

**City of Watsonville
City Attorney**

M E M O R A N D U M



DATE: March 18, 2020
TO: City Council
FROM: Alan J. Smith, City Attorney
SUBJECT: COVID-19 CAUSED EVICTIONS
AGENDA ITEM: March 20, 2020

RECOMMENDATION:

Staff recommends adopting the attached uncodified ordinance prohibiting evictions in the City of Watsonville to the extent attributable to the consequences of COVID-19 and directing that utilities not be disconnected or late fees charged for the consequences of COVID-19

RECENT EVENTS

On January 30, 2020, the World Health Organization declared COVID-19 a public health emergency of international concern.

On January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency.

On March 4, Governor Newsom signed Executive Order N-25-20 proclaiming a State of Emergency to exist in California as a result of the threat of COVID-19

On March 10, 2020, the Council declared a public health emergency from COVID-19.

On March 13, 2020 the County Superintendent of Schools closed all schools in the County of Santa Cruz.

On March 16, Governor Newsom signed Executive Order N-28-20 restricting residential evictions.

Also, on March 16, Santa Cruz County Health Officer Gail Newel issued a shelter in place order enforceable by the Santa Cruz County Sheriff's Office and local police chiefs. The Order directed all individuals to shelter in their place of residence unless they must obtain or perform vital services. All businesses, except essential businesses (as defined), are required to cease all activities at facilities located within the County. The order is effective on March 17, 2020 and will remain in place until April 7, 2020.

As of March 17, there are 13 confirmed COVID-19 cases in Santa Cruz County. The number of cases is expected to grow rapidly.

DISCUSSION:

Due to directives from federal, state and local health officials, public and private events have been cancelled, schools have been closed, and residents have been advised to avoid public gatherings and work from home to prevent the spread of this disease.

Restaurant and retail business has significantly declined, and parents miss work to care for home-bound school-age children, resulting in workers being impacted by lost wages and layoffs. The loss of wages caused by the effects of COVID-19 will impact a tenant's ability to pay rent when due, leaving tenants vulnerable to eviction and homelessness.

Beginning around the second week of March, many local governments throughout the country passed resolutions, executive orders, and ordinances to protect local tenants – both residential and small businesses. On March 16th, Governor Gavin Newsom signed Executive Order N-28-20, which avoided a state-wide response to the issue, and instead allowed local governments to “impose substantive limitations on residential or commercial evictions” related to COVID-19.

This report lays out various aspects of an eviction for nonpayment moratorium to be considered by the Council and compares how other California cities have addressed these issues.

DURATION OF MORATORIUM

Given the rapidly changing and unpredictable nature of this crisis, the proposed Ordinance simply states that it will be in effect for the duration of the local emergency. If a specific time limit is placed on it, it could place an unnecessary burden on the Council to renew it after, for example, 30 days, or repeal it if the time limit placed ends up being longer than necessary.

Table 1	
Examples of duration of eviction moratorium	
Hermosa Beach	Unclear – over 30 days
Los Angeles	Duration of the local emergency
Sacramento*	Duration of the local emergency
San Francisco	30 days or end of local emergency, whichever comes first
San Jose	6-month ordinance, but the resolution must be renewed every 30 days
Santa Monica	Duration of the local emergency
State Executive Order	Until May 31st

AFFECTED PROPERTIES

While most cities only protect residential tenants, the proposed Ordinance protects residential and commercial tenants. The City's commitment to maintaining a vibrant local economy is not possible without supporting small business owners. Governor Newsom's March 16 Executive Order¹ notes that “local jurisdictions may also determine, based on their particular needs, that promoting stability amongst *commercial tenancies* is also conducive to public health[.]”

¹ Executive Order N-28-20

Table 2	
Examples of types of tenants protected	
Hermosa Beach	Commercial properties only
Los Angeles	Residential properties only
Sacramento	Residential properties only
San Francisco	Residential properties only
San Jose	Residential properties only
Santa Monica	Does not specify, but appears to be only residential
Executive Order N-28-20	Both

CIRCUMSTANCES/PROOF REQUIRED TO QUALIFY FOR PROTECTION

The language in the proposed Ordinance draws from the Governor's Executive Order N-28-20, which states that circumstances for "affected tenants" can be defined as including, but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or a substantial decrease in business income caused by a reduction in opening hours or consumer demand), or substantial out-of-pocket medical expenses; and the decrease in household or business income or the out-of-pocket medical expenses described in subparagraph (I) was caused by the COVID-19 pandemic, or by any local, state, or federal occupation thereof.

Cities range in the types of documentation that could be used to verify financial impacts. While it helps to be clear about what qualifies, it should be taken into consideration that this is a busy and confusing time for all, and it may be difficult for tenants to collect appropriate and cohesive documentation in a short amount of time. Including language that notes that the list is "not limited" helps to address these concerns. Additionally, staff could prepare outreach materials for both tenants and landlords that give more detail about the process.

Table 4	
Examples of documentation/process required to qualify for eviction protection	
Hermosa Beach	Appropriate documentation to support the claim
Los Angeles	Documentation not specified
Sacramento*	To take advantage of the protections afforded under this subsection D, a tenant must do all the following: a. Notify the landlord in writing before the day rent is due that the tenant has a covered reason for delayed payment; b. Provide the landlord with verifiable documentation to support the assertion of a covered reason for delayed payment; and c. Pay the portion of rent that the tenant is able to pay.
San Francisco	The tenant must provide notice to the landlord within 30 days after the date that rent was due that the tenant is unable to pay rent due to financial impacts related to COVID-19. Within one week of providing notice, the tenant shall provide the landlord documentation. If the tenant does not provide evidence of financial impacts related to COVID-19, the landlord may attempt to proceed [with eviction].
San Jose	1. Letter from employer citing COVID-19 as a reason for reduced work hours or termination; 2. Employer paycheck stubs; 3. Bank statement.

	(not exclusive)
Santa Monica	The tenant, within 30 days after the date that rent is due, notifies the landlord in writing of lost income and inability to pay full rent due to financial impacts related to COVID-19, and provides documentation to support the claim.
<i>State Executive Order</i>	<i>Documentation not specified.</i>

REPAYING PAST-DUE RENT

This Ordinance does not deny landlords the rent they are due, it simply defers payment for a period of time so that tenants may be more financially stable and able to pay.

Tenants (both commercial and residential) will probably not be able to pay all past rent immediately upon returning to work. Depending on the length and severity of this crisis, this piece of the Ordinance may need to be amended in the future; if tenants are out of work for several months, it might take more than six months to repay their delinquent rent, and a more sophisticated repayment plan and procedure may prove necessary. For now, this piece is included in order to alert landlords and tenants that rent is expected to be paid.

Table 5	
Examples of requirements and timeline for paying past-due rent	
Hermosa Beach	N/A
Los Angeles	Tenants will have up to six months following the expiration of the local emergency period to repay any back due rent.
Sacramento*	The tenant must pay rent in the amount net of their income loss and to pay back rent within 120 days after the end of our local emergency declaration. Landlords could still impose late fees.
San Francisco	Up to six months before the landlord may recover possession due to those missed rent payments. The tenant shall pay the rent in one month if able to do so; however, if the tenant remains unable to pay rent due to the financial impacts related to COVID-19, the tenant may provide the landlord another notice and additional documentation pursuant to subsections (a) and (c) and thereby extend the payment date [in essence, tenant must resubmit documentation every month for the 6 months].
San Jose	None – will be addressed in a future ordinance
Santa Monica	The landlord may seek the unpaid rent after the 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 delated for the reasons state in this order.
<i>State Executive Order</i>	<i>Nothing in this Order shall relieve a tenant of the obligation to pay rent, nor restrict a landlord's ability to recover rent due.</i>

OTHER CONSIDERATIONS:

Some municipalities have also included provisions for water, sewer and solid waste utilities to waive late fees or prohibit utility shut offs. The precedent for this comes from other cities as well as Governor's Newsome's Executive Order. The City has already implemented proactive measures administratively to waive late fees and freeze utility shut-offs for the duration of the local emergency. However, utility customers will

continue to be responsible for paying for their utility services, including any late payments that may occur during this state of emergency.

EMERGENCY ORDINANCE:

This ordinance is an urgency ordinance that will go into effect immediately and not require a second reading. The authority for this is Section 602 of the City Charter² This Ordinance requires five affirmative votes to pass.

Links:

1. [Hermosa Beach](#)
2. [Los Angeles](#)
3. Oakland – voted to send a letter to Alameda County Superior Court asking the court to pause all ongoing eviction cases and reject new filings until the council's next meeting on April 7, ordinance will be brought to that meeting.
4. [Sacramento](#) *Had not yet been voted on – meeting on 3/17
5. [San Francisco](#)
6. [San Jose](#)
7. [Santa Monica](#)
8. [Governor Newsom's Executive Order N-28-20](#)

Attachment(s):

- 1) Table 7 – Matrix of California Cities' Tenant Protection Measures for COVID-19 affected tenants.

² SECTION 602. ORDINANCES: EMERGENCY. Any ordinance declared by the Council to be necessary as an emergency measure for preserving the public peace, health or safety, and containing a statement of the reasons for its urgency, may be introduced and adopted at one and the same meeting if passed by at least five (5) affirmative votes.

Table 7**Matrix of California cities' tenant protection measures for COVID-19 affected tenants**

City	Duration	Type of Tenant	Defining “Affected Tenants”	Repayment of missed rent
Hermosa Beach	Unclear – over 30 days	Commercial properties only	Appropriate documentation to support the claim	N/A
Los Angeles	Duration of the local emergency	Residential properties only	Documentation not specified	Tenants will have up to six months following the expiration of the local emergency period to repay any back due rent.
Sacramento*	Duration of the local emergency	Residential properties only	To take advantage of the protections afforded under this subsection D, a tenant must do all the following: a. Notify the landlord in writing before the day rent is due that the tenant has a covered reason for delayed payment; b. Provide the landlord with verifiable documentation to support the assertion of a covered reason for delayed payment; and c. Pay the portion of rent that the tenant is able to pay.	The tenant must pay rent in the amount net of their income loss and to pay back rent within 120 days after the end of our local emergency declaration. Landlords could still impose late fees.
San Francisco	30 days or end of local emergency, whichever comes first	Residential properties only	The tenant must provide notice to the landlord within 30 days after the date that rent was due that the tenant is unable to pay rent due to financial impacts related to COVID-19. Within one week of providing notice, the tenant shall provide the landlord documentation. If the tenant does not provide evidence of financial impacts related to COVID-19, the landlord may attempt to proceed [with eviction].	Up to six months before the landlord may recover possession due to those missed rent payments. The tenant shall pay the rent in one month if able to do so; however, if the tenant remains unable to pay rent due to the financial impacts related to COVID-19, the tenant may provide the landlord another notice and additional documentation pursuant to subsections (a) and (c) and thereby extend the payment date [in essence, tenant must resubmit documentation every month for the 6 months].
San Jose	6-month ordinance, the resolution must be renewed every 30 days	Residential properties only	1. Letter from employer citing COVID-19 as a reason for reduced work hours or termination; 2. Employer paycheck stubs; 3. Bank statement. (not exclusive)	None – will be addressed in a future ordinance

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Santa Monica	Duration of the local emergency	Does not specify, but appears to be only residential	The tenant, within 30 days after the date that rent is due, notifies the landlord in writing of lost income and inability to pay full rent due to financial impacts related to COVID-19, and provides documentation to support the claim.	The landlord may seek the unpaid rent after the 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 delated for the reasons state in this order.
State Executive Order	Until May 31st	Both	<i>Documentation not specified.</i>	<i>Nothing in this Order shall relieve a tenant of the obligation to pay rent, nor restrict a landlord's ability to recover rent due.</i>