

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Nanci Klein

**SUBJECT:** SEE BELOW

**DATE:** October 6, 2020

Approved



Date

10/6/2020

## INFORMATION

**SUBJECT: EXTENDED MORATORIUM ON EVICTIONS FOR NONPAYMENT OF RENT FOR SMALL BUSINESS TENANTS FINANCIALLY IMPACTED BY THE NOVEL CORONAVIRUS (COVID-19)**

The Santa Clara County eviction moratorium for all small business tenants impacted by the novel coronavirus (COVID-19) is now extended through to November 30, 2020.

## BACKGROUND

In response to the impact of COVID-19, the Santa Clara County Board of Supervisors first adopted an ordinance introducing an eviction moratorium for both residential and small business tenants at its meeting on March 24, 2020. The County ordinance was extended in May 2020 and updated in June 2020. Most recently the Santa Clara County Board of Supervisors met on August 25, 2020 and adopted [Ordinance NS-9.292](#). [This](#) extended the moratorium of evictions for both residential and small business tenants impacted by COVID-19 to November 30, 2020.

The ordinance passed by the Santa Clara County Board of Supervisors was a result of the Governor signing Executive Order N-28-20 on March 16, 2020 that provided a pathway for local jurisdictions to approve small business eviction moratoriums. The Governor extended the provisions of N-28-20 most recently on September 23, 2020, under N-80-20, which enabled commercial eviction moratoriums to continue through March 2021 should a local jurisdiction desire to extend until then. All residential tenants in California are now subject to the requirements of the [Tenant, Homeowner, and Small Landlord Relief and Stabilization Act](#) (Assembly Bill 3088) signed into law by Governor Newsom on August 31, 2020.

The County ordinance remains comprehensive, and City staff estimate that more than 27,000 commercial tenants physically located in the city of San José are covered by the terms of the

ordinance. This is equivalent to 99% of the commercially rented property in the City. On April 7, 2020, City Council approved a recommendation to endorse the staff report to support the County ordinance.

***Scope of the Temporary Moratorium on Evictions Resulting from the Novel Coronavirus (COVID-19)***

The County moratorium on evictions applies to all jurisdictions in the County and any local ordinance can only take effect where there are stronger protections for the tenant than contained in the County ordinance.

The County ordinance provides:

- A moratorium on evictions of tenants from property used for business, income producing purposes or any purpose other than used for residential use, however organized. This includes all locations and sites across San José, as well as cities and unincorporated parts throughout the County.
- A small business is defined as meeting the size standard in the industry in which that entity operates as defined in the U.S. Small Business Administration's [table of size standards](#).
- A business entity is defined as any person, partnership, corporate or fictitious entity, acting as a lessor or sublessor whether as a principal or through an agent. This includes the self-employed, sole proprietors, and gig workers operating from a variety of sites and locations. It also includes all nonprofit organizations.
- No penalties or late fees can be applied by the landlord during the period of the moratorium where the tenant evidences that the non-payment of rent is a direct consequence of COVID-19.
- An owner's failure to comply renders any notice of termination void.
- All unpaid rent must be paid within one year of the expiration of this ordinance with at least fifty percent due by May 28, 2021 and the outstanding balance by November 30, 2021 unless otherwise extended by the County at a later date. Landlords must inform tenants of the repayment terms and no additional charges can be applied.

The moratorium does not apply to otherwise lawful or at-fault evictions for reasons other than nonpayment of rent due to a substantial loss and/or out-of-pocket medical expense as a result of COVID-19. Any action taken by a landlord seeking eviction must comply with the following:

- Provide small business tenants with this [written notice](#) of the reason for the eviction and notice of the tenants' rights when serving the notice of termination; and
- [Provide resources for rental assistance programs.](#)

The County has published a [web page](#) with translation into multiple languages and a detailed [FAQ](#) explaining the responsibilities of the landlord and tenant impacted by COVID-19.

### *Evidence of Impact by COVID-19 on Small Business*

Since the shelter-in-place order issued by the Santa Clara County Health Director took effect on March 16, 2020, new data published by [Harvard University](#) covering the San José metropolitan statistical area (MSA) area from mid-March 2020 to mid-September 2020 identified the following:

- Total consumer spending in the San José MSA remains 13.3% below pre COVID levels. However, a number of key sectors continue to experience significantly worse declines in consumer spending including leisure and entertainment (-59%), transportation (-53%) and restaurants (-37%).
- The proportion of small business open has declined by 34.5% in the San José MSA with overall revenues down by 37.8%. These figures have remained largely unchanged since early July 2020.
- The [unemployment rate in the San José MSA](#) rose from 3.5% in March 2020 to 12.0% in April 2020 and has since fallen back to 7.6% in August 2020. This is above the year-ago estimate of 2.3%. The City of San José alone has 48,100 unemployed residents equivalent to an unemployment rate of 8.8%.

The impact is significant for commercial landlords as rent payments that were due in April 2020 can now be delayed by up to thirteen months since the date the moratorium was first adopted by the County. However, the moratorium is justified as it reflects the declining condition of the local economy and the ability of businesses to pay rent as demonstrated by the extraordinary demand for small business loans and time necessary to apply for and receive unemployment benefits.

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**CONCLUSION**

City staff will continue to monitor and update Council on all County decisions relating to the eviction moratorium and any relevant issues for the duration that the ordinance remains in effect.

/s/

NANCI KLEIN

Director of Economic Development

For questions, please contact Vic Farlie, Senior Economic Analyst, at (408) 535-8230.