



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand

**SUBJECT: REPORT ON EVICTION  
MORATORIUM**

**DATE:** September 23, 2021

Approved

Date

09/24/21

## **RECOMMENDATION**

Accept the staff report on the status of the State's Eviction Moratorium under Assembly Bill 832 and the Housing Department's efforts to provide education and support to at-risk communities in the City of San José.

## **OUTCOME**

The City Council will understand how the State's Eviction Moratorium, and Assembly Bill 832 (AB 832) impact and assist San José's tenants and how the Housing Department is working to provide support and education to impacted tenants and property owners regarding rental assistance.

## **EXECUTIVE SUMMARY**

The COVID-19 health crisis and resulting economic downturn placed millions of American renters at risk of eviction, demanding that governmental bodies at federal, state, and local levels respond to protect and support populations at risk of eviction. The Federal government responded by allocating up to \$46.55 billion for rent and utility payments as well as housing stability support for low-income households earning less than 80 % of the local Area Median Income (AMI). The City too adapted its own policies to ensure the needs of its most vulnerable tenants were met, including partnering with the County of Santa Clara and nonprofit partners to implement a local rental assistance program and opening an Eviction Prevention Help Center. Additionally, the Housing Department and its partners have scaled outreach efforts related to rental assistance resources, placing special emphasis on those who are extremely low-income, do not have traditional rental or lease agreements, and those who are at high risk of displacement and homelessness.

In June, California Governor Gavin Newsom signed AB 832 into law, extending the State's Eviction Moratorium through September 30, 2021, at which point it will expire. Beginning October 1, AB 832's COVID-19 Rental Recovery Act takes effect, ending the 25% rent obligation that was previously established, and setting in place new protections for tenants. This memo discusses key requirements and protections under the Act for both property owners and tenants, and what the Housing Department and its partners are doing to educate and assist tenants who continue to struggle with paying their rent.

Prior to the adoption of AB 832, on June 22, 2021<sup>1</sup>, the City Council enacted a residential Eviction Moratorium (through August 31, 2021). While AB 832 pre-empted the local ordinance, the City Council additionally directed the Administration to explore returning with a proposal to extend the Eviction Moratorium through December 2021. This report discusses how AB 832 prevents any city or county from adopting an ordinance, resolution, regulation, or administrative action that is in response to the COVID-19 pandemic to protect tenants from eviction until April 1, 2022. This report also briefly discusses recent changes to rental assistance programming, the City's strategies to assist impacted tenants applying for rental assistance, and the expansion of legal assistance for those at risk of eviction.

## **BACKGROUND**

On June 28, 2021, California Governor Gavin Newsom signed into law AB 832<sup>2</sup>, 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 further ensures rental assistance dollars are given to cities and counties with unmet needs and uses the judicial process to guarantee tenants and property owners have attempted to obtain rental assistance.

The background will expand on the following in turn:

- A. COVID-19 Tenant Relief Act Eviction Protections;
- B. COVID-19 Rental Housing Recovery Act; and
- C. Rental Assistance Changes Under AB 832.

### **A. COVID-19 Tenant Relief Act Eviction Protections**

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

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<sup>1</sup> <https://sanjose.legistar.com/LegislationDetail.aspx?ID=4988616&GUID=2AD8A932-6E53-4048-BBF1-A0F6E4CE2FBF&Options=&Search=>

<sup>2</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB832](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB832)

- 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 cumulative rent owed during the time period, or by some other means; and
- Submit to their property owner a signed Declaration of COVID-19 Related Financial Distress within 15 days of receiving a notice for nonpayment of rent.

These protections end September 30, 2021. AB 832 contains further provisions preventing local jurisdictions from adopting eviction protection measures in response to the COVID-19 pandemic until April 1, 2022.

## **B. COVID-19 Rental Housing Recovery Act**

AB 832 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 periods, which include COVID-19 rental debt (March 1, 2020 to September 30, 2021 rent) and COVID-19 recovery period rental debt (October 1, 2021 to March 31, 2022 rent), if the debt accumulated during a tenancy initially established before October 1, 2021.

The Recovery Act contains three main protections:

- 1) Requiring that property owners provide information about the availability of rental assistance and information about how to apply when they issue a notice for nonpayment of rent; and
- 2) Requiring property owners to apply for rental assistance and be denied (or wait twenty days without a response from the rental assistance program or without the tenant completing their portion of the application) before a Court will allow them to evict; and
- 3) Authorizing Courts to stay eviction proceedings and reinstate tenancies if a tenant’s application for rental assistance has been approved and payment is pending to the property owner.

First, for any notice demanding payment of rental debt during the COVID-19 recovery period (rent due between October 1, 2021 to March 31, 2022), the property owner must include additional information in their notice. The notice must state:

- 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, and
- Notice with specified language:

**“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 property owner does not follow the above requirements, AB 832 states that the Court, can dismiss the eviction. This action can be placed in motion by the Court or by the defendant. The defendant also has the right to use in their defense any of the requirements that the property owner did not meet.

Second, between October 1, 2021 to March 31, 2022, when a property owner files an unlawful detainer action, before the Court can issue a summons, the property owner must declare under penalty of perjury one of the following circumstances:

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

Additionally, before entering judgment, the Court must find that one of these two circumstances exist.

Third, during the eviction case, the Court can delay the lockout if the tenant is still residing in the property and reinstate a tenancy if all the following apply:

- 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 property owner has received the full amount of payment as demanded in the lawsuit.

### **C. 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, prospective rent payments, as well as utility bills for income-qualified tenants. Furthermore, the extension permits funds to be sent to tenants directly. Additional provisions include:

- ***Accessing rental funds*** – AB 832 allows tenants to access rental funds directly if their property owner chooses not to participate and ensures property owners can receive compensation even if their otherwise income-qualified tenants have already vacated a unit.
- ***Requiring rental assistance program administrators to provide notification to tenants and property owners*** – AB 832 also requires government agencies that are administering rental assistance programs to provide notification to a property owner when their tenant applies for rental assistance and to a tenant when their property owner applies. The program also must provide notification to the property owner 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 government agency's share of grant funds received from the state being reverted to the department for reallocation at the department's discretion.
- ***Develop Coordination Mechanisms no later than September 15, 2021*** – Rental assistance programs were required under AB 832 to create mechanisms that would allow property owners, tenants, and the Courts accessibility to verify the status of the application, obtain copies of information needed for a complete application, and process the application. If the application has been approved, then the amount will be processed. If the application has been denied, then the denial would be based on the following: 1) tenant is ineligible, 2) government rental assistance program no longer has sufficient funds, or 3) the application remained incomplete for 15 days.

### **ANALYSIS**

The City of San José remains committed to protecting the most vulnerable communities negatively affected by the COVID-19 pandemic. While the statewide Eviction Moratorium expires on September 30, 2021, the City will continue its efforts to encourage and assist tenants to apply for rental assistance.

The analysis section addresses the following:

- A. AB 832 Prevents Local Regulation of Evictions for Rent Debt Covering March 1, 2020 through March 31, 2022;
- B. Protections for Tenants Starting October 1, 2021 through March 31, 2022;
- C. City's Strategies to Assist Impacted Tenants Applying for Rental Assistance Programs; and
- D. Property Owners' Recovery through Small Claims of Unpaid COVID-19 Rent Debt.

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

AB 832, like its predecessors AB 3088 and SB 91, continues broad sweeping limits on local eviction protections related to COVID-19. First, AB 832 prohibits local jurisdictions from regulating evictions that are based on rent debt accumulating between March 1, 2020 through March 31, 2022. AB 832 states that any ordinance, resolution, regulation, or administrative action, however delineated, 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.

In addition, cities may not amend their existing just cause eviction ordinances to apply to rental payments that came due between March 1, 2020, and March 31, 2022. Finally, because Legislature found that AB 832 addresses a matter of statewide concern rather than a municipal affair, the law applies to all cities, including charter cities. Thus, while State law protections are still ongoing, local jurisdictions are unable to enact new laws to protect tenants from eviction related to COVID-19. Accordingly, the eviction prevention ordinance passed by Council on June 22, 2021 terminated upon passage of AB 832 since the State provisions continue the previous protections established under AB 3088 and SB 91. In short, the City is preempted from putting in place such an ordinance until April 1, 2022.

**B. Protections for Tenants Starting October 1, 2021 through March 31, 2022**

Before delving into the changes beginning October 1, 2021, it is important to note that tenants who paid at least 25% of their rent due from September 1, 2020 to September 30, 2021 cannot be evicted for failure to pay the remaining 75% of rent still owed. Starting October 2021, the 25% rent payment limit ends and new requirements begin.

Beginning October 1, 2021, tenants must either pay their current rent on time based upon their rental contract or apply for rental assistance to be protected against eviction. If a property owner wants to evict a tenant, they must first apply for rental assistance and be denied or receive no response after 20 days from either the tenant regarding status on the rental assistance application or from the rental assistance program. The Court must delay an eviction if a tenant has been approved for rental assistance until the rental assistance is received. If the delivery of the rental assistance resolves the lawsuit, then the case will be dismissed.

Therefore, property owners can only move forward with nonpayment of rent evictions for rent due between October 1, 2021 to March 31, 2022 if one of these three conditions apply:

- The tenants' rental assistance application was denied, or
- The property owner tried to apply for rental assistance, but the tenant did not cooperate with the application process, or
- The tenant's tenancy started after October 1, 2021.

If property owners are not able to prove one of these conditions within 60 days of filing the eviction lawsuit, the Court will dismiss the case. After October 1, 2021, property owners are no longer required to provide a 15-day notice for nonpayment of rent and can resume 3-day notices for nonpayment of rent.

Although AB 832 provides these additional protections, there is a fear that tenants who are given an eviction notice will not fully understand their rights and will move. This was a typical pattern observed prior to COVID-19; most tenants either find a way to pay their rent when they receive the three-day demand notice, or they leave. The City will continue to provide information, education, and assistance during this time period to ensure renters understand their rights.

### **C. City's Strategies to Assist Impacted Tenants Applying for Rental Assistance Programs**

The City launched two permanent locations for tenants to receive assistance with rental applications: on the 12<sup>th</sup> Floor of City Hall and the Franklin McKinley School District. These sites are referred to as Eviction Prevention Help Center locations. At these sites, Rental Assistance Navigators help tenants submit a rental assistance application; assistance is provided in various languages, including Spanish, Vietnamese, Mandarin, and English. Additional language assistance is also available. The centers also offer access to legal services, with Law Foundation and Bay Legal staff onsite. In addition to these two permanent locations, City staff have coordinated with organizations across the City to host pop-up events offering information regarding the Eviction Moratorium and rental assistance application help. Since July, Housing Department staff have participated in more than 70 pop-up events, including an event in partnership with the Santa Clara County Superior Court. Four additional campaigns targeting outreach include:

- ***Contacting tenants who have received a Notice of Termination for Nonpayment of Rent submitted to the Rent Stabilization Program*** – The Rent Stabilization Program recently launched a campaign to reach tenants who received notices of termination for nonpayment of rent. Under the City's Tenant Protection Ordinance, all tenants who live in apartments in San José must receive a Just Cause Reason from their property owner to terminate their tenancy. The Tenant Protection Ordinance also provides that property owners must submit a copy of the termination notice to the Rent Stabilization Program within three days of issuing the notice to the tenant. Staff analyzed the notices of terminations for nonpayment of rent since August 2021 and have mailed more than 1,400

follow up informational flyers directly to the tenants with information on the COVID-19 rental assistance program.

- ***Contacting rent stabilized apartment property owners to provide follow up assistance to tenants with rental arrears*** – The Housing Department is providing property owners who operate rent stabilized apartments with information about the rental assistance program. Property owners and Housing staff work together to identify tenants with rental arrears, and staff members follow up directly with the tenants, offering information on the rental assistance programs. As of September 1, 2021, staff has contacted more than 400 rent stabilized apartment property owners.
- ***Outreach to owners and property managers of restricted affordable developments*** – The Housing Department reached out to owners and property managers from affordable housing developments in the City’s portfolio, offering information about the rental assistance program and inviting them to two webinars providing additional information.
- ***Legal Assistance Expanded*** – The Housing Department and Santa Clara County Office of Supportive Housing are jointly funding expanded legal services in San José and throughout the county in anticipation of an eviction surge once the State eviction moratorium is lifted. With expanded funding and a new two-year contract with the Law Foundation of Silicon Valley, the City’s goal is to provide every tenant in San José with access to some level of legal assistance. The proposal includes 17 new staff including attorneys, community housing advocates, social workers, and paralegals to significantly expand services, known as Community Housing Advocates. The expanded eviction defense services include providing advice and counsel, assisting tenants to prepare and file answers to unlawful detainer cases, guidance on representing themselves in Court, and full representation of tenants in eviction cases, including trial. The Community Housing Advocates will work on intake, outreach, community education, brief legal services under the supervision of an attorney, and tenant organizing. Additionally, expanded services will include a pro bono program. As such, a new staff attorney in the pro bono program will train and support pro bono attorneys to increase assistance to tenants.

#### **D. Property Owners’ Recovery through Small Claims of Unpaid COVID-19 Rent Debt**

AB 832 includes requirements that unpaid COVID-19 rent debt that accumulated between March 1, 2020 through September 30, 2021 may be pursued through small claims court. The requirement to pursue unpaid COVID-19 rent debt through small claims court is in effect through October 1, 2025. Beginning November 1, 2021, property owners may bring a small claims action to recover unpaid COVID-19 rent debt.

A property owner who files a small claims action must attach to the complaint documentation showing that they have 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.



During the small claims action, the Court may reduce the damages awarded for any amount of COVID-19 rental debt if the Court determines that the property owner refused to obtain rental assistance from the state rental assistance program if the tenant met the eligibility requirements of the program and funding was available.

## **CONCLUSION**

The COVID-19 pandemic continues to disrupt the lives of tenants across the City of San José. As eviction prevention policies are set to expire, the City maintains its commitment to assist tenants in applying for rental assistance. These efforts are especially important to prevent displacement and ensure that individuals and families who may be experiencing a heavy rent burden are able to repay the rent that has accrued over the course of the pandemic. In addition, these efforts support property owners who have been unable to make ends meet during the pandemic without 100% of their rental income.

## **EVALUATION AND FOLLOW-UP**

The Housing Department and the City Manager's Office of Administration, Policy, and Intergovernmental Relations will continue to track legislative action around this issue, as well as the impact of the State and local efforts. Future updates to City Council regarding the Administration's response to the COVID-19 pandemic will include information related to eviction prevention and emergency rental assistance.

## **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

## **PUBLIC OUTREACH**

The Housing Department is providing direct support to tenants with help submitting rental assistance applications. The Department also continues outreach efforts through media campaigns, phone calls, mailers, and community events.

## **COORDINATION**

The memorandum was coordinated with the City Attorney's Office, the City Manager's Budget Office, and the City Manager's Office of Administration, Policy, and Intergovernmental Relations.

**COMMISSION RECOMMENDATION/INPUT**

Due to the urgency of this matter, staff was unable to bring this item to the Housing and Community Development Commission for input.

**FISCAL/POLICY ALIGNMENT**

This action is consistent with the City's *Consolidated Plan 2015-2020*, adopted by City Council on May 5, 2015, to provide homes for very low- and extremely low-income households, and with Goal H-2 of the City's *Housing Element 2014-2023*, adopted by City Council on January 27, 2015, to "increase, preserve, and improve San José's affordable housing stock."

**CEQA**

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

/s/  
JACKY MORALES-FERRAND  
Director, Housing Department

For questions, please contact Deputy Director, Rachel VanderVeen, at 408-535-8231 or [Rachel.VanderVeen@sanjoseca.gov](mailto:Rachel.VanderVeen@sanjoseca.gov).