



The City of San Diego

Staff Report

DATE ISSUED: March 21, 2022
TO: City Council
FROM: Office of Council President Sean Elo-Rivera, Council District 9
SUBJECT: Residential "No-Fault" Eviction Moratorium to Preserve Tenancies During the Declared State of Emergency from COVID-19

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Council District(s): Citywide

OVERVIEW:

This emergency ordinance would, until 60 days after the end of the declared local state of emergency from COVID-19, authorize a moratorium on "no-fault" evictions, with certain exceptions, to help preserve the health and safety of the public. The ordinance would be enacted on April 4, 2022, following the end of state preemption on new eviction moratoria established by AB 832.

"No-fault" evictions are evictions resulting in the termination of the tenancy under circumstances that do not arise from the action or inaction of the tenant in violation of the lease or the law. The City of San Diego's Tenant's Right to Know Regulations¹ authorize the following circumstances for "no-fault" evictions: (1) Correction of Violations, (2) Withdrawal of Residential Rental Structure from the Rental Market, and (3) Owner or Relative Occupancy.

Through "no-fault" evictions, tenants can be evicted and displaced from their homes despite meeting their monthly rental obligations and acting in good faith to meet all requirements outlined in the City's Tenant's Right to Know Ordinance and the terms of their lease.

"No-fault evictions" allow a landlord to unilaterally terminate a lease contract that defines the living situation for residential tenants, despite no wrongful behavior from the tenant. This sudden and immediate displacement can have a profound impact on the financial, emotional, and professional stability of a tenant's life. These impacts are compounded by the ongoing COVID-19 pandemic, as demonstrated by the January 2022 peak of new COVID-19 cases, which was more than triple the previous peak in January 2021.²

Exceptions are made to the ordinance to allow for compliance with state Ellis Act provisions, the California Civil Code, and to ensure that eviction protection provisions do not compromise public health or safety. Noticing requirements apply for exceptions in which there is not an imminent threat to health or safety.

¹ City of San Diego Tenant's Right to Know Ordinance – San Diego Municipal Code Chapter 9, Article 8, Division 7, §98.0701 – 98.0760. <https://docs.sandiego.gov/municode/MuniCodeChapter09/Ch09Art08Division07.pdf>

² The Center for Disease Control webpage, "CDC COVID Data Tracker": https://covid.cdc.gov/covid-data-tracker/#trends_dailycases

The ordinance provides an exception for owner or relative move-in, which allows for the landlord, their parents, grandparents, children, or grandchildren to occupy a home as their primary residence, and requires that they provide the impacted tenant with at least 90 days of prior written notice of the landlord's intent to occupy the rental unit.

The ordinance provides an exception that allows a landlord to evict tenants to withdraw units from the rental market, but they must vacate all units in all buildings on a parcel, and must provide six months of prior written notice to impacted tenants to provide sufficient time to seek housing accommodations.

AFFECTED TENANTS: The emergency ordinance will apply to all residential tenants renting within the City of San Diego. The ordinance will allow tenants to defend themselves against "no-fault evictions" occurring during the local COVID-19 state of emergency.

ENFORCEMENT MECHANISM: The emergency ordinance will provide affected tenants with an affirmative defense against unlawful detainer and other eviction or removal actions for affected tenants.

PROPOSED ACTIONS:

- (1) Consider adoption of an emergency ordinance that would establish a moratorium on "no-fault" evictions during the local COVID-19 state of emergency.
- (2) Consider adoption of a due course ordinance that would establish a moratorium on "no-fault" evictions during the local COVID-19 state of emergency.

DISCUSSION OF ITEM:

The novel coronavirus, also known as COVID-19, is an infectious disease that has caused a pandemic with significant adverse effects on our local economy in the City of San Diego. On March 12, 2020, the County of San Diego issued an order from the Public Health Officer requiring, among other things, all bars, adult entertainment establishments, and other business establishments in the County that serve alcohol and do not serve food to close, and requiring all restaurants to reduce occupancy for on-site dining. Since then, increasing transmission and strains on our healthcare system have prompted additional restrictions, continuing to impact wide portions of San Diego's economy.

On March 16, 2020, Governor Gavin Newsom issued Executive Order N-28-20 to provide guidance to local jurisdictions interested in halting tenant evictions by adoption of local regulations. The order gives local governments the authority to halt evictions for renters and homeowners.

On August 31, 2020, Governor Newsom signed into law AB 3088. The legislation implemented statewide eviction protections, superseding any new or updated local measures through January 31, 2021. The law protects only residential tenants impacted by COVID-19 and requires tenants to pay at least 25% of owed rent from September 1, 2020 through January 31, 2021, which was due by January 31, 2021. On January 29, 2021, Governor Newsom signed into law SB 91 which extended state protections as well as the preemption of local eviction moratorium policies.

On June 28, 2021, Governor Newsom signed into law AB 832, or the COVID-19 Rental Housing Recovery Act. The legislation extends eviction protections for residential tenants, including mobile home tenants, experiencing a financial hardship relating to COVID-19. The new Act prohibits cities and counties from adopting new eviction moratoria through March 31, 2022, to provide rent-relief uniformity throughout the State.

The City of San Diego has experienced significant adverse impacts due to COVID-19. The ongoing impacts to businesses and schools has had profound impacts on residents, particularly parents with young children, leading to reduced work hours and wages. Ensuring that residents continue to have stable shelter is vital to public safety and the ongoing health of our local economy.

Several studies and national organizations have reinforced the crucial role of eviction moratoria in protecting public health during the COVID-19 pandemic, demonstrating both the need for strong

protections and the benefits of these policies in slowing the spread of the virus. Evictions have been associated with higher COVID-19 transmission³ and mortality.⁴ A Journal of Urban Health⁵ study suggests that evictions increase COVID-19 infection rates through overcrowded living environments, transiency, reduced access to healthcare, and challenges to comply with pandemic mitigation strategies. In fact, research indicates that removing eviction protections was associated with an increase in COVID-19 mortality by a factor of 1.6 after seven weeks and 5.4 after 16 weeks.⁶

Nationally, neighborhoods which experienced higher levels of evictions also had lower COVID-19 vaccination rates in all nine cities and respective zip codes analyzed by Eviction Lab.⁷

In a brief of amici curiae⁸ filed by the American Academy of Pediatrics, American Medical Association, and 22 other organizations with relevant expertise, they similarly contend that evictions increase COVID-19 infection rates for high-risk populations, that evictions exacerbate the disproportionate impact of COVID-19 on marginalized communities, and that eviction moratoria slow the spread of the virus, preventing serious health impacts or death.

As the spread of COVID-19 cases surged this winter, restrictions were tightened to prevent our healthcare systems from being overwhelmed. This has unfortunately led to incredible uncertainty and a difficult environment for renters in our City. Despite the case rate dropping recently, there remains a threat of a surge from a new COVID-19 variant, BA.2,⁹ and even with restrictions being lifted, the housing market and daily life need time to adjust. During this time, evictions will continue to have a pronounced effect on public health and safety.

Jurisdictions throughout the State of California, including Los Angeles County, Alameda County, and the cities of Oakland, San Francisco, and Richmond have enacted similar bans on “no-fault” evictions during their local COVID-19 state of emergency. Los Angeles, for example, passed emergency renter protections which cover all no-fault evictions, except for “qualified Owner Move-in Evictions”.¹⁰

The Legal Aid Society of San Diego (LASSD), which provides free civil legal assistance to low-income clients, including protection against eviction and housing instability, reported a significant number of clients experiencing a “no-fault eviction”. From July 2021 through January 2022, LASSD received nearly

³ Nande, Anjalika, and Sheen, Justin and Walters, Emma L and Klein, Brennan and Chinazzi, Matteo and Gheorghe, Andrei and Adlam, Ben and Shinnick, Julianna and Florencia Tejada, Maria and Scarpino, Samuel V and Vespignani, Alessandro and Greenlee, Andrew J and Schneider, Daniel and Levy, Michael Z and Hill, Alison L, The effect of eviction moratoria on the transmission of SARS-CoV-2 (January 19, 2021). Available at <https://www.medrxiv.org/content/10.1101/2020.10.27.20220897v2.full-text>

⁴ Jowers, Kay and Timmins, Christopher and Bhavsar, Nrupen and Hu, Qihui and Marshall, Julia, Housing Precarity & the COVID-19 Pandemic: Impacts of Utility Disconnection and Eviction Moratoria on Infections and Deaths Across US Counties (January 2021). Available at <https://www.nber.org/papers/w28394>

⁵ Benfer, Emily and Vlahov, David and Long, Marissa and Walker-Wells, Evan and Pottenger, J.L. and Gonsalves, Gregg and Keene, Danya, Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy (November 1, 2020). Journal of Urban Health (2020), Available at SSRN: <https://ssrn.com/abstract=3736457> or <http://dx.doi.org/10.2139/ssrn.3736457>

⁶ Leifheit KM, Linton SL, Raifman J, Schwartz GL, Benfer EA, Zimmerman FJ, et al. Expiring Eviction Moratoria and COVID-19 Incidence and Mortality: Evidence from a Natural Experiment. 2020; <https://doi.org/10.2139/ssrn.3739576>.

⁷ Jin, Olivia and Lemmerman, Emily and Hepburn, Peter and Desmond, Matthew, Neighborhoods with Highest Eviction Filing Rates have Lowest Levels of COVID-19 Vaccination (June 11, 2021). Eviction Lab, Available at <https://evictionlab.org/filing-and-vaccination-rates/>

⁸ Benfer, Emily and Pottenger, J.L. and Tenenbaum, Richard and Smith, Wingo and Todd, Emilia and Minopoli, Salvatore and Monaghan, Patrick and Oesterblad, Jacqui and Walker-Wells, Evan and Wren, Logan, Public Health Amici Curiae Brief in Support of the Centers for Disease Control and Prevention Eviction Moratorium (October 9, 2020). Available at SSRN: <https://ssrn.com/abstract=3708504> or <http://dx.doi.org/10.2139/ssrn.3708504>

⁹ Sisson, Paul, Expert: COVID BA.2 variant likely widely spreading in San Diego County, available at <https://www.sandiegouniontribune.com/news/health/story/2022-03-23/covid>

¹⁰ Los Angeles County Consumer & Business Affairs. “About L.A. County’s COVID-19 Tenant Protections Resolution”. <https://dcba.lacounty.gov/noevictions/>

1,400 requests for assistance for housing related issue from households in the City of San Diego.¹¹ About 23% of these households requested assistance with a no-fault eviction, comprising the largest percentage of housing related issues that San Diego households are requesting assistance for. Given that LASSD only represents low-income clients and those who are aware of their services, the actual number of “no-fault” evictions occurring in the City of San Diego is likely much higher.

On March 1, 2021, the San Diego City Council authorized the City to accept and transfer additional Federal Emergency Rental Funds (ERA 1) allocated by the U.S. Treasury to the San Diego Housing Commission for support of the COVID-19 Housing Stability Assistance Program (HSAP). The U.S. Treasury recently reallocated \$8.3 million to support the HSAP program, however that is only 7 percent of the \$115 million requested based on data analysis of program need.¹²

All funding that was authorized to contribute towards the HSAP program before the recent \$8.3 million allocation have been fully obligated to assist households and total obligations for HSAP still exceed funding to assist households.

January and February 2022 had the third and fourth highest number of applications in the first nine months since HSAP began, demonstrating the continued and growing high need for rental assistance to keep people housed. 42,759 applications have been submitted since the program’s inception.¹³

In January 2022, most City shelters were unable to accept people looking for shelter as a result of COVID-19 cases among the population at the shelters. As of January 31, 2022, over 165 COVID-19 cases occurred among residents and staff of City shelters, which directly resulted in intakes being stopped and people experiencing homelessness losing the opportunity to receive shelter.¹⁴ Some shelters were unable to accept people for several weeks during the Omicron surge, increasing public health risks for those unable to seek shelter and for those within the shelter system.

A program operated by the County of San Diego to provide hotel rooms to people at high risk of severe COVID-19 was to end by March 20, 2022 however was extended until June 30, 2022. The program provides 132 rooms to people experiencing homelessness. While those residents will be offered other housing options, the end of the program reduces the number of rooms available to people experiencing homelessness to be protected from COVID-19.¹⁵

AB 832, the COVID-19 Tenant Relief Act, provides eviction protections for non-payment of rent as long as the tenant has not been denied for rental assistance, prohibits local jurisdictions from adopting new eviction moratoria and provides protections through March 31, 2022. New eviction moratoria may not take effect until April 1, 2022.¹⁶ The proposed emergency ordinance and due course ordinance for a no-fault eviction moratorium, with certain exceptions, will provide residential tenants the protection and relief to maintain housing stability and contribute to reducing the number of COVID-19 infections.

City of San Diego Strategic Plan:

Priority Area: Create Homes for All of Us

Outcomes: San Diegans live in vibrant communities with healthy homes and access to opportunity.

¹¹ E-mail communication from Gilberto Vera, Esq., Senior Attorney with Legal Aid Society of San Diego, Inc. to Brett Weise, Senior Policy Advisor with Council President Sean Elo-Rivera, on January 27, 2022.

¹² E-mail communication from Molly Chase, Vice President of Policy with San Diego Housing Commission to Brett Weise, Senior Policy Advisor with Council President Sean Elo-Rivera, on January 11, 2022.

¹³ Includes applicants who updated information on previously submitted applications and/or requested additional assistance. E-mail communication from Jeff Davis, Deputy Chief Executive Officer with San Diego Housing Commission to Maya Rosas, Deputy Chief of Staff with Council President Sean Elo-Rivera, on March 3, 2022.

¹⁴ Halverstadt, Lisa, Most Homeless Shelters Still Not Welcoming Newcomers (January 31, 2022), Available at <https://voiceofsandiego.org/2022/01/31/most-homeless-shelters-still-not-welcoming-newcomers/>

¹⁵ Dulaney, Cody, San Diego County extends COVID-19 hotel program, buying residents time (March 18, 2022). Available at <https://inewssource.org/2022/03/18/san-diego-county-extends-hotel-program/>

¹⁶ Assembly Bill No. 832. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB832

Priority Area: Protect & Enrich Every Neighborhood

Objective: San Diego is an extraordinary place to live, and every San Diegan should have access to a safe and secure environment, along with a variety of core amenities that improve quality of life.

Goal 1: Provide high quality public service;

Goal 2: Work in partnership with all of our communities to achieve safe and livable neighborhoods;

Goal 3: Create and sustain a resilient and economically prosperous City with opportunity in every community.

Fiscal Considerations:

N/A

Charter Section 225 Disclosure of Business Interests:

N/A

Environmental Impact:

This activity, a Residential "No-Fault" Eviction Moratorium, is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(2), as it would not result in a direct or reasonably foreseeable indirect physical change in the environment.

Climate Action Plan Implementation:

N/A

Equal Opportunity Contracting Information (if applicable):

N/A

Previous Council and/or Committee Actions:

- (1) On March 17, 2020, the San Diego City Council approved work on a comprehensive package of relief actions to help impacted residents and businesses during this unprecedented crisis. As part of this action, the Council adopted Resolution R-2020-417, which directed the Mayor to present a temporary moratorium on residential and commercial evictions during the local emergency due to the Novel Coronavirus, COVID-19.
- (2) On March 25, 2020, the City Council enacted Ordinance O-21177 to protect impacted residential and commercial tenants from eviction for unpaid rent.
- (3) On January 26, 2021, the City Council enacted Ordinances O-2021-91 and O-2021-92 to enact a temporary moratorium on evictions due to nonpayment of rent for residential tenants arising out of a substantial decrease in income or out-of-pocket medical expenses resulting from the novel coronavirus, COVID-19, or governmental response to COVID-19

Planning Commission Action:

N/A

Key Stakeholders and Community Outreach Efforts:

Tenants and landlords of residential property in the City of San Diego.

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