirements	<p>For ordinances that condition the start of repayment on the termination of the local emergency, AB 3088 requires repayment to begin no later than 3/1/21. Goleta's ordinance requires tenants to repay rent within 12 months of the local emergency expiring. Effective repayment period: 3/1/21-3/1/22.</p> <p>All deferred rent must be repaid by 3/1/22.</p>	<p>For ordinances that condition the start of repayment on the termination of the local emergency, AB 3088 requires repayment to begin no later than 3/1/21. Goleta's ordinance requires tenants to repay rent within 12 months of the local emergency expiring. Effective repayment period: 3/1/21-3/1/22.</p> <p>All deferred rent must be repaid by 3/1/22.</p>

<p>Landlord remedies for rental debt</p>	<p>None. Landlords are encouraged to offer repayment plans to tenants beyond the 12-month period. If mutually agreed upon, landlord can apply security deposit toward rental debt and tenant must replenish by end of 12-month period. Agreements cannot waive provisions of the Act.</p> <p>Landlords could bring small claims actions on March 1, 2021, under AB 3088, but tenants would have a defense that repayment is not due until after end of 12-month repayment period, or 3/1/22.</p>	<p>Landlords could bring small claims actions on March 1, 2021, but tenants would have a defense that repayment is not due until after end of repayment period (3/1/22).</p>
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If the City does not terminate the moratorium and only incorporates the Act's mandated repayment start date,

1. Tenants, regardless of income level, must between now and the date the City Council ends the eviction moratorium (or the local emergency):
 - Notify the landlord within seven days after rent is due of the inability to pay rent due to COVID related financial distress
 - Provide documentation of COVID-19 related financial distress by March 1, 2021, when the repayment period begins.
 - Finish repaying all back rent by March 1, 2022.
2. Landlords:
 - May not file an unlawful detainer action or serve any notice of eviction for nonpayment of rent incurred from March 14, 2020 through the end of the local emergency.
 - No earlier than March 1, 2021, may not demand the tenant to pay back rent owed from March 14, 2020 through January 31, 2021; and must allow the tenant until March 1, 2022 to repay all deferred rent.
 - Though allowed, should not file a small claim against a tenant for nonpayment of rent for the period March 14, 2020 through January 31, 2021 until after the repayment period ends on March 1, 2022; if a small claims action is filed before then, tenants will have a defense that no debt has accrued yet.

If the City chooses to end the City's moratorium, effective November 1, 2020, and default to the state framework under the Act,

1. Beginning November 1, 2020, a "high income tenant" must:

- Return to the landlord a signed declaration of hardship within 15 days of receipt. A declaration must be signed each time one is provided by the landlord for the specified month or months.
 - If the landlord already has proof of the tenant's income on file, the tenant must also provide documentation of hardship if requested by the landlord in the 15-day notice.
 - Repayment obligations are as follows:
 - For rent that came due March 14, 2020 through October 31, 2020, the tenant must pay past due rent in full by the end of the repayment period (March 1, 2022).
 - For rent that comes due November 1, 2020 through January 31, 2021, the tenant must pay 25% of the total rent that came due during this period by January 31, 2021 to avoid eviction. The remaining rent must be paid by the end of the repayment period (March 1, 2022).
2. Beginning November 1, 2020, a tenant that is not a "high-income tenant" must:
- Return to the landlord a signed declaration of hardship within 15 days of receipt. A declaration must be signed and returned each time one is provided by the landlord for the specified month or months. No documentation of COVID-19 related financial hardship is required.
 - Repayment obligations are as follows:
 - For rent that came due March 14, 2020 through October 31, 2020, the tenant must pay past due rent in full by the end of the repayment period (March 1, 2022).
 - For rent that comes due November 1, 2020 through January 31, 2021, the tenant must pay 25% of the total rent that came due during this period by January 31, 2021 to avoid eviction. The remaining rent must be paid by the end of the repayment period (March 1, 2022).
3. Beginning November 1, 2020, a residential landlord is subject to the following:
- To evict a tenant, a landlord must serve a 15-day notice to pay rent or quit, which must be accompanied by an unsigned copy of a declaration of hardship. The notice must contain the text prescribed in the Act. If the landlord was required by law to provide a translation of the rental agreement in another language, a copy of the declaration form in that language must also be provided.
 - A landlord may ask a "high-income tenant" to provide documentation of hardship in the 15-day notice only if the landlord already has proof of the tenant's income on file. A landlord may not demand proof of income for any tenant.
 - If a tenant fails to timely return a hardship declaration or fails to meet his or her repayment obligations by January 31, 2021, a landlord may

file an eviction action on or after February 1, 2021.

- Though allowed to do so on or after March 1, 2021, a landlord should not file a small claims action against a tenant to recover deferred rent that came due March 1, 2020 through January 31, 2021 until after the repayment period ends on March 1, 2022.

Policy Considerations

The state law is ambiguous when applied to residential eviction moratoria like Goleta's that have no precise end date, and no court has yet interpreted the state law. However, there is a reasonable argument that, other than the repayment period fixed by operation of the new state law, the City's local eviction protections remain in effect until repealed or the local emergency ends. If the City chooses to keep its ordinance in place, the only necessary action is adding provisions to establish the repayment period (3/1/21-3/1/22) and encourage repayment plans that do not waive the provisions of the Act. Under the City's ordinance, tenants would not have to pay 25% of total rent owed for a 3-month period (11/1/20 – 1/31/21) to receive eviction protection. Tenants would, however, have to provide documentation or an explanation of their COVID-19 related financial impacts and the burden is on the tenant to notify the landlord. Keeping the eviction protections of the City's ordinance would meet the public policy objectives of (i) helping financially distressed tenants avoid homelessness, (ii) preventing the movement of large numbers of people, and (iii) minimizing contact in adherence with public health orders to shelter in place to prevent the transmission of COVID-19.

On the other hand, if the City chooses to end its moratorium and allow the State framework to apply starting November 1, 2020, the equities between landlords and tenants would be more balanced. The State framework requires tenants to pay back 25 percent of rent owed for a 3-month period (11/1/20 – 1/31/21). However, to ensure protection under both the City's ordinance and the state law, if a tenant is served with a 15-day notice to pay rent and an unsigned hardship declaration, tenants will be encouraged to pay 25% of the total rent that came due between September 1, 2020 and January 31, 2021, inclusive (i.e. one month and a quarter of rent), by January 31, 2021 to receive eviction protection. Some landlords have not received any rent since March 2020 and receiving 25 percent of rent gives them some benefit for the duration of time that they would not otherwise have received any rent. Landlords who do not receive rent may also face financial distress with respect to payment of expenses, including but not limited to mortgage and maintenance expenses of the leased property.

Moreover, the remaining 75 percent of rental debt from the 3-month period (11/1/20 – 1/31/21) and all deferred rent from the prior 8 months (March 14, 2020 through October 31, 2020) would have to be repaid by March 1, 2022. This lower percentage of rental debt may be more feasible for a tenant to pay back than 100 percent of rental debt. If the City's moratorium is not terminated, on the other hand, tenants will be required to pay all of the deferred rent coming due in one lump-sum on March 2022, which could be very large. Here, the public policy concern is tenants' inability to pay back 100 percent of all rental debt in the 12-month repayment period on top of their regular rent and the possibility

of eviction for failing to do so. Therefore, a key consideration is whether requiring tenants to pay a certain percentage now (by ending the City moratorium) would help decrease the probability of their default on paying back 100 percent of the debt (plus their regular rent) and prevent possible eviction at a later date.

Comparison to Other Jurisdictions

Most local entities have to follow the State framework because their ordinances have expired:

Eviction Moratorium Table:

Entity	Temporary Eviction Moratorium Expiration Date
Santa Barbara County	September 30, 2020
City of Santa Barbara	September 30, 2020
City of Carpinteria	September 30, 2020
City of Santa Maria	The Emergency Order will remain in effect unless rescinded by the Director of Emergency Services
City of Solvang	July 30, 2020
County of Ventura	September 30, 2020
City of Ventura	November 1, 2020
County of San Luis Obispo	May 31, 2020
City of Lompoc	September 30, 2020

All other entities' ordinances have expired, with the exception of the City of Ventura's ordinance that expires on November 1, 2020. Only the City of Santa Maria does not have a specific expiration date on their evictions moratoria like Goleta. The State framework will be applicable in all of the other cities and counties in the region.

B. Commercial Eviction Moratorium

In light of potential changes to the residential evictions moratorium, the Council can also decide if it wants to change its commercial evictions moratorium. The Governor's recent Executive Order N-80-20 extended the authority for local jurisdictions to prohibit commercial evictions until March 31, 2021. If Council chooses to keep the commercial eviction moratorium in place, staff recommends that Ordinance 2020-07U be amended to include this sunset date. Staff will monitor the Governor's orders and state law and bring this item back to Council if the sunset date changes.

C. Mortgage Foreclosure Moratorium

Council also has the option to retain or terminate the foreclosure moratorium. Since the foreclosure moratorium was passed by Council in Ordinance 2020-07U in April 2020, AB 3088 and other applicable laws and federal and state relief programs created foreclosure protections available to City of Goleta residents. Staff recommends that foreclosures be governed by those laws and programs and that the foreclosure moratorium be terminated.

ALTERNATIVES:

All alternative options are described above.

FISCAL IMPACTS:

The City of Goleta initially incurs all costs related to the City's response to the COVID-19 Pandemic, but will submit requests for cost recovery to the California Office of Emergency Services (CalOES), either directly, or through the Santa Barbara County Office of Emergency Management, the local reporting agent.

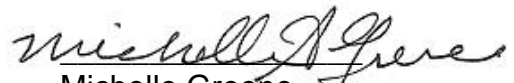
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