



SUMMARY REPORT

Agenda Date: 1/26/2021

To: Board of Supervisors

Department or Agency Name(s): County Counsel

Staff Name and Phone Number: Elizabeth Coleman, 707-565-2421

Vote Requirement: Majority

Supervisorial District(s): Countywide

Title:

COVID-19 Renter Protection Information and Discussion of Options

Recommended Action:

- A) Receive information on limiting allowable bases for eviction during COVID-19 crisis via just cause ordinance; Board of Supervisors authority to limit late fees in the residential rental context during COVID-19 crisis; and potential adoption of right to counsel ordinance for residential eviction matters.
- B) Provide direction to staff regarding drafting of ordinances to be considered by Board of Supervisors at a later date.

Executive Summary:

On January 5, 2021, the Board provided direction to develop proposals to potentially aid the community in response to the COVID-19 pandemic, and directed County Counsel to return to the Board with options and analysis regarding potential ordinance changes responsive to the impact of the COVID-19 crisis on tenants.

Sonoma County residents continue to face compounding economic impacts from COVID-19. Currently, the State of California's state-wide protections from eviction for non-payment of rent, as well as a federal ban on evictions, as discussed in a concurrent item, remain in effect.

Evictions lead directly to homelessness and overcrowded living spaces, both of which contribute to the spread of COVID. As discussed below, there are several policy options the Board may consider, including adoption of a limitation on allowable bases for eviction, prospectively banning late fees for past due rent, and/or adoption of a right to counsel ordinance.

Since the January 5th Board Meeting, there have been some state and federal proposals that, if adopted, will have a direct impact on renters.

Discussion:

I. Just Cause Ordinances and Limiting Fault or No-Fault Evictions

"Just cause" eviction limits mean that tenants may not be evicted unless the landlord has specified a legally allowable reason. For example, an eviction may be allowed for an at-fault reason, such as non-payment of rent, violation of material lease term, nuisance, or other lease violations. An eviction may also be allowed for a no-fault reason (i.e. not the fault of the tenant), such as when a property is taken off the rental market,

when property improvements must be made, or when an owner will occupy the property. California law provides some just cause protection for tenants who have been in their homes for more than 12 months, and expanded such protections during the pause in eviction for nonpayment of rent effectuated by AB 3088. State law allows local entities to adopt broader just cause ordinances than the state statutes, both as a general matter and specifically related to the COVID-19 crisis via AB 3088. If a county decides to adopt just cause eviction limitations, the criteria are within the authority of the adopting jurisdiction to set, within certain parameters.

Just Cause Evictions and Public Health: COVID- 19 Response

Because of its manner of transmission, COVID-19 spread is exacerbated by homelessness and overcrowded living spaces. Evictions lead directly to both situations, which create added risks to both the evicted persons and the community at large. Just cause eviction protections targeted to the current emergency are focused on public health more broadly, not just fairness and protection for the renters themselves. Authority to take such action rests both in the County's general police power and the particular authority to respond to the current emergency via the California Emergency Services Act, AB 3088, and Executive Order N-28-20.

Possible Approaches to a Just Cause Limit on Evictions during COVID-19 Emergency.

The scope of a limitation on the allowable bases for eviction would be within the discretion of the Board.

The broadest form of protection would be an ordinance that forbid both at-fault evictions and no-fault evictions, subject to certain limitations. Several jurisdictions have taken the approach of forbidding all evictions except where required for health and safety reasons. This means that evictions cannot proceed even for what would normally be good cause, because the greater good of protection from the pandemic is being valued. This type of a limit would also prevent no-fault evictions, in situations where an owner may normally evict a tenant for no fault of the tenant, for example so the owner can reoccupy the premises, or to take the property off the rental market for other reasons (i.e. under the Ellis Act). This approach creates a significant limit on landlord rights, but creates a clear guide for all parties to understand who may not be evicted, and provides maximum community protection from COVID-19 spread.

Narrower limitations can also be adopted as just cause protections. One potential such approach would be to limit evictions to good faith, material breaches of a lease or of generally applicable law. Such an approach would pause no-fault evictions, such as owner move-in and other evictions allowed by the Ellis Act, and avoid pretextual evictions intended as an end-run around eviction for non-payment of rent. Even though Sonoma County renters have until April 30th to pay their 25% of rent due subject to any applicable federal limitations, landlords can still evict for minor lease violations, or other legally permissible reasons, as a pretext for evicting tenants behind on their rent. Narrow just cause language could limit that "loophole" and give Sonoma County tenants the intended benefit of the repayment period.

A limited just cause ordinance could provide significant protection to tenants by avoiding pretextual or no-fault evictions. However, it would leave to the interpretation of judges whether an eviction was done in good faith and for sufficient cause. Accordingly, tenants would not know in advance of legal proceedings if they

would be successful in defending an eviction. To apply such protections, it is likely that more eviction actions would be initiated, as the application of the protections would be highly fact specific, and would likely require a judicial finding, and many eviction matters are settled or adjudicated by the default of unrepresented tenants, as discussed below. As such, a limited just cause ordinance would not provide the maximal protection for housing security.

Should the Board provide direction to pursue an ordinance limiting allowable bases for eviction during the pendency of the COVID-19 pandemic, or other defined term, County Counsel will return to your Board with a proposed just cause amendment to the emergency eviction protection ordinance, consistent with Board direction as to any then-current limitations as imposed by AB 3088 and any extensions or revisions thereto.

II. Board Authority to Limit Late Fees on Rent in Via Ordinance.

The Board has authority associated with COVID-19 response, under a reasonable interpretation of applicable law, to ban late fees for past-due rent.

Late fees in rental contracts are generally treated as liquidated damages in California. Liquidated damages are intended to be a way of estimating the likely harm that a breach of contract might cause, particularly in a case where it may be very difficult to calculate the actual damages incurred. California courts have held that late fees are subject to statutory law regarding the circumstances under which liquidated damages may be charged, generally treating them as impermissible unless certain criteria are met. Some California local entities have limited the ability to collect late fees even prior to the COVID-19 pandemic, under their general police power. As related to the COVID-19 pandemic, Executive Order N-28-20, authorizing local agencies to take necessary action to promote housing stability and mitigate hardship caused by COVID-19, provided a waiver of state-level preemption on local jurisdictions' ability to regulate aspects of rental contracts, which reasonably includes late fees to the extent such regulations might otherwise be deemed preempted. Several jurisdictions have imposed late fee limits as part of their COVID-19 emergency tenant protections. In the Bay Area, such jurisdictions include the City of Sonoma, Marin County, Solano County, Contra Costa County, the City of Richmond, Alameda County, the City of Oakland, the City of Berkeley, Santa Clara County, San Mateo County, and the City and County of San Francisco. Further, nothing in the currently adopted state eviction protection statutes would on its face preclude the County from adopting late fee restrictions, particularly going forward.

Barring subsequent state-level action to the contrary, the Board may amend its eviction protection ordinance in a manner that includes a suspension of late fees on a going-forward basis. Nothing in the language of existing state law preempts the County from doing so or has found that such limits are otherwise legally impermissible. Legal challenges to similar restrictions are under current judicial review and could alter the analysis, but at this time no successful legal challenge has been mounted.

III. Right to Counsel Ordinance

Basic Concept of a Right to Counsel Ordinance

A right to counsel ordinance creates a legal right to all tenants in the County, or based on geographic or economic criteria as designated in the ordinance, to have an attorney represent them in eviction proceedings. A right to counsel would be passed by County ordinance, and would set the parameters of who would qualify and at what point in legal proceedings the right would attach.

A right to counsel ordinance creates an obligation on the part of the County to fund legal services, and an obligation to ensure resources are provided in conformance with law otherwise applicable to the provision of County services, such as accessibility and non-discrimination requirements. Services would be provided similarly to public defenders, at the obligation of the County to a sufficient level to discharge the duty created by the Ordinance. While the structural parameters of a right to counsel ordinance could vary, such as whether the County funded a panel of attorneys to take cases or whether the County chose to fund a non-profit entity, such as Sonoma County Legal Aid, to provide such services, would be up to the discretion of the Board. Should the Board provide direction to pursue a right to counsel ordinance, County Counsel would work with the County Administrator, in coordination with Sonoma County Legal Aid, and return to your Board with a detailed proposal.

Scope of the Potential Right to Counsel - Scope Determines Impact.

In 2014-2016, an average of 1195 eviction matters were in Sonoma County Courts. In 2016, as an example, 40% proceeded by default. This number understates total evictions, most of which occur outside of court. Significant data exists on the effects of representation in eviction cases in California from the Sargent Shriver Civil Counsel Act, a five-year pilot project passed in 2009. The Shriver Act infused funds into civil representation, including eviction defense, in several regions across the state. According to the 2020 evaluation of the Shriver Act, when tenants receive full representation in eviction cases, the results include significantly fewer cases ending by default, representation by counsel helps tenants avoid eviction, and civil legal services support longer-term housing stability.

While a detailed analysis of the cost and benefits of a right to counsel program in Sonoma County has not been completed, data from other jurisdictions can inform the scope of the impact to local tenants and County resources. Stout, a global investment firm, maintains comprehensive resources on right to counsel programs, and has done several detailed cost-benefit studies of such programs around the country, including New York City, Baltimore, Philadelphia, and Los Angeles. These studies show significant returns on investment for cities and counties that implement right to counsel. See

https://info.stout.com/hubfs/PDF/Eviction-Reports-Articles-Cities-States/Los%20Angeles%20Eviction%20RTC%20Report_12-10-19.pdf for the Los Angeles Stout study.

In contemplating a right to counsel ordinance, staff would seek direction from your Board regarding the point at which such a right would attach. Some programs attach the right to counsel only upon the filing of a formal eviction action, while others propose providing pre-litigation services at no cost to qualifying tenants at risk of eviction. Pre-litigation services, while not always captured by litigation figures in terms of the total impact on the rate of evictions, can reduce total number of eviction matters filed and individuals vacating premises under threat of eviction where formal proceedings are not yet filed.

Alternatives to Right to Counsel Ordinance to Help Stabilize Current Housing Crisis.

As presented to your Board in a concurrent item today, the County can fund eviction defense without creating a right to counsel, through a \$150,000 investment with Sonoma County Legal Aid, to cover the cost of hiring an additional legal aid attorney for a one-year period. The cost and benefit of that more limited approach is addressed in that item.

While a short-term budgetary decision to support Legal Aid in its eviction defense work will assist Sonoma County renters in eviction proceedings and limit the budgetary impact to a definable amount and duration, it similarly limits the long term impact on housing security that may be created by the adoption of a right to counsel ordinance.

IV. State and Federal Rent Assistance and Eviction Defense Proposals since January 5, 2021

Since the January 5th Board Meeting, there have been some state and federal proposals that, if adopted, will have a direct impact on renters. The Governor is requesting the Legislature's speedy passage of COVID-19 eviction protection legislation, as well as early budget action to deploy all of the \$2.6 billion in federal rent assistance allocated to California and local governments-\$1.4 billion of which is allocated to the state and \$1.2 billion of which is directly allocated to local governments with populations over 200,000. On January 14th, the Biden Administration released its \$2 trillion coronavirus rescue package. The plan seeks to extend the eviction and foreclosure moratoriums and continue applications for forbearance on federally guaranteed mortgages until September 30, 2021 to prevent evictions and loss of homes during the pandemic. The current Federal eviction moratorium is set to expire at the end of January 2021. The Biden proposal would provide funding for legal assistance for households facing eviction or foreclosure. The plan would provide \$30 billion in rental and energy and water assistance for families, in addition to the \$25 billion already allocated by Congress for emergency rental assistance to meet the need for families. This includes an additional \$25 billion for the emergency rental assistance program and \$5 billion to cover home energy and water costs and arrears through programs like the Low-Income Home Energy Assistance Program (LIHEAP), for struggling renters.

Should the Board be interested in making changes to the County's current eviction defense ordinance, County Counsel requests that your Board provide specific direction on the scope of the changes. Any changes would come back to the Board for consideration at a subsequent meeting.

Prior Board Actions:

January 5, 2021: Received direction to develop proposals to potentially aid the community in response to the COVID-19 pandemic

August 6, 2020: Adopted the Amended COVID-19 Eviction Defense Urgency Ordinance

June 23, 2020: Received an Analysis and Provided Direction on Housing Stability Measures during the COVID19 Emergency

March 24, 2020: Adopted the COVID-19 Eviction Defense Urgency Ordinance

FISCAL SUMMARY

Expenditures	FY 20-21 Adopted	FY21-22 Projected	FY 22-23 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			

Narrative Explanation of Fiscal Impacts:

Fiscal impacts for this item are limited to the use of staff resources; if Board directs staff to return with proposed ordinances, further budgetary analysis will be provided of such ordinances.

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

N/A

Related Items "On File" with the Clerk of the Board:

COVID-19 Eviction Defense Urgency Ordinance