

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: July 1, 2021

Approved



Date

07/01/21

INFORMATION

SUBJECT: UPDATE ON FEDERAL AND STATEWIDE EXTENSION OF RESIDENTIAL EVICTION MORATORIUM

The purpose of this information memorandum is to provide the City Council with an update on the federal and statewide extension of the residential eviction moratorium.

BACKGROUND

On June 28, 2021, California Governor Gavin Newsom signed into law [Assembly Bill 832](#) (AB 832), enacting a number of protections against eviction for tenants who have been unable to pay rent debt that accrued during the COVID-19 crisis. AB 832 includes additional requirements of local rental assistance programs, as described below, and contains provisions that help streamline rental assistance payments to tenants and property owners. The Bill ensures rental assistance dollars are given to cities and counties with unmet needs and uses the judicial process to guarantee tenants and landlords have attempted to obtain rental assistance.

Additionally, the Center for Disease Control and Prevention extended the eviction moratorium on June 24, 2021. This extension applies to any tenant, lessee, or resident of a residential property who earn less than \$99,000 annually and provides to their property owner a signed declaration. The extension will go through July 31, 2021.

COVID-19 Tenant Relief Act Eviction Protections

AB 832 extends through September 30, 2021, the same eviction protections originally established under the COVID-19 Tenant Relief Act of 2020 passed under AB 3088 and further extended under SB 91. Tenants cannot be evicted for COVID-19 rent debt (rent due between 3/1/2020 - 9/30/2021) so long as they:

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- Pay at least 25% of rent due by September 30, 2021, for the period of September 1, 2020 through September 30, 2021. Tenants may do this by paying at least 25% each month, or by paying a lump sum equaling 25% of their rent during the time period, or by some other means.
- Submit to their landlord a signed Declaration of COVID-19-related Financial Distress within 15 days of receiving a notice for nonpayment of rent.

COVID-19 Rental Housing Recovery Act

AB 832 also contains the COVID-19 Rental Housing Recovery Act (the “Recovery Act”), effective through September 30, 2024. The Recovery Act applies to rent debt accumulated during the COVID-19 hardship, which includes COVID-19 rental debt (3/1/2020 - 9/30/2021 rent) and COVID-19 recovery period rental debt (10/1/2021 - 3/31/2022 rent), if the debt accumulated during a tenancy initially established before October 1, 2021. The Recovery Act contains three main provisions that use the judicial process to ensure that landlords seek rental assistance before pursuing an eviction:

First, any notice demanding payment of COVID-19 recovery period rental debt (rent due between 10/1/2021 - 3/31/2022), the landlord must include in the notice the following:

- The time period in which the tenant may pay the amount due or deliver possession of the property shall be no shorter than three days, excluding Saturdays, Sundays, and other judicial holidays.
- The amount of rent demanded and the date each amount became due.
- The telephone number and internet website address of the pertinent government rental assistance program.
- The following in bold text and at least 12-point font, in the language that the lease was negotiated:

“IMPORTANT NOTICE FROM THE STATE OF CALIFORNIA – YOU MUST TAKE ACTION TO AVOID AN EVICTION: As part of the state’s COVID-19 relief plan, money has been set aside to help renters who have fallen behind on rent or utility payments.

If you cannot pay the amount demanded in this notice, YOU SHOULD COMPLETE A RENTAL ASSISTANCE APPLICATION IMMEDIATELY! It is free and simple to apply. Citizenship or immigration status does not matter.

DO NOT DELAY! IF YOU DO NOT COMPLETE YOUR APPLICATION FOR RENTAL ASSISTANCE WITHIN 15 BUSINESS DAYS, YOUR LANDLORD MAY BE ABLE TO SUE TO OBTAIN A COURT ORDER FOR YOUR EVICTION.

You can start your application by calling 1-833-430-2122 or visiting <http://housingiskey.com>.”

If the requirements above are not followed, the court, upon its own motion or upon a motion by a defendant in the case, shall dismiss a cause of action for unlawful detainer that is based on a notice that demands payment of COVID-19 recovery period rental debt. A defendant may raise the insufficiency of a notice pursuant to this section as a complete defense to an unlawful detainer.

Second, between October 1, 2021-March 31, 2022, when landlords file an unlawful detainer action, before the Court can issue a summons, a landlord must declare under penalty of perjury, either:

- (1) They have completed an application for government rental assistance, but the application was denied and a copy of the denial; or
- (2) They submitted a completed application for rental assistance and a) 20 days have passed since the landlord applied or served the notice, b) the landlord has not received notice indicating the tenant has submitted a completed application, and c) the landlord has not received any communication from the tenant that the tenant has applied for rental assistance demanded from the landlord.

The Court must find that one of the above conditions exist before they can enter judgment.

Third, the Court can reinstate a tenancy through a relief from forfeiture motion in an unlawful detainer action if the tenant is still occupying the property, and:

- (1) The lawsuit demanded payment of rental debt that accumulated due to COVID-19 financial hardship.
- (2) The tenant submits verification to the court that a government rental assistance program has approved an application for rental assistance corresponding to part or all of the rental debt demanded in the complaint.
- (3) The approved payment from the rental assistance program, together with any additional payments made by the tenant, constitute full payment of the rental debt demanded in the complaint.
- (4) The landlord has received the full amount of payment as demanded in the lawsuit.

AB 832 Prevents Local Regulation of Evictions for Rent Debt Covering March 1, 2020 through March 31, 2022

AB 832, like AB 3088 and SB 91 before it, limits local regulation of evictions of rent debt that accumulated between March 1, 2020 through March 31, 2022. The Bill provides that any ordinance, resolution, regulation, or administrative action adopted by a city, county, or city and county in response to the COVID-19 pandemic to protect tenants from eviction that occurs between August 19, 2020 and March 31, 2022, shall have no effect before April 1, 2022. Additionally, the Bill states that a city may not amend existing just cause eviction ordinances to apply to rental payments that came due between March 1, 2020, and March 31, 2022. Finally, the Bill states that the Legislature finds and declares that this section addresses a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section applies to all cities, including charter cities.

Accordingly, the Ordinance, passed by the City Council on June 22, 2021, terminates upon passage of AB 832 since these provisions continue the previous protections established under AB 3088 and SB 91.

Small Claims Requirements

AB 832 also contains additional requirements surrounding small claims actions of COVID-19 rent debt. These provisions are extended until October 1, 2025. AB 832 states that it is the intent of the Legislature that landlords of residential real property and their tenants have the option to litigate disputes regarding rent which is unpaid for the time period between March 1, 2020 to September 30, 2021 in the small claims court. Beginning November 1, 2021, landlords can bring a small claims action to recover unpaid COVID-19 rent debt. Only current actions filed before October 1, 2020 may proceed at this time.

A landlord who files a small claims action must attach to the complaint documentation showing that the plaintiff has made a good faith effort to investigate whether governmental rental assistance is available to the tenant, seek governmental rental assistance for the tenant, or cooperate with the tenant's efforts to obtain rental assistance from any governmental entity, or other third party pursuant to paragraph (3) of subdivision (a) of Section 1947.3 of the Civil Code.

The court may reduce the damages awarded for any amount of COVID-19 rental debt if the court determines that the landlord refused to obtain rental assistance from the state rental assistance program if the tenant met the eligibility requirements and funding was available.

Rental Assistance Changes Under AB 832

AB 832 also includes provisions to help streamline rental assistance payments to tenants and property owners who already applied and have received approval through the existing state rental assistance program. The state has increased its financial assistance to a \$5.2 billion rent relief program that will cover 100% of accumulated past-due rent on or after April 1, 2020 and prospective rent payments, as well as utility bills for income-qualified tenants. Furthermore, the extension would allow funds to be sent to tenants directly and allow a new process targeted to protect tenants from eviction if eligible for aid. AB 832 also allows tenants to access rental funds directly if their landlord chooses not to participate and ensures property owners can receive compensation even if their otherwise income-qualified tenants have already vacated a unit.

AB 832 also includes notification requirements of local grantees who are administering rental assistance. A grantee shall provide notification to the landlord and tenant when either the landlord or the tenant submits a completed application for rental assistance. A grantee shall provide notification to the landlord and tenant once a final decision has been rendered. The notification shall include the total amount of assistance paid and the time period for which assistance was provided, as applicable. Failure to comply with the requirements of this subdivision may result in the grantee's share of funds received from the state pursuant to Section 50897.2 or 50897.2.1 reverted to the department for reallocation at the department's discretion.

Additional rental assistance provisions under AB 832 for local rental assistance programs include:

(a) Each government rental assistance program shall, by no later than September 15, 2021, develop mechanisms, including, but not limited to, telephone or online access, through which landlords, tenants, and the court may do both of the following:

(1) Verify the status of an application for rental assistance based upon the property address and a unique application number.

(2) Obtain copies of any determination on an application for rental assistance. A determination shall indicate all of the following:

(a) The name of the tenant that is the subject of the application.

(b) The address of the property that is the subject of the application.

(c) Whether the application has been approved or denied.

(d) If the application has been approved, then the amount of the payment that has been approved and the period and type of rental debt to which the amount corresponds.

(e) If the application has been denied, the reason for the denial, which shall be any of the following:

(i) The tenant is ineligible for government rental assistance.

(ii) The government rental assistance program no longer has sufficient funds to approve the application.

(iii) The application remained incomplete 15 days, excluding Saturdays, Sundays, and other judicial holidays, after it was initially submitted because of failure on the part of the tenant to provide required information.

(b) A government rental assistance program that does not comply with this section shall be deemed ineligible to receive further block grant allocations pursuant to Section 50897.2 of, or 50897.2.1 of, the Health and Safety Code.

(c) It shall be unlawful for a person to access or use any information available pursuant to subdivision (a) for any purpose other than to determine the status of an application for assistance.

Rental Assistance Programs Available to San José Residents

Santa Clara County residents can get information about rental assistance resources, including which program they are eligible for, online at SCCRentHelp.org.

Those who earn less than 30% of the area median income can apply for rental assistance through the local program, Santa Clara County Homelessness Prevention System – COVID-19 Response. The local program is a public/nonprofit partnership between the City of San José, County of Santa Clara, and the countywide Homelessness Prevention System, led by Sacred Heart Community Service and Destination: Home SV.

To be eligible, a tenant must:

- Have been financially impacted by the pandemic. This could include losing a job, having work hours cut, owning or working for a business that closed temporarily or permanently,

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or being unable to work due to illness from COVID-19, caring for elders or children (including due to distance learning or loss of childcare), or having unexpected family expenses due to the pandemic.

- Is at-risk of losing their housing. This could include receiving an eviction or late notice from a landlord, being behind on rent or utilities, or being unstably housed (including living in overcrowded housing); AND
- Makes less than 30% of the area's median income. In Santa Clara County, this would be an annual income before taxes of \$49,700 for a household of four.

This program prioritizes our most vulnerable residents hardest hit by the COVID-19 pandemic and the pandemic-induced recession. Its efforts focus on extremely low-income renters with incomes below 30% of the Area Median Income (AMI), including those who do not have traditional rental or lease agreements, and who are at high risk of displacement and homelessness. Information is online at SCCRentHelp.org or by phone at 211.

Renters with incomes between 30% and 80% of AMI are eligible for assistance through the State program at HousingIsKey.com or by phone at 833-430-2122.

Center for Disease Control and Prevention Eviction Moratorium

The Center for Disease Control and Prevention extended on June 24, 2021 the federal eviction moratorium to prevent evictions of tenants who have not been able to make their rental payments due to the COVID-19 pandemic. The eviction moratorium was scheduled to expire on June 30, 2021 and is now extended to July 31, 2021 with the intent to be the final extension made. The Center for Disease Control and Prevention Eviction Moratorium applies to:

- Tenants who have completed and signed a copy of a declaration under penalty of perjury indicating that:
 - (1) The individual has used the best efforts to obtain all available government assistance for rent or housing;
 - (2) The individual either (i) earned no more than \$99,000 (or \$198,000 if filing jointly) in Calendar Year 2020, or expects to earn no more than \$99,000 in annual income for Calendar Year 2021 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2020 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check);
 - (3) The individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses;
 - (4) The individual is using best efforts to make timely partial payments that are as close to full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and
 - (5) Eviction would likely render the individual homeless or force the individual to move into and live in close quarters in a new congregate or shared living setting because the individual has no other available housing options.

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On Tuesday June 29, 2021, the Supreme Court voted to keep the Center for Disease Control and Prevention eviction moratorium in place until the moratorium is set to expire. The order to vacate the eviction moratorium was an emergency request from a landlord group. The 5-4 vote will keep the eviction moratorium in place to allow more time for additional and orderly distribution of rental assistance funds

COORDINATION

The memorandum was coordinated with the City Attorney's Office and the City Emergency Operation Center Community and Economic Recovery Branch.

/s/

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For questions, please contact Director Jacky Morales-Ferrand at Jack.MoralesFerrand@sanjoseca.gov.