



they have received a notice of eviction for failure to pay rent, and that such failure is related to a substantial loss of income or substantial out-of-pocket medical expenses resulting from the 2020 novel coronavirus pandemic or any local, state, or federal government response to the pandemic, for the duration of the County of Sonoma's Public Health and Local Emergency. This urgency ordinance also provides that a tenant who utilizes this affirmative defense share that information with the owner of the property to support an owner's claim for any prospective mortgage relief due to impacts resulting from the 2020 novel coronavirus pandemic or any local, state, or federal government response to the pandemic.

This urgency ordinance also directs the Sonoma County Housing Authority to extend deadlines for housing assistance recipients or applicants to deliver records or documents related to their eligibility for programs, to the extent legally possible.

Recent orders from our state and local officials require us to stay home or at our place of residence, with exceptions for essential activities and the continuity of operation of critical infrastructure.

To facilitate implementation of those orders, as well as to reduce the possibility of creating additional numbers of people without home and shelter in which to stay, this urgency ordinance recognizes that both tenants and landlords could benefit from the availability of an affirmative defense that allows for demonstration of the economic impacts of COVID-19 from their ability to timely pay their rent and mortgages.

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.

#### **DISCUSSION:**

Tonight's item is to provide information to the City Council and community on the ordinances recently adopted and to

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

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, 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:

1. 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.
2. 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.
3. The tenant must demonstrate the substantial loss of income or substantial out-of-pocket medical expenses through documentation or other objectively verifiable means.
4. 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.
5. The prohibition against evictions also applies to a landlord's action that constitutes constructive eviction (such as termination of a tenant's utilities).
6. A landlord's failure to comply with the Ordinance will render any notice of eviction void.
7. 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.
8. 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.
9. The Ordinance does not relieve the tenant of the obligation to pay rent, nor restrict a landlord's ability to recover rent due.
10. 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.
11. As an Urgency Ordinance, the Ordinance became effective immediately upon adoption. It is thus is now in effect throughout the County, in both incorporated and unincorporated areas.
12. It is important to note that the Ordinance does not require any enforcement action or other implementation by the City of Sebastopol 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 Sonoma County cities are recommending that Sonoma County cities take no separate action, but rather allow the County-wide Ordinance to operate uniformly.

Since passage of the County ordinance Governor Newsom signed Executive Order no. N-28-20 which provides much of the same protection. City attorneys have reviewed the Order to ascertain whether the County ordinance is still enforceable. The County is likewise reviewing its ordinance to decide if it is preempted by the Governor's order.

It appears that a number of attorneys believe that both the order, and the ordinance, are enforceable. Since they are not identical, a tenant seeking protection can utilize the best provisions of each. It is felt that in issuing his order the Governor was making sure that tenants in jurisdictions without a local ordinance have protection. For those areas which have a local ordinance it was not intended to completely take the place of those ordinances.

At the time this report was prepared the County was still assessing the preemption issue, and the city attorneys were preparing a memorandum comparing the two. This staff report will therefore be supplemented at the City Council meeting.

Although this ordinance relates to residential tenants, it is imperative that our landlords also recognize the plight that our local businesses are under. The City Council urges our local landlords/owners of commercial businesses to work with the tenants in the same effort that this ordinance works with residential tenants. A letter is proposed to be sent to landlords/owners urging the commercial industry to provide leniency with their tenants as well.

**Fiscal Analysis:**

There is no direct fiscal impact associated with the recommended action tonight.

**Public Notice:**

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to scheduled meeting date.

**RECOMMENDATION:** That the City Council Receive and Discuss the Information to date relate to the State of California and County of Sonoma's Ordinances of Evictions and Support and Authorize the Mayor to Send Letter Urging Owners of Commercial Property to Provide Relief for Tenants.

**Attachment(s):**

Letter

**City Council**

Mayor Patrick Slayter  
Vice Mayor Una Glass  
Michael Carnacchi  
Sarah Glade Gurney  
Neysa Hinton



**City Manager**

Larry McLaughlin  
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Mary Gourley  
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**City of Sebastopol**

April 8, 2020

To: Commercial Property Managers and Owners

RE: Leniency for Tenants

Dear City of Sebastopol Commercial Property Managers and Owners:

I wish to extend my heartfelt concern to all of our community during this pandemic and want to work together as we navigate the novel coronavirus (COVID-19) pandemic.

The City of Sebastopol is contacting the owners and managers of commercial properties in the City of Sebastopol to ask your help in addressing concerns of commercial establishments tenants.

As you may be aware, the County of Sonoma adopted an Urgency Ordinance, the COVID-19 Eviction Defense Urgency Ordinance. 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 County's ordinance is focused on those individuals and families impacted by the pandemic and 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.

Similarly, the City is asking you, our business community, to consider what you can do to voluntarily ease burdens for tenants who may have difficulty paying rent for their businesses because of the shelter in place, illness or financial hardship related to ongoing business disruptions and closures. The City and Chamber of Commerce have been working with the Small Business Administration to obtain as much information as possible regarding business loans and other resources. Sebastopol is community where we are known for neighbors helping neighbors. This is a significant way that you can help our businesses. We need and would appreciate your help in ensuring that our small businesses are here to serve the public and support our local economy when we emerge from this crisis.

We appreciate your understanding and urge any actions that you can take to help your tenants.

Thank you for your consideration of this request.

Respectfully,

Patrick Slayter  
Mayor  
City of Sebastopol

Copies Furnished: Sebastopol City Council