

COVID-19

Eviction Defense Ordinance

City Council Meeting
June 8, 2021

Sue Gallagher, City Attorney
Megan Bassinger, Interim Director
Housing and Community Services

Background

- Follow-up from study session
- Council direction to return with City Ordinance
- Proposed Ordinance to provide protections from eviction for failure to pay rent due to financial impacts of COVID-19
- Aligned with County's original Eviction Defense Ordinance

Existing Eviction Protections

- Federal CDC Order
- State Statute
- County Ordinance

Federal Eviction Protections

- ❑ Order issued by the Center for Disease Control and Prevention
- ❑ Temporary halt to residential evictions to prevent the further spread of COVID-19
- ❑ Order originally adopted September 4, 2020
- ❑ Extended twice, most recently to June 30, 2021

Federal Eviction Protections

- ❑ Does not relieve tenant of obligation to pay rent
- ❑ Does not preclude the charging of late fees, penalties or interest
- ❑ Protections apply only for the duration of the CDC Order (currently through June 30, 2021)

Eligibility

- ❑ Income no more than \$99,000 (\$198,000 if filing jointly) in 2020
- ❑ Used best efforts to obtain all available government assistance for rent or housing
- ❑ Unable to pay the full rent due to:
 - Substantial loss of household income
 - Extraordinary out-of-pocket medical expenses

Eligibility (con't)

4. Using best efforts to make timely partial payments as close to the full payment as possible
5. No other housing options -- Eviction would likely render the individual homeless or into congregate or shared living setting
6. Each adult tenant must sign declaration of eligibility under penalty of perjury

Exceptions

- ❑ Order does not preclude evictions based on:
 - Criminal activity
 - Threatening the health or safety of other residents
 - Damage or risk of damage to property
 - Violation of building or health and safety codes
 - Violation of contract obligation, other than payment of rent

Exceptions

- ❑ Order does not apply in any state or local area with a moratorium on residential evictions that provides the same or greater level of public health protection

State Protections: AB 3088 / SB 91

- ❑ Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020, signed into law on August 31, 2020 (AB 3088), amended January 29, 2021 (SB 91)
- ❑ Prohibits residential evictions for nonpayment of rent due to financial hardship caused by the COVID pandemic
- ❑ Does not relieve the tenant of the obligation to pay rent, but provides additional time to pay

AB 3088 / SB 91

- Phase 1: If unpaid rent accrued during first six months of pandemic, the unpaid rent is converted to consumer debt and cannot ever be used as a basis for eviction
- Phase 2: If unpaid rent accrued after the first six months of pandemic, that unpaid rent is converted to consumer debt (and cannot ever be used as a basis for eviction) ONLY IF:
 - Tenant submits declaration that failure to pay rent was due to financial hardship due to COVID-19
 - Tenant pays 25% of rent due by June 30, 2021

AB 3088 / SB 91

- ❑ Authorizes landlords to seek recovery of unpaid rents (consumer debt) through Small Claims Court, beginning August 1, 2021
- ❑ Allows eviction for causes allowable under law, other than non-payment of rent due to the impacts of COVID-19
- ❑ Expressly allows for additional local eviction protections

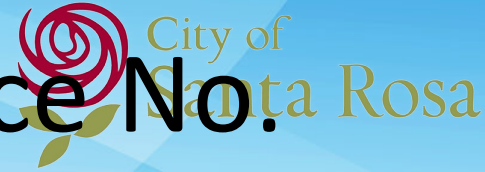
SB 91 – Additional Financial Provisions

- Establishes State Rental Assistance Program
 - \$2.6 Billion in federal rental assistance
 - Aid to income-qualified tenants most at risk (tenants at or below 80% of AMI)
 - Aid to landlords – Property owners who agree to waive 20% of unpaid rent will be eligible for reimbursement of remaining 80% of rent owed between April 1, 2020 and March 31, 2021

Sonoma County Ordinance No. 6301

- ❑ Urgency Ordinance adopted March 24, 2020
- ❑ Prohibits residential evictions for failure to pay rent if that failure to pay rent was the result of substantial loss of income or out-of-pocket medical expenses associated with COVID-19
- ❑ Does not relieve tenant of obligation to pay rent, but instead allows additional time to make that payment

Sonoma County Ordinance No. 6301



- Creates an affirmative defense, which may be asserted in the tenant's answer to an unlawful detainer action
- Creates a private right of action for any violation of the ordinance by a landlord:
 - Civil action for injunctive relief and/or damages.
 - Treble damages may be awarded
 - Damages may include damages for mental or emotional distress (but will not be trebled)

Sonoma County Ordinance No. 6301

- ❑ Ordinance adopted under County's emergency powers.
- ❑ Expressly intended to apply within incorporated and unincorporated areas
- ❑ Does not preclude additional or alternative action by cities, although consistency was urged.
- ❑ City Council received a report on the ordinance on March 31, 2020

Amendments to County Ordinance

- Urgency Ordinance adopted February 9, 2021, to expand protections of Ordinance 6301

- As amended, prohibits all evictions except as follows:
 - When necessary due to violence, threats of violence or imminent threat to the health or safety of another

 - When for purposes of removing the unit from the rental market in compliance with state law

 - When based upon nonpayment of rent between March 1, 2020 and June 30, 2021, unrelated to financial hardships resulting from COVID-19

Amendments to County Ordinance

- All other provisions of Ordinance 6301 remain unchanged:
 - Expressly intended to apply in both incorporated and unincorporated areas
 - Self-executing, no further action required by cities
 - Does not, however, preclude additional or alternative action by cities

Proposed City Ordinance

- ❑ In alignment with County's original Ordinance No. 6301
- ❑ Prohibits residential evictions for failure to pay rent if that failure to pay rent was the result of substantial loss of income or out-of-pocket medical expenses associated with COVID-19
- ❑ Does not relieve tenant of obligation to pay rent, but instead allows additional time to make that payment

Proposed City Ordinance

- Creates an affirmative defense, which may be asserted in the tenant's answer to an unlawful detainer action
- Creates a private right of action for any violation of the Ordinance by a landlord:
 - Civil action for injunctive relief and/or damages
 - Treble damages may be awarded
 - Damages may include damages for mental or emotional distress (but will not be trebled, except if willful or reckless disregard of Ordinance)

Proposed City Ordinance

- Allows additional time for repayment of outstanding rent – until 60 days after termination of the local public health emergency
 - Time for repayment, however, may be limited by state law

- Does not otherwise limit evictions allowable under state law.

QUESTIONS?