



Legislation Text

File #: 2021-0077, **Version:** 1

To: Board of Supervisors

Department or Agency Name(s): County Counsel

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

Vote Requirement: 4/5th

Supervisorial District(s): All

Title:

Adoption of Amendment to COVID-19 Eviction Defense Urgency Ordinance to Include Just Cause Limitations

Recommended Action:

Consider one of the following actions:

- A) Introduce, waive reading of, and adopt an Urgency Ordinance to Amend COVID-19 Eviction Defense Urgency Ordinance (Ordinance No. 6301) to Include Just Cause Limitations - (Limiting Eviction to Health and Safety Reasons) (4/5 Vote Required); OR
- B) Introduce, waive reading of, and adopt an Urgency Ordinance to Amend COVID-19 Eviction Defense Urgency Ordinance (Ordinance No. 6301) to Include Just Cause Limitations - (Limiting Eviction to Health and Safety Reasons and Removal of Property from Rental Market) (4/5 Vote Required); OR
- C) Do not adopt urgency ordinance and instead provide direction to staff.

Executive Summary:

On March 24, 2020, your Board adopted the COVID-19 Eviction Defense Urgency Ordinance (Ordinance No. 6301) which created an affirmative defense for any residential tenant who can demonstrate that they have received a notice of eviction for failure to pay rent, and that such failure is related to certain financial hardships created by the COVID-19 pandemic. Subsequently adopted state law has limited certain terms of Ordinance No. 6301, but it remains in effect.

Due to the continuing nature of COVID-19 pandemic and the strain it continues to put on the health and finances of local residents, on January 5, 2021, the Board provided direction to develop new proposals to aid the community. On January 26, 2021, County Counsel returned to your Board with options and analysis regarding potential ordinance changes responsive to the impact of the COVID-19 crisis on tenants, including limiting the allowable bases for eviction during COVID-19 crisis via just cause ordinance; Board authority to limit late fees in the residential rental context during the COVID-19 crisis; and potential adoption of right to counsel ordinance for residential eviction matters. Your Board directed counsel to return to the Board with proposed ordinance language, providing alternative approaches of (1) limiting all evictions other than as required for health and safety, or (2) limiting all evictions other than as required for health and safety and for the removal of the subject property from the rental market. This item presents both options to the Board for consideration and the possible adoption of one of two alternative proposed urgency ordinances.

Discussion:

Background of COVID-19 State, Federal, and Local Eviction Protection Measures

On March 16, 2020, Governor Gavin Newsom issued Executive Order N-28-20, which authorized local jurisdictions to suspend the evictions of tenants for the non-payment of rent if the non-payment is a result of the COVID-19 pandemic. Without local protection, there was a great possibility that eviction notices for failure to pay rent would surge as residents would be unable to earn income due to the pandemic, or be forced to pay substantial medical expenses associated with virus infection. This Order suspended state law provisions that preempt or restrict a local government's exercise of police power to impose limitations on residential and commercial evictions.

On March 24, 2020, your Board adopted Ordinance 6301, the Emergency Eviction Defense Ordinance, which created an affirmative defense for any residential tenant who can demonstrate that 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 60 days after the termination of the County of Sonoma's Public Health and Local Emergency Orders.

On August 31, 2020, Governor Newsom signed the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (Assembly Bill 3088), which authorized that no tenant be evicted before February 1, 2021 as a result of rent owed due to a COVID-19 related hardship accrued between March 4 - August 31, 2020, if the tenant can provide a declaration of hardship according to the legislation's timelines. For a COVID-19 related hardship that accrues between September 1, 2020 - January 31, 2021, tenants must pay at least 25 percent of the rent due to avoid eviction. While tenants are still responsible for paying unpaid amounts to landlords, those unpaid amounts cannot be the basis for an eviction.

SB 91, signed into law by Governor Newsom on January 29, 2021, extends the eviction moratorium for nonpayment statewide to July 1, 2021, and sets the repayment period applicable to counties with longer repayment periods under local ordinance, such as Sonoma County, to end on August 31, 2021. Thus, under the current exacted state law, nonpayment of rent for the period of September 1, 2020-June 30, 2021 may not be the basis for eviction in Sonoma County until August 31, 2021. SB 91 also limits the ability to landlords to assess and collect late fees, and establishes the State Rental Assistance Program, which will allocate \$2.6 billion in federal rental assistance to California, and will target aid to the tenants most at -risk due to unpaid rent, in addition to extending assistance to property owners who agree to waiver 20 percent of unpaid rent.

Further residential eviction protections may be on the horizon with the proposal of President Biden's \$2 trillion coronavirus rescue package, which 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 Biden proposal would also provide funding for legal assistance for households facing eviction or foreclosure, and 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.

Scope of the Amended Ordinance

Your Board directed counsel to return on February 9, 2021 with proposed ordinance language, providing alternative approaches of (1) limiting all evictions other than as required for health and safety, or (2) limiting all evictions other than as required for health and safety and for the removal of the subject property from the rental market. Pursuant to that direction, this item proposes two separate and alternative urgency ordinances limiting the allowable bases for eviction. Both are written to sunset concurrent with the termination of the repayment period for back rent, referred to as the “repayment period” under AB 3088 and SB 91, and the “Payback Period” under Ordinance 3601. That date is currently August 31, 2021, but could be extended by operation of law if further state action is taken to extend the eviction moratorium for nonpayment of rent beyond the terms of SB 91, or by your Board if further action is taken to amend the effective period of any adopted urgency ordinance.

It is anticipated that if your Board determines that just cause limitations on evictions should be adopted, after having introduced and waived reading of both proposed alternatives, it will vote to reject the disfavored option and vote to adopt the selected alternative.

It is therefore recommended that your Board introduce, waive the reading of, and adopt either Attachment A (Proposal Limiting Eviction to Health and Safety Reasons) or Attachment B (Proposal Limiting Eviction to Health and Safety Reasons OR Removal from Rental Market), to amend the COVID-19 Eviction Defense Urgency Ordinance, and to take effect immediately upon four-fifths approval and adoption. In the alternative, your Board may choose to adopt neither of the proposed amendments and provide further direction to staff.

Prior Board Actions:

January 26, 2021: Board received COVID-19 Renter Protection Information and Discussion of Options

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

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; further budgetary analysis will be provided if necessary.

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:

Attachment A- Proposed Urgency Ordinance Limiting Eviction to Health and Safety Reasons

Attachment B- Proposed Urgency Ordinance Limiting Eviction to Health and Safety Reasons and Removal of Property from Rental Market

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

COVID-19 Eviction Defense Urgency Ordinance