



Agenda Report

20-453

Agenda Date: 4/7/2020

REPORT TO COUNCIL

SUBJECT

Action on Ordinance No. 2015 Establishing a Temporary Moratorium on Evictions for the Non-payment of Rent and No-Fault Evictions for Residential Tenants with incomes affected by the novel coronavirus (COVID-19)

BACKGROUND

On March 24, 2020, the City Council adopted an Urgency Ordinance and approved the introduction of a regular ordinance to establish a temporary moratorium on evictions for the non-payment of rent and no-fault evictions for tenants affected by COVID-19. The Urgency Ordinance is effective for 45 days from March 24, 2020, or until May 8, 2020.

Both ordinances apply to all residential tenants renting in a building or portion of a building that is used as a home, residence or sleeping place in Santa Clara for periods in excess of seven days. The City's proposed regular ordinance would provide a moratorium on evictions until August 5, 2020 and provides that the landlord may not take legal action to recover unpaid rent until 90 days after termination of the temporary moratorium.

Also, on March 24, 2020, the County of Santa Clara adopted an eviction moratorium ordinance that applies to all the cities within the County. The County's ordinance applies to both residential and commercial tenants. The County's ordinance remains in effect until the expiration of the County's Resolution Ratifying and Extending the Proclamation of a Local Emergency, Resolution No. BOS-2020-10, and any and all extensions or renewals of such proclamation. The Landlord may begin seeking back rent 120 days after expiration of the local emergency.

On March 27, 2020, Governor Newsom issued an executive order to establish a statewide moratorium on evictions banning the enforcement of eviction orders for renters affected by COVID-19 through May 31, 2020. The order prohibits landlords from evicting tenants for nonpayment of rent and prohibits enforcement of evictions by law enforcement or courts. It also requires tenants to declare in writing, no more than seven days after the rent comes due, that the tenant cannot pay all or part of their rent due to COVID-19.

Because the Executive Order and County ordinance are applicable to the City and its residents, staff recommends making some changes to the City's proposed regular ordinance in order to align the dates and repayment period to avoid confusion for Santa Clara residents. Also, because the provisions of the regular ordinance differ now from the ordinance that was approved on March 24, the proposed regular ordinance is being re-introduced for approval, with a second reading for adoption scheduled on April 28, 2020.

DISCUSSION

The revised regular ordinance, if enacted, will establish a temporary moratorium that can be activated by City Council adoption of a resolution setting forth the facts and circumstances for activation and shall expire thirty (30) days after adoption, unless the resolution is otherwise extended by approval of the City Council. To align with the County's ordinance, a landlord may not take legal action to recover unpaid rent until 120 days after termination of the temporary moratorium.

Staff is recommending that the Council adopt a regular ordinance to establish the moratorium. The ordinance contains the following provisions:

Regular Ordinance:

- Introduced on April 7, 2020.
- Adoption proposed for April 28, 2020.
- If adopted, ordinance goes into effect 30 days after adoption, May 28, 2020.
- The regular ordinance will be activated by resolution for a 30-day period, that may be extended by resolution.

At the April 28, 2020 Council meeting, the City will also need to adopt a resolution to extend the provisions of the Urgency Ordinance so that it will remain in effect until the Regular Ordinance becomes effective.

ENVIRONMENTAL REVIEW

The ordinance regulates eviction of tenants from existing rental units and its adoption is an administrative activity that does not result in a direct or indirect physical change to the environment. Therefore, this action is exempt from environmental review under CEQA per the CEQA Guidelines section 15378(b)(5).

FISCAL IMPACT

There is no fiscal impact.

COORDINATION

This report has been coordinated with the City Attorney's office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Introduce Ordinance No. 2015 Establishing a Temporary Moratorium on Evictions for the Non-payment of Rent and No-Fault Evictions for tenants affected by COVID-19.

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Ordinance

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SANTA CLARA,
CALIFORNIA, ESTABLISHING A TEMPORARY
MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF
RENT AND NO-FAULT EVICTIONS FOR RESIDENTIAL
TENANTS WHERE THE FAILURE TO PAY RENT RESULTS
FROM INCOME LOSS RESULTING FROM THE NOVEL
CORONAVIRUS (COVID-19)**

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, international, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus now known as COVID-19;

WHEREAS, on March 11, 2020, pursuant to “The Code of the City of Santa Clara, California” (“SCCC”) section 2.140.060, City Manager Deanna Santana, as the City’s Director of Emergency Services, signed a Proclamation of Local Emergency to help ensure the City’s continuity of essential operations and services available for the City of Santa Clara to respond to the COVID-19 emergency;

WHEREAS, on March 13, 2020, the County issued a new Order mandating a countywide moratorium on gatherings of more than 100 persons and a conditional countywide moratorium on gatherings of between 35-100 persons. California Governor Gavin Newsom also called for bars, wineries, and brew pubs to close. These restrictions will impact how businesses operate that rely on customer patronage and will result in lost revenue for those that cannot continue to operate their businesses during this time;

WHEREAS, both large and smaller events across the Bay Area and in Santa Clara are cancelling or being postponed due to the County’s Order and recommendations at all levels

of government to cancel large gatherings amid concerns over spread of the virus. These cancellations and postponements cause loss in revenue for the event, as well as surrounding local businesses that rely on such events to bring in patrons to their businesses;

WHEREAS, the County Superintendent of Schools and all district superintendents in the County have decided to close schools to students for three weeks beginning Monday, March 16, 2020. These school closures will cause children to remain at home, leading to many parents adjusting their work schedules to take time off work, whether paid or unpaid. Hourly wage earners are unlikely to be paid for time off. The inability to work due to school closures will economically strain those families who cannot afford to take off time from work to stay at home;

WHEREAS, On March 16, 2020, the Health Officer of the County of Santa Clara directed all individuals living in the County to shelter at their place of residence except to provide or receive essential services. The Health Officer further directed that all business and governmental agencies cease non-essential operations at physical locations in the County;

WHEREAS, the Governor of the State of California 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 individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs;

WHEREAS, on Monday March 16, 2020, Governor Gavin Newsom issued an executive order that allows cities to suspend evictions for renters and homeowners, citing the ongoing novel

coronavirus outbreak and the related economic fallout. State government cannot suspend evictions itself, so individual municipalities must implement moratoriums themselves;

WHEREAS, during the COVID-19 emergency, affected tenants who have lost income due to the impact on the economy or their employment may be at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted, and an eviction on their record can have long lasting effects on their ability to rent in the future;

WHEREAS, further economic impacts are anticipated, leaving tenants vulnerable to eviction;

WHEREAS, 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;

WHEREAS, this ordinance is necessary to protect public health and safety, as affected by the emergency caused by the spread of COVID-19; and,

WHEREAS, staff discussions, testimony, and documentary evidence presented in a public forum support the basis of the findings and actions set forth in this ordinance.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That a new Chapter 8.65 (entitled "Emergency Evictions Protection") of Title 8 (entitled "Health and Safety") of "The Code of the City of Santa Clara, California" to read as follows:

8.65.010: Findings.

The City Council of the City of Santa Clara hereby finds as follows:

- A.** On February 10, 2020, the County of Santa Clara declared a public health emergency resulting from the spread of the novel coronavirus (COVID-19).
- B.** On March 4, 2020, the Governor of the State of California declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for a broader spread of COVID-19.
- C.** Orders and recommendations from public health officials at all levels of government require most people to stay home from work.
- D.** As a result of the COVID-19 emergency and the government orders, many tenants have experienced sudden income loss, and further impacts are anticipated, leaving tenants vulnerable to eviction.
- E.** An Ordinance to promote housing stability during the COVID-19 pandemic and to prevent avoidable homelessness is necessary for the immediate preservation of the public peace, health or safety because the COVID-19 pandemic has the potential for destabilizing the residential rental market for all of the reasons described herein. This action is intended to enable tenants in the City whose employment and income have been affected by the COVID-19 pandemic to be temporarily exempt from eviction for non-payment of rent and to reduce the risk that these events will lead to anxiety, stress and potential homelessness for the affected City residents and their communities thereby serving the public peace, health, safety, and public welfare.

8.65.020: Term, Expiration.

A. This Ordinance is effective thirty (30) days after date of its adoption and shall remain in effect for a period of six (6) months after its effective date and thereafter is repealed unless extended by ordinance.

B. The moratorium will commence upon adoption by City Council of a Resolution setting forth the facts and circumstances for activation and shall expire thirty (30) days after adoption, unless the Resolution is otherwise extended by approval of the City Council.

C. A subsequent Resolution shall set forth the facts and circumstances for activation, as well as the effective period of the non-payment moratorium set forth in the Ordinance.

8.65.030: Definitions.

A. "Affected Tenant" shall mean a Tenant or Tenant Household, who has, as a result of the COVID-19 pandemic, or declaration of the County Public Health Officer, or other local, State or Federal Authority, suffered a substantial loss in income as a result of any of the following: 1) job loss; 2) a reduction of compensated hours of work; 3) employer's business closure; 4) missing work due to a minor child's school closure; or 5) other similarly-caused reason resulting in a loss of income due to COVID-19.

B. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Rental Unit, and the agent, representative, or successor of any of the foregoing.

C. “No-fault eviction” refers to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant, including but not limited to eviction notices served pursuant to Code of Civil Procedure sections 1161(1), 1161(5), or 1161c.

D. “Notice of Termination” shall mean the notice informing a Tenant of the termination of tenancy.

E. “Rental Unit” means a structure or the part of a structure located within the City of Santa Clara that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which household pays rent for the use and occupancy for periods in excess of seven days.

F. “Tenant” means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupancy of a Rental Unit.

G. “Tenant Household” means one or more Tenant(s) who occupy any individual Rental Unit, including each dependent of any Tenant whose primary residence is the Rental Unit.

8.65.040: Moratorium on Nonpayment and No-Fault Terminations.

A. During the term of this Ordinance, no Landlord may terminate or attempt to terminate the tenancy of an Affected Tenant in either of the following situations:

(1) for non-payment or delayed payment of rent if the Affected Tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19; or

(2) for a no-fault eviction unless necessary for the health and safety of tenants, neighbors, or the landlord.

B. A landlord who has received notice that an Affected Tenant cannot pay some or all of the rent temporarily for the reasons set forth above shall not serve a notice pursuant to CCP Section 1161(2), file or prosecute an unlawful detainer action based on a three-day pay or quit notice, or otherwise seek to evict that tenant for non-payment of rent.

C. A landlord will be deemed to have received notice of the Affected Tenant's inability to pay rent if the tenant provides evidence in writing of informing the landlord of the Affected Tenant's lost income and inability to pay full rent. For purposes of this section, "in writing" includes email or text communications to a landlord, or to the landlord's representative with whom the tenant has previously corresponded by email or text.

8.65.050: Application.

This Ordinance applies to attempts to evict for nonpayment eviction notices, no-fault eviction notices, and unlawful detainer actions based on such notices, served or filed on or after the date of introduction of this ordinance through the end of the temporary moratorium. Nothing in this Ordinance shall relieve the tenant of liability for the unpaid rent. The landlord may not take legal action to recover unpaid rent until one hundred

and twenty (120) days after termination of the temporary moratorium. No landlord may charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance.

8.65.060: Affirmative Defense to Eviction; Penalties and Remedies.

A. Affirmative Defense. Any Landlord that seeks to terminate a tenancy of an Affected Tenant must comply with this Ordinance. A Landlord's failure to comply with this Ordinance shall constitute a complete affirmative defense for an Affected Tenant against any unlawful detainer action.

B. The following documents shall create a rebuttable presumption that the Affected Tenant has met the documentation requirement set forth above, however, they are not the exclusive form of documentation demonstrating impacts to income due to COVID-19:

1. Letter from employer citing COVID-19 as a reason for reduced work hours or termination;
2. Employer paycheck stubs;
3. Bank statements.

C. Civil Remedies.

1. Any Landlord that fail(s) to comply with this Ordinance may be subject to civil proceedings for displacement of Affected Tenant(s) initiated by the Affected Tenant Household for actual and exemplary damages.

2. Whoever is found to have violated this Ordinance shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees.

3. Treble damages shall be awarded for a Landlord's willful failure to comply with the obligations established under this Ordinance.

4. Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a Tenant or non-Tenant third party for the damage done to said Landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.

8.65.070: Regulations.

The city manager shall have the authority to promulgate and publish regulations related to the administration of this ordinance.

SECTION 2: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 3: Effective date. This Ordinance shall take effect thirty (30) days after date of its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this ____ day of April, 2020, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None