

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: SUE GALLAGHER, CITY ATTORNEY
SUBJECT: SONOMA COUNTY COVID-19 EVICTION DEFENSE
ORDINANCE

AGENDA ACTION: RECEIVE REPORT

RECOMMENDATION

It is recommended by the City Attorney that Council receive a report on the provisions and operation of the Urgency Ordinance of the County of Sonoma and the Sonoma County Community Development Commission Establishing an Affirmative Defense to Eviction Arising from Income Loss or Substantial Medical Expenses Related to COVID-19. No action by Council is requested at this time.

EXECUTIVE SUMMARY

On March 24, 2020, the Sonoma County Board of Supervisors, acting in its capacity as both the Board of Supervisors and the Board of Commissioners of the Sonoma County Community Development Commission, unanimously adopted an ordinance providing an avenue for relief from evictions for tenants suffering from substantial loss of income or medical expenses related to the COVID-19 pandemic or any local, state, or federal government response to the COVID-19 pandemic.

The ordinance establishes an affirmative defense, which may be used in court as protection against eviction, for tenants who can demonstrate, through documentation or other objectively verifiable means, that their failure to pay rent results from a substantial loss of income or substantial out-of-pocket medical expenses associated with the COVID-19 pandemic or any local, state, or federal government response to the COVID-19 pandemic.

The ordinance does not relieve the tenant of the obligation to pay rent, nor does it restrict a landlord's ability to recover rent due. The Ordinance provides a sixty-day period after the termination of the local Public Health Emergency for payment of all unpaid rent.

The Urgency Ordinance became effective upon adoption and it applies throughout the County, in both incorporated and unincorporated areas.

No action is required or requested of the Council at this time.

BACKGROUND

On March 16, 2020, Governor Newsom issued Executive Order N-28-20, which, among other matters, suspended state law restrictions on the power of local governments to limit residential or commercial evictions when the basis for the eviction is nonpayment of rent arising out of a substantial decrease in income or out-of-pocket medical expenses caused by the COVID-19 pandemic or by any local, state or federal government response to COVID-19. The Governor's Order does not itself place any limit on evictions, but rather allows local governments to impose limitations when the local government deems it appropriate for its own community. The Governor's Order does not relieve tenants of the obligation to pay rent, nor restrict landlords' ability to recover rent due.

The Governor's Order allowing for local action is in effect through May 31, 2020, and may be extended. Several cities and counties across the state have taken action under the Governor's Order to limit evictions, including, in Northern California, the Counties of Sonoma, Marin, Alameda, Santa Clara, San Mateo and Santa Cruz, as well as the Cities of San Jose and Monterey. Adopted ordinances vary from jurisdiction to jurisdiction.

Sonoma County's action took place last Tuesday, March 24th. In response to the Governor's Order, and in recognition of the Health Officer's Declaration of Local Health Emergency and the Proclamations of Emergency issued by the State, the County, the City of Santa Rosa and other cities, the Sonoma County Board of Supervisors, acting in its capacity as both the Board of Supervisors and the Board of Commissioners of the Sonoma County Community Development Commission, adopted the COVID-19 Eviction Defense Ordinance (Ordinance), a copy of which is attached.

The Ordinance was adopted pursuant to the County's emergency powers under the California Emergency Services Act (Government Code §§ 8550 et seq), and is intended to apply throughout the County, in both incorporated and unincorporated areas.

PRIOR CITY COUNCIL REVIEW

Not applicable.

ANALYSIS

The County's Ordinance is designed to prevent residential evictions that might otherwise occur due to a tenant's substantial loss of income or medical expense resulting from the COVID-19 pandemic. The Ordinance arises out of, and is closely tied to the Sonoma County Public Health Officer's Order No.C19-03, dated March 17, 2020,

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directing that all residents in the County shelter at their place of residence, as well as the California Governor's Executive Order N-33-20, dated March 19, 2020, ordering individuals residing in California to stay home or at their place of residence except as needed for essential activities. Focused on those individuals and families impacted by the pandemic, the County's ordinance is intended to avoid residential displacements that might otherwise push people into homelessness or overcrowded living conditions and thereby increase the risk of the spread of COVID-19 in our community.

The key elements of the Ordinance are as follows:

- The Ordinance prohibits landlords from evicting a tenant for failure to pay rent if the tenant demonstrates that the failure to pay rent results from a substantial loss of income or substantial out-of-pocket medical expenses associated with the COVID-19 pandemic or any local, state, or federal government response to the COVID-19 pandemic.
- The substantial loss of income may be from (a) job loss, (b) layoffs, (c) a reduction in the number of compensable hours of work, (d) a store, restaurant, office or business closure, (e) a substantial decrease in business income caused by a reduction in open hours or consumer demand, (f) the need to miss work to care for a home-bound school-age child or a family member infected with coronavirus, or (g) other similarly-caused loss of income that resulted from the COVID-19 pandemic.
- The tenant must demonstrate the substantial loss of income or substantial out-of-pocket medical expenses through documentation or other objectively verifiable means.
- The tenant must share the documentation with the landlord for the purpose of supporting the landlord's claim for mortgage relief. The Ordinance itself does not create a path for mortgage relief, as mortgage relief is outside the authority of local government.
- The prohibition against evictions also applies to a landlord's action that constitutes constructive eviction (such as termination of a tenant's utilities).
- A landlord's failure to comply with the Ordinance will render any notice of eviction void.
- The Ordinance may be used by the tenant as an affirmative defense against an unlawful detainer action brought in Superior Court by a landlord in violation of the Ordinance.

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- The Ordinance creates a private right of action by which a tenant may file a civil action against a landlord for a violation of the ordinance. In that action, the tenant may seek injunctive relief and treble money damages (recovery equal to three times the actual damages). Relief may include damages for mental or emotional distress, provided however that those damages will be trebled only if the landlord acted in knowing violation or reckless disregard of the Ordinance. The prevailing party in the action is entitled to costs and attorneys' fees.
- The Ordinance does not relieve the tenant of the obligation to pay rent, nor restrict a landlord's ability to recover rent due.
- The Ordinance is intended to remain in effect for sixty days after the Public Health Emergency and Local Emergency Orders are no longer in effect, so as to provide time for tenants to pay unpaid rent.

As an Urgency Ordinance, the Ordinance became effective immediately upon adoption. It is thus now in effect throughout the County, in both incorporated and unincorporated areas.

It is important to note that the Ordinance does not require any enforcement action or other implementation by the City of Santa Rosa or any other local jurisdiction. Instead, it creates an affirmative defense and private right of action for use by private tenants facing unpermitted eviction proceedings. The Ordinance is implemented through private civil proceedings.

Notwithstanding its application throughout the County, the Ordinance does not preclude separate action by the incorporated cities within the County on the subject of evictions. With respect to separate action by cities, the Ordinance states "[I]t is the intention of the Board of Supervisors and Board of Commissioners to establish an affirmative defense against residential evictions that applies uniformly throughout the County of Sonoma, to both unincorporated and incorporated areas. However, in the event individual cities or towns deem it necessary or advisable to take separate action to adopt their own eviction moratoria within their jurisdictions, the Board of Supervisors and Board of Commissioners urge those cities and towns to enact measures that will, to the greatest extent practicable, be consistent with this Ordinance." To avoid any inconsistency or confusion across jurisdictional boundaries, the Office of the City Attorney recommends that the Santa Rosa City Council take no separate action, but rather allow the County-wide Ordinance to operate uniformly.

FISCAL IMPACT

Not applicable.

ENVIRONMENTAL IMPACT

No action is being taken by Council at this time.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

NOTIFICATION

Not applicable.

ATTACHMENTS

- Attachment 1 - Sonoma County COVID-19 Eviction Defense Urgency Ordinance
- Attachment 2 - Governor's Executive Order N-28-20
- Attachment 3 - Governor's Executive Order N-33-20
- Attachment 4 - Order of the Health Officer of the County of Sonoma No. C-19-03

CONTACT

Sue Gallagher, City Attorney, sgallagher@srcity.org, 707-543-3040