

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL

FROM: SUE GALLAGHER, CITY ATTORNEY
CITY ATTORNEY'S OFFICE

SUBJECT: ADOPTION OF AN URGENCY ORDINANCE TEMPORARILY
REGULATING TENANT EVICTIONS IN THE CITY OF SANTA
ROSA

AGENDA ACTION: URGENCY ORDINANCE

RECOMMENDATION

In light of conditions created by the wildfires of October 2017, it is recommended that the Council consider an urgency ordinance establishing temporary restrictions on tenant evictions in Santa Rosa. The proposed ordinance would take effect immediately upon adoption and would be of limited scope and duration.

EXECUTIVE SUMMARY

In the early hours of October 9, 2017, a series of wildfires swept in from the east into Sonoma County and the City of Santa Rosa. The fires continued for days, ultimately becoming the most destructive wildfire event in California history. The fires burned more than 90,000 acres in Sonoma County and, within the City of Santa Rosa alone, destroyed or damaged approximately 3000 residential units. Thousands of residents were displaced.

The sudden and substantial loss of residential units exacerbated the City's already existing housing shortage. Staff has received evidence that some landlords are taking advantage of the circumstances to evict lower income tenants in order to rent, at significantly higher rates, to households displaced by the fires. The City's low vacancy rates and the sudden spike in rents may make it difficult, if not impossible, for those lower income tenants to find replacement rental housing within Santa Rosa, placing them at risk of housing instability and homelessness.

At the request of Council members, this item offers a temporary urgency ordinance for the Council's consideration. The proposed ordinance would establish limited

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restrictions on residential tenant evictions during the term of the state and federal declarations of emergency, and is intended to provide protections to existing tenants and bring greater stability to the rental market. Although drafted as an urgency ordinance to take effect immediately, the Council may, as an alternative, consider its adoption as a regular ordinance.

BACKGROUND

As the Council is well familiar, beginning in the earliest hours of October 9, 2017, a series of wildfires swept in from the east into Sonoma County and the City of Santa Rosa. The fires continued for days, ultimately becoming the most destructive wildfire event in California history. The fires burned more than 90,000 acres in Sonoma County and, within the City of Santa Rosa alone, destroyed or damaged approximately 3000 residential units and numerous commercial structures. Thousands of households were suddenly displaced.

In light of the extreme conditions, a series of emergency declarations were issued. On October 9, 2017, at 3:17 a.m., the City Manager, in his capacity as Director of Emergency Services, proclaimed the existence of a local emergency in the City of Santa Rosa. Later that same day, the Governor of the State of California proclaimed a State of Emergency for Sonoma and other counties. The following day, October 10, 2017, the President of the United States declared the existence of a major disaster in the State of California and ordered federal aid to supplement state and local recovery efforts in the areas affected by the fires. On October 13, 2017, at a special meeting, the City Council adopted Resolution No. RES-2017-201, ratifying the City Manager's proclamation of the existence of a local emergency. All of the emergency declarations remain in effect at this time.

The fires destroyed approximately 5% of the City's housing stock. The sudden and substantial loss of residential units, both rental and owner-occupied, exacerbated the City's already existing housing shortage and further disrupted an already unstable rental market. There is evidence that the rental market is further skewed by the presence of insurance proceeds, which may allow some households displaced by the fire to afford higher rents, while increasing the risk that other households may be displaced or priced out of the market.

Staff of Housing and Community Services has received multiple reports that some landlords may be taking advantage of the exceptional circumstances to evict existing lower income tenants in order to rent, at significantly higher rates, to insured households displaced by the fires. Since the fires, eight of the City's Section 8 Housing Choice Voucher recipients have received 60 day eviction notices. Staff has received anecdotal information of many non-Section 8 renters receiving such notices as well.

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The combination of the City's extremely low vacancy rates and the sudden spike in rents may make it difficult, if not impossible, for lower income tenants to find affordable rental housing within Santa Rosa, placing those individuals and families at increased risk of housing instability and homelessness.

PRIOR CITY COUNCIL REVIEW

On August 30, 2016, Council adopted Ordinance No. 4072, to add a new chapter to the City Code to establish generally-applicable provisions for residential rent control and just cause evictions. Ordinance No. 4072 was the subject of a referendum and was overturned by the voters on June 6, 2017.

ANALYSIS

A. Terms of the Proposed Ordinance.

To help address the continuing impacts of the loss of 3000 residential units and the resulting disruption to the City's residential rental market, Council members have requested that staff bring forward, for the Council's consideration, a proposed ordinance to establish temporary regulations regarding residential tenant evictions.

As drafted, the proposed ordinance would temporarily prohibit a landlord from evicting a tenant or refusing to renew a rental, except for one or more of the following reasons:

- (a) Nonpayment of rent.
- (b) Repeated late payment of rent.
- (c) Violation of obligations under the rental agreement.
- (d) Creation of a nuisance.
- (e) Illegal use of the rental unit.
- (f) Refusal by the tenant to renew a rental agreement on the same terms following expiration.
- (g) Refusal by the tenant to provide the landlord access to the unit for repair, inspection or potential sale or financing.
- (h) Landlord's need to correct City Code violations or recover possession under order by any government agency.

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- (i) Withdrawal of the rental unit from the rental market by the landlord seeking to exit the rental business.
- (j) The intent to occupy the rental unit as a principal residence by the landlord, a close relative or a resident manager.

Those restrictions on tenant evictions would remain in effect only so long as the City remained subject to a state or federal declaration of emergency arising from the wildfires.

B. Elections Code Limitations

Concerns have been raised as to potential state law limitations on the Council's ability to consider eviction regulations, in light of the defeat of Measure C last June.

In August 2016, the City Council adopted a generally-applicable ordinance which, in relevant part, included a requirement for just cause for tenant evictions within the City of Santa Rosa. (Ordinance No. 4072.) That ordinance was challenged by referendum, placed on the ballot as Measure C, and was overturned by the voters on June 6, 2017.

After a rejection by the voters, Elections Code Section 9241 generally precludes the City Council from re-adopting the same ordinance for a period of one year from the date of the vote. The courts have read that provision of the Elections Code to preclude any new ordinance that is "essentially the same" as the defeated measure. The limits of that rule have been stated by the courts as follows:

"[When an ordinance has been suspended by referendum] the council cannot enact another ordinance *in all essential features* like the repealed ordinance . . . The council may, however, deal further with the subject matter of the suspended ordinance, by enacting an ordinance essentially different from the ordinance protested against, avoiding, perhaps, the objections made to the first ordinance. If this be done, not in bad faith, and not with intent to evade the effect of the referendum petition, the second ordinance should not be held invalid for this cause." (emphasis added)

This is known as the "Stratham Rule," based on a case from 1920, and it continues to be in use by the courts today. The decisions tend to be very fact specific, with some subsequent ordinances upheld and others struck down. Two examples of subsequent ordinances that were upheld are:

- A referendum was filed against a Los Angeles ordinance that imposed a living wage requirement for hotel service workers in the area surrounding LAX. The Court upheld a subsequent ordinance that, instead, created an "Airport Hospitality Enhancement Zone" in the area. The new ordinance provided various economic benefits and financial incentives for businesses within the Enhancement Zone, committed the City to expend funds for street improvements

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in the area, for a market analysis, and for a job training program for hotel and restaurant workers, and imposed the living wage requirement but allowed it to be phased in over time. The second ordinance was drafted after negotiations with a variety of interest groups. The Court found that the new ordinance was essentially different from the first and had attempted in good faith to address the public's objections to the initial Living Wage Ordinance. (*Rubalcava v. Martinez* (2007) 158 Cal.App.4th 563.)

- A referendum was filed against a Sausalito ordinance that provided for the purchase of certain land, followed by a lease on favorable terms to a specific private corporation. The Court upheld a subsequent resolution that scaled back so as to simply establish a policy in favor of acquisition of that land for public recreational purposes, with no provision for a subsequent private lease. (*Reagan v. City of Sausalito* (1962) 210 Cal.App.2d 618.)

Under these standards, it appears that Elections Code Section 9241 would not preclude adoption of the temporary regulations on residential tenant evictions proposed here, given the exceptional changed circumstances now faced by the City, and the limited scope, duration and intent of the regulations.

C. Urgency or Regular Ordinance

Section 8 of the Santa Rosa City Charter allows the Council to adopt an urgency ordinance to take effect immediately upon its adoption, if the Council finds such to be necessary for the preservation of public peace, health or safety. The ordinance must state the reasons for the urgency, and a five-sevenths vote of the City Council is required for adoption.

The Council may choose to adopt the proposed ordinance either as an urgency ordinance to take effect immediately or as a regular ordinance to take effect on the 31st day. It has been proposed as an urgency ordinance in light of the currency of the effects of the wildfires, but it may be readily revised at the direction of the Council.

FISCAL IMPACT

Unknown at this time.

ENVIRONMENTAL IMPACT

The adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act under section 15061(b)3 in that there is no possibility that the implementation of this ordinance may have significant effects on the environment.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable

NOTIFICATION

Not applicable.

ATTACHMENTS

- Ordinance

CONTACT

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