



REPORT TO CITY COUNCIL

Approved by:

Arnaldo Rodriguez, City Manager

Council Meeting of: April 6, 2020

Agenda Number: A-1

SUBJECT:

Consideration of an Urgency Ordinance Prohibiting Residential and Commercial Tenant Evictions related to the COVID-19 pandemic beginning March 4, 2020 and continuing through May 31, 2020 in accordance with Governor Newsom's Executive Order N-28-20 or as may be extended by executive order of the Governor or by State Law

RECOMMENDATION:

Staff recommends that the Council adopt the Urgency Ordinance prohibiting residential and commercial tenant evictions related to the novel coronavirus (COVID-19) pandemic.

DISCUSSION:

On March 4, 2020, California Governor Gavin Newsom proclaimed that a State of Emergency exists in California as a result of the threat of the novel coronavirus, COVID-19. On March 16, 2020, the County of Madera issued a declaration of emergency, and on the same day, Governor Newsom issued an executive order that authorizes local governments to create ordinances to halt evictions for residential and commercial renters in California who are affected by COVID-19. Shortly thereafter, on March 18, 2020, the City Council (Council) proclaimed the existence of a local emergency in the City. The following day, on March 19, 2020, Governor Newsom announced a statewide stay-at-home order to reduce the spread of COVID-19. A week later, on March 27, 2020, Governor Newsom issued Executive Order N-37-20 that extended the period for a residential tenant who is served with an eviction summons to respond by 60 days.

As Madera's situation has worsened, evidenced by the influx of confirmed COVID-19 cases, it has become apparent that there is an immediate need for the preservation of public peace, health, and safety of the City's residents. As the public health emergency intensifies and the number of people infected by the COVID-19 virus increases, people in the City could potentially be at risk of infection and severe and potentially life-threatening illness. As of April 4, 2020, there were 30 confirmed cases in Madera County, with additional pending test results.

While the shelter-in-place order from the Governor supports the need to slow the spread of the virus, it also has negative side effects. Specifically, it may:

- preclude many residents of the City from working
- significantly reduce the hours that may be worked
- require residents to refrain from working
- require residents to work fewer hours to take care of children who are home because schools are closed, take care of ill family members, or because they themselves are ill

Due to the high percentage of City residents that are renters, some may not be able to locate housing in the City should they be required to relocate. As a result, it is essential to avoid unnecessary housing displacement to protect the City's affordable housing stock and to prevent housed individuals from falling into homelessness. Additionally, the loss of income as a result of COVID-19 may inhibit City residents and businesses from fulfilling their financial obligations, including paying rent, while further economic impacts are anticipated, leaving tenants vulnerable to eviction.

Moreover, many businesses have suffered losses due to the shelter-in-place order that required some businesses to close or decrease customer capacity. Combined, these economic impacts may hinder or imperil their ability to make timely rent payments. Accordingly, legislative action is required to support vulnerable tenants and to help stabilize small businesses. While these measures do not ensure that community members will not suffer significant economic losses, they could potentially play a critical role in preserving the economic diversity that make Madera such a unique and vibrant community and the goal of providing equity for City residents.

Proposed Ordinance

This urgency ordinance will prevent displacement, could potentially reduce transmission of the novel Coronavirus, and promote the stability and the health and safety of the residents of Madera during the local emergency declared by the Council.

In summary, the urgency ordinance applies per the following:

- A. Effective March 4, 2020, Landlords shall not evict a residential or commercial tenant for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19.
- B. A landlord who knows that a tenant cannot pay some or all of the rent temporarily shall not serve a notice pursuant, file or prosecute an unlawful detainer action based on a three-day pay or quit notice, or otherwise seek to evict a tenant for nonpayment of rent.

A landlord knows of a tenant's inability to pay rent within the meaning of the Urgency Ordinance if the tenant, before the date that rent is due or within a reasonable period of time not to exceed seven days, notifies the landlord in writing that the tenant needs to

delay all or some payment of rent due to lost income and inability to pay due to financial impacts related to COVID-19, and provides documentation to support the inability to pay rent claim.

Note that “in writing” includes handwritten, typewritten, email, or text communications to a landlord or the landlord’s representative with whom the tenant has previously corresponded.

For purposes of the ordinance, financial impacts related to COVID-19 may be summarized as follows:

1. Being sick with a suspected or confirmed case, or caring for a household or family member who is sick with a suspected or confirmed case;
2. Lay-off, reduction of hours, or other income reduction resulting from COVID-19, the state of emergency or a related local, state, or federal government response;
3. Compliance with a recommendation or order from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency;
4. Compliance with local, state, or federal government orders to shelter-in place, to reduce business hours, to close businesses, to change the manner of operating the business;
5. Substantial out-of-pocket medical expenses; or
6. Childcare needs arising from school closures.

Collection of Back Rent:

It is noted that the urgency ordinance does not relieve the tenant of liability for unpaid rent that becomes due during the Local Emergency. Per the ordinance, tenants must pay back rent within six months of the expiration of the local emergency; however, a landlord may not charge or collect a late fee for rent that is delayed for COVID-19 related issues.

Applicable Time Period:

The City Attorney has prepared the attached Urgency Ordinance that would temporarily prohibit evictions for nonpayment of rent beginning March 4, 2020 and continuing through May 31, 2020, in accordance with Governor Newsom’s Executive Order N-28-20 or as may be extended by an executive order of the Governor or by state law.

Approval Process and Effective Date:

As to an urgency ordinance, such an ordinance may be adopted at this meeting after consideration and deliberations. Government Code Section 36937 requires an urgency ordinance to be passed by a four fifths (4/5) vote of the City Council, which means 6 votes are required in

order for a 7-member Council to pass the urgency ordinance. If passed, the Ordinance would be effective immediately.

ATTACHMENT:

1. Urgency Ordinance prohibiting residential and commercial tenant evictions related to COVID-19 pandemic
2. Memorandum from the City Attorney to the Mayor and City Council dated April 6, 2020

ORDINANCE NO. 20-

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MADERA PROHIBITING RESIDENTIAL AND COMMERCIAL TENANT
EVICTIONS RELATED TO THE COVID-19 PANDEMIC**

THE CITY COUNCIL OF THE CITY OF MADERA DOES ORDAIN AS FOLLOWS:

SECTION 1. TITLE AND PURPOSE. This Ordinance shall be known as the “COVID-19 Eviction Moratorium Ordinance.” The purpose of this Ordinance is to impose a temporary moratorium on eviction for non-payment of rent by residential and commercial tenants impacted by the COVID-19 crisis in accordance with Governor Newsom’s Executive Order N-28-20.

SECTION 2. FINDINGS. The City Council finds and declares:

- A. The City of Madera like the rest of California cities is experiencing a crisis of homelessness and displacement of renters of unprecedented levels.
- B. In December of 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19) was first identified in Wuhan City, Hubie Province, China.
- C. COVID-19 has since spread outside of China, impacting more than 177 countries, including the United States.
- D. The California Department of Public Health has activated its Medical and Health Coordination Center, and the Office of Emergency Services has activated the State Operations Center to provide support and guide actions to preserve public health.
- E. On March 4, 2020, Governor Newsom declared the existence of a state of emergency for the State of California due to threats to people within the State from COVID-19 and the County declared the existence of a local emergency.
- F. On March 16, 2020, the County of Madera issued a declaration of emergency in the County of Madera.
- G. On March 16, 2020, Governor Newsome issued Executive Order N-28-20. Among the provisions in that Executive Order were provisions which waived any provisions of state law that would preempt or otherwise restrict a local government’s exercise of its police power to impose substantive limitations on residential or commercial evictions, including but not limited to Civil Code Sections 1940 et seq. or 1954.25 et seq., until May 31, 2020, unless extended.

- H. On March 18, 2020, the City Council of the City of Madera adopted Resolution 20-30 and proclaimed the existence of a local emergency in the City of Madera.
- I. On March 19, 2020, the Governor issued Executive Order N-33-20 requiring people within the State to stay at home, other than to obtain food and other essential services. As a result of this public health emergency and the precautions mandated, many tenants in Madera have experienced or expect soon to experience sudden and unexpected income loss.
- J. The Governor has stated that individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19, and such individuals and their families may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks.
- K. On March 27, 2020, Governor Newsom issued Executive Order N-37-20. That Order extends by sixty days the period for a residential tenant who is served with an eviction summons to respond. The extension is applicable only to a residential tenant's inability to pay rent due to COVID-19 related reasons.
- L. The City Council has the power, under Government Code sections 36934 and 36937, to adopt an ordinance that takes effect immediately if it is an ordinance "[f]or the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the City Council."

SECTION 3. PROHIBITION ON EVICTIONS. The statutory cause of action for judicial foreclosure, Code of Civil Procedure section 725a et seq., the statutory cause of action for unlawful detainer, Code of Civil Procedure section 1161 et seq., and any other statutory cause of action that could be used to evict or otherwise eject a residential or commercial tenant or occupant of residential real property after foreclosure is suspended as applied to any residential or commercial tenancy of real property and any occupation thereof as described in this Ordinance.

A temporary moratorium on eviction for non-payment of rent by residential and commercial tenants impacted by the COVID-19 crisis is imposed and applies as provided in this Ordinance.

- A. A landlord shall not evict a residential or commercial tenant for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19.

- B. A landlord who knows that a tenant cannot pay some or all of the rent temporarily for the reasons set forth in this Ordinance shall not serve a notice pursuant to Code of Civil Procedure Section 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict a tenant for nonpayment of rent.

A landlord knows of a tenant's inability to pay rent within the meaning of this Ordinance if the tenant, before the date that rent is due or within a reasonable period of time not to exceed seven (7) day, notifies the landlord in writing that the tenant needs to delay all or some payment of rent due to lost income and inability to pay due to financial impacts related to COVID-19, and provides documentation to support the inability to pay rent claim.

- C. For purposes of this Ordinance, "financial impacts related to COVID-19" include, but are not limited to, tenant lost income as a result of any of the following:

- (1) Being sick with a suspected or confirmed case of COVID-19, or caring for a household or family member who is sick with a suspected or confirmed case of COVID-19;
- (2) Lay-off, reduction of hours, or other income reduction resulting from COVID-19, the state of emergency or a related local, state, or federal government response;
- (3) Compliance with a recommendation or order from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency;
- (4) Compliance with local, state, or federal government orders to shelter-in place, to reduce business hours, to close businesses, to change the manner of operating the business;
- (5) Substantial out-of-pocket medical expenses; or
- (6) Childcare needs arising from school closures related to COVID-19.

- D. For purposes of this Ordinance "in writing" includes handwritten, typewritten, email or text communications to a landlord or the landlord's representative with whom the tenant has previously corresponded. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's notice.

SECTION 4. COLLECTION OF BACK RENT. Nothing in this Ordinance shall relieve a tenant of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency and the tenant must pay within six months of the expiration of the local emergency. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this

Ordinance; nor may a landlord seek rent that is delayed for the reasons stated in this Ordinance through the eviction process.

SECTION 5. APPLICABLE PERIOD. The protections of this Ordinance are effective as of March 4, 2020, the date the Governor of the State of California declared state of emergency due to COVID-19 and shall remain in effect through May 31, 2020, in accordance with Governor Newsom’s Executive Order N-28-20 or as may be extended by an executive order of the Governor or by state law.

SECTION 6. REMEDIES. In the event of a violation of this Ordinance, an aggrieved tenant may institute a civil proceeding for injunctive relief, and money damages as specified below, and whatever other relief the court deems appropriate. Money damages shall be awarded if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of this Ordinance. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the tenant under local, state or federal law. In addition, this Ordinance grants a defense to eviction in the event that an unlawful detainer action is commenced in violation of this Ordinance.

SECTION 7. SEVERANCE. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Ordinance or application thereof would be subsequently declared invalid or unconstitutional.

SECTION 8. CEQA. This Urgency Ordinance is exempt from the California Environmental Quality Act (“CEQA”) under Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where, as here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The adoption of a temporary moratorium on evictions would not cause a significant effect on the environment

SECTION 9. EMERGENCY FINDINGS. Based on the findings set forth in Section 2 of this Ordinance and in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, the City Council believes it is necessary to issue and implement this Urgency Ordinance to protect life, property and civil order. An urgency ordinance that is effective immediately is necessary to avoid the immediate threat to public peace, health, and safety as a failure to adopt this urgency ordinance would result in the displacement of City residents and community members. The directives from the State and the County to contain the spread of

COVID-19 have resulted in loss of business, furloughs, loss of wages, and lack of work for employees. To protect the public health, safety, and welfare, the City must act to prevent the eviction of tenants who are unable to pay rent due to wage losses caused by the effects of COVID-19. An emergency measure is necessary to protect tenants from eviction for a temporary period.

In summary, the City Council finds that there is a current and immediate threat to public health, safety, and welfare posed by COVID-19, and there is an immediate need for the preservation of public peace, health or safety of the residents and community of the City. One of the many effects of the COVID-19 pandemic is that the stay at home order precludes many residents of the City from working or significantly reduces the hours that may be worked or requires residents to refrain from working or to work fewer hours to take care of children who are home because schools are closed, take care of ill family members, or because they themselves are ill. The City Council further finds that during this local emergency, and in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement to protect the City's affordable housing stock and to prevent housed individuals from falling into homelessness. Additionally, the loss of income as a result of COVID-19 may inhibit City residents and businesses from fulfilling their financial obligations, including paying rent, while further economic impacts are anticipated, leaving tenants vulnerable to eviction.

SECTION 10. EFFECTIVE DATE. This ordinance is an emergency ordinance for the immediate preservation of the public peace, health, and safety and shall become effective immediately upon its adoption by a vote of 4/5 affirmative vote of the City Council per Government Code Section 36937.

SECTION 11. PUBLICATION. This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 6th day of April 2020.

Andrew Medellin, Mayor

ATTEST:

I, Alicia Gonzales, City Clerk of the City of Madera, California, do hereby certify that the City Council duly adopted the foregoing Urgency Ordinance No. ____ at its regular meeting held on the ____ day of April 2020, by the following roll call vote:

MEMORANDUM FROM CITY ATTORNEY

DATE: April 6, 2020
TO: Mayor and City Council
CC: Arnaldo Rodriguez, City Manager
FROM: Hilda Cantú Montoy, City Attorney 
RE: Local Agency Regulation of Evictions and Foreclosures Under Executive Orders During COVID-19 Pandemic

This memo provides legal background and guidance regarding specific issues related to a City's authority to restrict evictions and foreclosures as a result of the COVID-19 pandemic and associated emergency in light of Governor Newsom's Executive Orders.

NOTE: Given the fluidity of the pandemic, it is possible subsequent Executive Orders, court decisions, or guidance provided by the State may result in refinement of the conclusions.

1. WHAT DOES GOVERNOR NEWSOM'S EO N-28-20 AUTHORIZE REGARDING EVICTIONS?

Governor Newsom issued EO N-28-20 issued on March 16, 2020, which addresses various matters relating to the State of Emergency he declared on March 4, 2020. Relevant here is the language regarding eviction restrictions.

Key provisions in the Order include:

- Removal of statutory restrictions on local governments relating to evictions which thereby allows local governments to impose eviction restrictions.
- The permissible restrictions include a suspension on residential and commercial evictions and occupants of residential real property after foreclosure for tenants who are unable to pay their rent because of COVID-19.
- The Order does not empower local governments to place a moratorium on all evictions. The reason for eviction must be linked to the coronavirus pandemic.
- The Order does not relieve a tenant of an obligation to pay rent or limit a landlord's ability to recover rent that is due.
- The Order is effective until May 31, 2020, unless extended by Executive Order.

In summary, the Order allows a city to enact an ordinance protecting tenants as follows:

A. Residential Tenants. Local governments may protect residential tenants from evictions for nonpayment of rent where:

- i. The household experienced either a substantial decrease in income (e.g., due to a layoff or reduction in hours), or substantial out-of-pocket medical expenses and/or
- ii. The loss of income or medical expenses were caused by COVID-19 or the government's response to COVID-19, such as shelter-in-place or similar orders.

B. Commercial Tenants. Local governments may protect commercial tenants from evictions for nonpayment of rent in cases where:

- i. The business experienced a substantial decrease in income and
- ii. The loss of income was caused by COVID-19 or the government's response to COVID-19 (e.g., due to a reduction in hours of operation because of decreased consumer demand or closure due to government orders).

2. WHAT DOES EO N-37-20 SAY ABOUT EVICTIONS?

On March 27, 2020, the Governor issued Executive Order N-37-20, effective immediately, banning the enforcement of evictions orders for renters affected by COVID-19 through May 31, 2020. The order prohibits landlords from evicting residential tenants for nonpayment of rent and prohibits enforcement of evictions by law enforcement or courts.

Key provisions of that Order include the following:

- Prior to the date of this Order, the tenant paid rent due to the landlord pursuant to an agreement.
- The tenant notifies the landlord in writing before the rent is due, or within a reasonable period of time afterwards not to exceed 7 days, that the tenant needs to delay all or some payment of rent because of an inability to pay the full amount due to reasons related to COVID-19, including but not limited to the following:
 - The tenant was unavailable to work because the tenant was sick with a suspected or confirmed case of COVID-19 or caring for a household or family member who was sick with a suspected or confirmed case of COVID-19;
 - The tenant experienced a lay-off, loss of hours, or other income reduction resulting from COVID-19, the state of emergency, or related government response; or
 - The tenant needed to miss work to care for a child whose school was closed in response to COVID-19.

- The tenant retains verifiable documentation, such as termination notices, payroll checks, pay stubs, bank statements, medical bills, or signed letters or statements from an employer or supervisor explaining the tenant's changed financial circumstances, to support the tenant's assertion of an inability to pay. This documentation may be provided to the landlord no later than the time upon payment of back-due rent.
- The tenant remains obligated to repay the full rent amount in a timely manner and could still face eviction after the enforcement moratorium is lifted.
- The EO is currently in effect through May 31, 2020, unless extended.

3. Do the Executive Orders Apply to Evictions for Reasons other than Payment of Rent?

The EO's apply only to evictions for nonpayment of rent relating to COVID-19. However, Court closures and sheriffs' non enforcement of eviction related lock-out orders effectively prevent the filing of an eviction lawsuit for any purpose.

4. If a City Adopts a Moratorium Ordinance Per EO N-28-20 Must It Include Any of the Requirements of EO N-37-20?

EO N-37-20 was issued subsequent to EO N-28-20. Taken together, the Executive Orders allow a local jurisdiction to impose certain limitations on evictions and suspend certain eviction actions including for foreclosures that would circumvent the state adopted eviction restrictions.

Some uncertainty is created with the following text from EO N-37-20: "It is further ordered that this Order supersedes Executive Order N-28-20 to the extent that there is any conflict with that Order."

One could argue that an inconsistency arises in that the newer Order only applies to residential tenancies so an ordinance under EO N-28-20 may not apply to commercial tenancies. Another argument is that the newer Order has more specific language regarding notice by the tenant.

This office's conclusion is that the City may enact its own ordinance which may apply to both residential and commercial tenancies. Ambiguity is created by the statements from the Governor's websites such as: "Today's action builds on Governor Newsom's previous executive order authorizing local governments to halt evictions for renters impacted by the pandemic." However, we recommend that the notice requirements in N-37-20 be part of any ordinance as they are so specifically framed in N-37-20.

5. May cities and other local entities adopt eviction restrictions that are broader than the authority granted under state law authority or an emergency Executive Order by the Governor?

Our view is that an ordinance should stay within the confines of the Executive Orders issued by the Governor. One of the main issues in this regard is the time period for the eviction moratorium ordinance.

The safer legal approach is that a city not attempt to extend local bans on evictions or foreclosures beyond the period of an active EO. In that regard, the ordinance prepared per the City Council's direction provides:

The protections of this Ordinance are effective as of March 4, 2020, the date the Governor of the State of California declared state of emergency due to COVID-19 and shall remain in effect through May 31, 2020, in accordance with Governor Newsom's Executive Order N-28-20 or as may be extended by an executive order of the Governor or by state law.

The Council may direct that this office report back prior to May 31, 2020, to review whether the Governor has extended the time period. In the event that he has not, the City may weigh its options at that time. By then there will be more information.

Our research reflects that the general rule is that a city may not legally regulate evictions outside of the rent control process or context, and even then there are limitations on a city's authority. Although no case was located in the time available that expressly held that a city may or is prohibited from extending eviction emergency restrictions beyond the parameters authorized by an Executive Order such as the time period under a declared emergency, there are potential legal preemption issues. Absent guidance from the courts, the City could be stepping into uncharted and legally risky territory if it enacts a ban on evictions beyond the time authorized by the Executive Order.

If this were not the case, there would be no reason for the Governor to issue an Executive Order which specifically authorized cities to regulate COVID-19 related evictions during the course of the declared emergency. If this were not the case, many more cities would have their own ordinances even when there is no emergency.

A city may not enact local laws that conflict with "general" or state laws. (Cal. Const. art XI, §7.) Local legislation that conflicts with general laws of the state is void. (*Cohen v Board of Supervisors* (1985) 40 Cal.3d 277, 290; *People ex rel Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 484.) A local law that conflicts with state law within the meaning of California Constitution article XI, Section 7, if it either i) duplicates, ii) contradicts, or iii) enters a field which has been fully occupied by state law, whether expressly or by legislative implication. (*California Fed. Sav. & Loan Assn v. City of Los Angeles* (1991) 54 Cal.3d 1; *Candid Enters, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885; *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.th 383, 396.)

The mere fact that the state, in the exercise of its police powers, has enacted certain regulations does not prohibit a municipality from imposing additional requirements on the same subject. As long as no conflict exists between the two, the requirements of the municipal ordinance are not unreasonable or discriminatory, and the state has not preempted the field, both will stand. (*City of Riverside v. Inland Empire Patients & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 743; *California Rifle & Pistol Ass'n, Inc. v. City of W. Hollywood* (1998) 66 Cal.App.th 1302.) However, a local law contradicts state law when its purpose is inimical to the purpose of the state law (see *Ex Parte Daniels* (1920) 183 Cal 636, 642); prohibits what the legislature intends to authorize (see *Northern Cal. Psychiatric Soc'y v. City of Berkley* (1986) 178 Cal.App.3d 90, 105); or otherwise fails to

follow state mandates (see *Bank of the Orient v. Town of Tiburon* (1990) 220 Cal.App.3 992, 1004, disapproved on other grounds in *Morehart v. County of Santa Barbara* (1994) 7 Cal.th 725, 743 n 11.)

A declared emergency can provide certain exceptions to this general rule. However, if a city were to exceed the scope or period of time authorized by an executive order (outside the rent control context), then the local law could prohibit evictions that the legislature has authorized or otherwise inhibit or make impossible for a landlord to act under state law regarding evictions. Under these circumstances there is a higher probability a court would determine the local law has been preempted by state law and is void. Likewise, there is also a greater risk of claims related to a Constitutional takings issue, unlawful interference with contractual obligations, inverse condemnation, or other claims that could be brought by landlords.

The City ordinance cannot modify statutory eviction procedures. A municipality is generally not authorized to regulate eviction procedures except in furtherance of the public objectives of a rent control ordinance. (*Foster v. Britton*, 242 Cal. App. 4th 920, 932, 195 Cal. Rptr. 3d 800 (1st Dist. 2015); *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 141, 130 Cal. Rptr. 465, 550 P.2d 1001 (1976); *Lancaster v. Municipal Court*, 6 Cal. 3d 805, 807, 100 Cal. Rptr. 609, 494 P.2d 681 (1972); *City of Santa Clara v. Von Raesfeld*, 3 Cal. 3d 239, 245–246, 90 Cal. Rptr. 8, 474 P.2d 976 (1970); *Galvan v. Superior Court of City and County of San Francisco*, 70 Cal. 2d 851, 859, 76 Cal. Rptr. 642, 452 P.2d 930 (1969).) The ordinance can impose substantive defenses to eviction that are consistent with the purposes of the ordinance. In doing so, however, it cannot impose procedural conditions to an eviction, such as the necessity to obtain a permit to evict as a condition to filing an unlawful detainer proceeding. (*Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 149–151, 130 Cal. Rptr. 465, 550 P.2d 1001 (1976).) Thus, under existing law, municipalities may by ordinance limit the substantive grounds for eviction in the context of a rent control ordinance by specifying that a landlord may gain possession of a rental unit only on certain limited grounds. (See *Fisher*, supra, 37 Cal.3d at p. 707, 209 Cal.Rptr. 682, 693 P.2d 261; *Birkenfeld*, supra, 17 Cal.3d at p. 149, 130 Cal.Rptr. 465, 550 P.2d 1001.) But cities may not procedurally impair the summary eviction scheme set forth in the unlawful detainer statutes and they may not alter the Evidence Code burdens of proof. (*Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009), citing *Birkenfeld*, supra, at p. 151, 130 Cal.Rptr. 465, 550 P.2d 1001; *Fisher*, supra, at p. 709, 209 Cal.Rptr. 682, 693 P.2d 261.)

For example, a municipality cannot enact an ordinance under the guise of rent control that requires a 60-day notice to increase rents when the restriction is not related to rent control regulation. (*Tri County Apartment Assn. v. City of Mountain View*, 196 Cal. App. 3d 1283, 1292–1293, 1298, 242 Cal. Rptr. 438 (6th Dist. 1987).)

The limited power to address eviction issues has been applied when the City is attempting to implement rent control laws. In *Rental Housing Assn. of Northern Alameda County v. City of Oakland*, implementation of “a just for cause” eviction restriction -adopted by initiative to supplement the City’s rent control ordinance - required that tenants be provided notice and an opportunity to cure any offending conduct before a landlord may resort to eviction. While preempted on several grounds (despite the great deferrals granted by the court) the initiative was found not to be preempted as a procedural barrier to the prosecution of unlawful detainer proceedings. The court allowed the city to regulate the substantive grounds for eviction not the

actual remedy available. However, it was only a temporary halt on when an eviction can be brought in the context of a rental control ordinance to which there are special exceptions under state law.

6. May Cities Enact Local Ordinances Under EO 28-20 Prohibiting Mortgage Foreclosures?

No. First, the EO refers to evictions caused by foreclosures not to foreclosures per se. Second, the EO requests but does not order that financial institutions such as banks and credit institutions implement a moratorium on residential and commercial foreclosures and related evictions. Like the restrictions on evictions, the reason must be linked to loss of income due to COVID-19.

The governor stopped short of directing financial institutions to halt coronavirus-related foreclosures. This may be due to concerns that a directive would violate the takings clause of the U.S. Constitution requiring the government to pay just compensation for taking private property. However, in interpreting the contracts clause of the Constitution, the U.S. Supreme Court upheld a state's temporary moratorium on foreclosures during the Great Depression. While the Order is similarly meant to provide relief during an economic downturn, there may be a concern if a mandatory moratorium was challenged the current makeup of the Supreme Court would result in a different outcome. It is also an open question whether a legal challenge to a state request, rather than a directive, for a moratorium would be successful.

Lenders and financial institutions may be taking caution in denying this request, particularly as the requirements for government aid and federal assistance for banks have not been clearly stated or fleshed out. Federal banking regulators recently urged financial institutions to work constructively with borrowers and committed to "favorably consider" retail banking services and lending activities such as the expansion of credit, loan modifications, and extensions that assist small businesses, under the Community Reinvestment Act. Under the EO, it is unclear whether financial institutions may obtain direct or indirect COVID-19 relief. The EO directs the California Department of Business Oversight to "engage with financial institutions to identify tools to provide relief from the threat of residential foreclosure and displacement." Government relief programs like mortgage subsidies or loans for affected homeowners would ultimately benefit lenders. Such programs would permit homeowners to continue to pay off their mortgage and lenders would not need to initiate eviction proceedings. Additionally, the order does not expressly prohibit the granting of relief directly to financial intuitions that comply with the governor's request to halt coronavirus-related evictions.

In summary, at this time there is no state or federal order (or legislation) halting foreclosures. However, most banks are voluntarily deferring from initiating foreclosures, extending payment due dates, and adopting forbearance programs without penalties/late fees.

For example, Freddie Mae is:

Providing mortgage forbearance for up to 12 months,

Waiving assessments of penalties and late fees,

Halting all foreclosure sales and evictions of borrowers living in Freddie Mac-owned homes until at least May 17, 2020,

Suspending reporting to credit bureaus of delinquency related to forbearance,

Offering loan modification options that lower payments or keep payments the same after the forbearance period.

The Department of Housing and Urban Development (HUD) has released guidance urging mortgage servicers to halt pending foreclosures and refrain from initiating new foreclosures for 60 days for borrowers with single-family mortgages insured by the FHA.

7. Once EO N-37-20 and N-28-20 Expire or Not Extended, May Landlords Terminate Tenants or Must They Give Reasonable Period for Payment?

Once the EOs expire, the landlords may proceed to evict tenants consistent under State law. There is not a requirement for them to give a reasonable period for payment. Indeed, as noted above, the EOs make clear that to the extent possible the tenants should pay all or a portion of the rent available to them.

In other words, when the temporary suspension of the State statutes expires, a city's authority to act under those EOs also expires.