



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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### REPORT TO COUNCIL

#### **SUBJECT**

Adopt an Emergency Ordinance Enacting a Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic; Introduce a Regular Ordinance Enacting a Moratorium on Evictions for Nonpayment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic; and Provide Direction Regarding any Desired Enhanced Provisions on Temporary Moratorium on Evictions of Commercial Tenants Impacted by the COVID-19 Pandemic.

#### **BACKGROUND**

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 February 10, 2020, the Santa Clara County Public Health Officer announced a local health emergency due to the spread of the novel coronavirus. On March 11, 2020, the World Health Organization declared the coronavirus outbreak a pandemic.

On March 12, 2020, in response to the spread of COVID-19, the Sunnyvale City Manager declared a local emergency, which was ratified by the City Council on March 17, 2020. In addition, on March 16, 2020, the Public Health Officer of the County of Santa Clara released an order directing all individuals living in the County to shelter at their place of residence except to provide or receive certain essential services or engage in certain essential activities and work for essential businesses and government services. Further, the order directed all businesses and governmental agencies to cease non-essential operations at physical locations in the County. As a result, many business and employers have had to close or significantly reduce operating levels resulting in a reduction of workforce and a reduction in income to individuals and to the businesses.

On March 16, 2020, Governor Newsom issued Executive Order N-28-20, which suspends state law that would otherwise preempt or restrict local jurisdictions' authority to suspend the evictions of tenants for the non-payment of rent if the non-payment is a result of the COVID-19 pandemic.

On March 20, Governor Newsom issued Executive Order N-33-20 which included an Order by the State Health Officer to protect public health from COVID-19. The order states that all individuals living in the State of California are to stay home or at their place of residence except as further defined in the order; and is in effect until further notice.

The significant impacts of the shelter-in-place and stay at home orders, as well as the related closures of schools and non-essential businesses, have or have the potential to cause widespread economic impacts to Sunnyvale residents who may lose income as a result of COVID-19. A temporary moratorium on residential evictions due to nonpayment of rent will help prevent homelessness and promote housing stability and public health, safety, and welfare during this emergency.

## **EXISTING POLICY**

### **CHARTER OF THE CITY OF SUNNYVALE**

#### **Article VII Ordinances and Legal Notices**

##### **Section 701 - Emergency Ordinances**

Any ordinance declared by the City 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 affirmative votes.

### **GENERAL PLAN**

#### **Housing Element**

##### **GOAL HE-5 EQUAL HOUSING OPPORTUNITIES**

Promote equal housing opportunities for all residents, including Sunnyvale's special needs populations, so that residents can reside in the housing of their choice.

#### **Land Use and Transportation**

##### **GOAL LT-11 SUPPORTIVE ECONOMIC DEVELOPMENT ENVIRONMENT**

Facilitate an economic development environment that supports a wide variety of businesses and promotes a strong economy within existing environmental, social, fiscal, and land use constraints.

## **ENVIRONMENTAL REVIEW**

Adoption of an emergency ordinance does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) as the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

## **DISCUSSION**

The COVID-19 Emergency and the subsequent 'shelter in place' order will lead to severe economic stress for many of Sunnyvale's businesses and residents, particularly those who are already economically burdened. Displacement through eviction may create undue hardship for renters through stress, anxiety, and additional relocation costs that could increase the community's susceptibility to COVID-19. An urgency ordinance placing a moratorium on residential evictions is recommended to help prevent the spread of COVID-19, prevent homelessness and promote housing stability, and protect the health and welfare of Sunnyvale residents during this unprecedented emergency. Further the Council may wish to consider a similar future action related to commercial tenants.

Several other agencies throughout the state and county have enacted similar ordinances in recent weeks. On March 24, the Santa Clara County Board of Supervisors adopted an emergency ordinance that provides protections to tenants throughout Santa Clara County, including in cities, by using the emergency authority granted by the Governor, as well as Government Code section 8634. However, it states that where a city in the county enacts an ordinance or regulation that is more protective of tenants, the city ordinance or regulation will apply. The County's ordinance prohibits

evictions of both residential and commercial tenants for nonpayment of rent when the failure to pay is directly related to a substantial loss of income or substantial out-of-pocket medical expenses associated with the 2020 COVID-19 pandemic or any local, State, or federal government response to the pandemic. Tenants will have 120 days to repay unpaid rent after the emergency ends.

Attachment 5 includes a table of two local counties (Santa Clara and San Mateo) and other Cities in Santa Clara County that have adopted similar local ordinances; this table will be updated prior to the public hearing. After Santa Clara County adopted an ordinance on March 24, 2020 the cities of Cupertino and Gilroy considered local ordinances, which they did not adopt as they were satisfied with the provisions in the County ordinance. The provisions of the other eviction moratorium ordinances are substantially similar; but may differ in two key areas: the time period a tenant will have to repay unpaid rent, typically 90, 120, or 180 days; and whether the regulations include commercial tenants.

### **Sunnyvale Ordinances Prohibiting Evictions of Residential Tenants for Nonpayment of Rent Due to Impacts from COVID-19**

If the Council desires to enact an ordinance that provides more stringent protections for residential tenants than the Santa Clara County ordinance, staff has provided a proposed emergency ordinance that would suspend residential evictions for nonpayment of rent as a result of impacts from COVID-19, protecting residential tenants suddenly facing financial hardship due to COVID-19 from eviction, and providing housing stability during this volatile period of time, helping ensure that residents remain housed and sheltered in place rather than suddenly facing homelessness.

The City Attorney has prepared two ordinances. The first is an emergency ordinance enacting a temporary moratorium on residential evictions for nonpayment of rent by tenants impacted by the COVID-19 pandemic, the details of which are discussed below. This Emergency Ordinance requires five (5) affirmative votes of the City Council to adopt the Ordinance. Adoption of the Second Ordinance, which is identical in content but a regular ordinance which requires a second reading and would be in effect thirty (30) days after the second reading, is also recommended as an administrative and procedural step to eliminate the need to return for an extension to the Emergency Ordinance in the likely event that the emergency extends longer than the duration an Emergency Ordinance can be in effect.

#### Key elements of the proposed Sunnyvale ordinances include:

1. On or after March 12, 2020 (the day Sunnyvale declared a local emergency) Landlords would be prohibited from evicting residential tenants for nonpayment of rent where the nonpayment of rent is due to impacts from COVID-19. Evictions for any other reason would be permitted under the ordinance.
2. Tenants would be required to notify their landlords within 30 days of the due date for rent of their inability or reduced ability to pay rent due to the COVID-19 pandemic. Tenants would be required to provide a landlord with supporting documentation. Examples of such documentation could include: communications from an employer showing a COVID-19 related job loss or reduction of compensated hours of work; communications related to school closure supporting the need to miss work to care for a home-bound school-age child; or, other similarly -caused loss of income that resulted from COVID-19. Tenants whose income is reduced must pay a reduced amount.

3. Tenants would have 180 days from the time the emergency ends to repay unpaid rent. It is important to note that the Ordinance does not excuse payment of rent, but rather prohibits evictions related to a tenant's inability to pay during the COVID-19 emergency and up to six months after the emergency ends. It may still be challenging for some renters to pay the back rent; however, the moratorium on evictions serves the immediate public health and safety purpose of ensuring the renter shelter during the COVID-19 emergency. This payback period is the only material difference between the provisions in the City and County ordinances (180 days and 120 days, respectively).
4. Provides a tenant with the right to civil enforcement of the provisions of either ordinance. That is, in a case where a landlord attempted to evict for nonpayment of rent a tenant claiming a reduction in income from the COVID-19 emergency, the tenant could raise either ordinance as an affirmative defense in that eviction action, and obtain civil penalties against any landlord found in violation of either ordinance.

If the ordinance is adopted, the City will provide notice to the community and educate landlords on its details, including that they are prohibited from evicting, for nonpayment of rent, tenants financially impacted by COVID-19 tenants.

#### Existing Tenant Resources

The City partners with Project Sentinel for Tenant-Landlord Dispute Resolution Services. The Dispute Resolution Services Program provides counseling and dispute resolution services to renters and landlords, including counseling services on rights and responsibilities, information and referral services, educational services, and various dispute resolution alternatives including tenant/landlord mediation. The Program helps to assure that City residents are treated in accordance with all applicable federal, state and local laws.

#### Effects on Landlords

This ordinance would reduce income flow for landlords. Some property owners may be able to more easily weather delayed payment of rent, whereas other landlords (such as those with fewer properties) may depend on that rent for their own living expenses, mortgage payments of the rented property and property maintenance. However, these smaller landlords may have an opportunity to work with the lending institutions which are also allowing a 90 day freeze on mortgage payments.

#### **Commercial Tenant Evictions for Nonpayment of Rent**

Sunnyvale businesses are also significantly impacted by the health crisis of this global pandemic. School closures have occurred, restaurants have been ordered to only serve food for delivery or pick-up, fitness centers and many other businesses have been determined to be non-essential, and thus ordered to effectively cease operations. The loss of income caused by the effects of COVID-19 and the public health orders have, and will, impact commercial tenants' ability to pay rent when due, leaving them vulnerable to eviction. Prohibiting evictions on a temporary basis may be needed to avoid business closures and job losses.

As discussed above, the County's ordinance also prohibits evictions for nonpayment of rent of commercial tenants financially impacted by COVID-19. Such tenants would, under the County ordinance, have 120 days after the emergency to repay unpaid rent. However, the Sunnyvale City Council may adopt an ordinance providing enhanced the protections to cover commercial evictions. If the Council desires to expand those protections, it should provide direction to staff on desired terms

and staff will return with an ordinance applying to commercial tenants. Until that time, it is the County's position (and there is an Attorney General's Opinion confirming that position) that the provisions of the County's eviction moratorium ordinance would apply to commercial tenants in Sunnyvale if the Council chooses not to adopt a local ordinance with greater protections than those offered by the County.

### **FISCAL IMPACT**

Adoption of these ordinances will have no direct fiscal impact on the City. Staff time will be required to advise property owners of the moratorium and to inform and answer questions from the community about the ordinance.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, Sunnyvale Public Library and Department of Public Safety; and by making the agenda and report available at the Office of the City Manager and on the City's website.

An email was sent to individuals, agencies, advocacy groups, and businesses who have expressed an interest in housing related matters informing of this item on the City Council agenda. A similar email message was also sent to business associations in Sunnyvale.

Email and letters received from the public are included in Attachment 3.

### **ALTERNATIVES**

1. Adopt an Emergency Ordinance and Introduce a Regular Ordinance Enacting a Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic (Attachments 1 and 2).
2. Adopt an Emergency Ordinance and Introduce a Regular Ordinance Enacting a Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic with modifications.
3. Do not adopt the Emergency or Regular Ordinances Enacting a Moratorium on Evictions for Non-Payment of Rent by Residential Tenants. The provisions of the County's eviction moratorium ordinance would apply to residential tenants if the Council chooses not to adopt a local ordinance.
4. Provide direction to staff on whether the Council desires enhanced provisions, beyond those set forth in the County ordinance, for eviction moratoriums for commercial tenants impacted by the COVID-19 pandemic.

### **STAFF RECOMMENDATION**

Alternative 1 and Alternative 4:

1) Adopt an Emergency Ordinance and Introduce a Regular Ordinance Enacting a Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic (Attachments 1 and 2); and, 4) provide direction to staff on whether the Council desires enhanced provisions, beyond those set forth in the County ordinance, for eviction moratoriums for commercial tenants impacted by the COVID-19 pandemic.

The adoption of the emergency ordinance establishing a temporary moratorium evictions for nonpayment of rent by for residential tenants impacted by the COVID-19 virus is an important step to

protect the public health and safety of Sunnyvale residents by helping prevent homelessness and ensuring that people remain housed, particularly given the shelter-in-place and stay at home orders.

If Council provides direction on expanding the protections offered in the County ordinance for commercial tenants City staff will return with another ordinance for Council consideration.

Prepared by: Jenny Carloni, Housing Officer

Reviewed by: Trudi Ryan, Director, Community Development

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

### **ATTACHMENTS**

1. Draft Emergency Ordinance Enacting a Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic
2. Ordinance Enacting a Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic
3. County of Santa Clara Uncodified Emergency ORDINANCE NO. NS-9.287 Relating to a Temporary Moratorium on Evictions of Residential and Commercial Tenants Impacted by the COVID-19 Pandemic
4. Letters from the Community
5. Table: Neighboring Jurisdictions with COVID-19 Eviction Moratoriums as of 3/24/20