



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development

**Prepared by: Alicia Giudice
Community Development Director
Alexis Captanian, Housing Analyst**

City Manager Approval: _____

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TOPIC: EVICTION MORATORIUM THROUGH SEPTEMBER 2022

SUBJECT: AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL, PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 36937(B), BARRING EVICTIONS IN THE CITY OF SAN RAFAEL THROUGH SEPTEMBER 30, 2022 DUE TO THE PUBLIC HEALTH EMERGENCY ARISING FROM COVID-19

RECOMMENDATION:

Adopt, with at least 4/5 vote, an urgency ordinance enacting a temporary moratorium through September 30, 2022 on evictions of tenants residing in residential rental units in San Rafael and setting forth the facts constituting such urgency.

BACKGROUND:

Countywide Eviction Moratorium

On March 24, 2020, the Marin County Board of Supervisors adopted Resolution No. 2020-27 Barring Evictions in Marin County Due to the Public Health Emergency Arising from COVID-19 (the "Eviction Ban Resolution"). This resolution encompassed properties located within the incorporated and unincorporated areas of the County and thus included properties located within the City of San Rafael.

The countywide eviction moratorium was in effect from March 27, 2020 through September 30, 2020. The resolution specified that landlords could not recover possession of a rental unit if the tenant provided notice to the landlord within 30 days after the date that rent was due that they were unable to pay the rent because of financial impacts related to COVID-19.

On April 28, 2020, the Marin County Board of Supervisors adopted Resolution 2020-40 amending and updating the Eviction Ban Resolution, including adding in a 90-day repayment provision for renters to repay back rent, and requiring landlords to provide a notice of the eviction ban prior to serving a notice of eviction on any tenant.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

On August 31, 2020, the State passed AB 3088, which established a statewide eviction moratorium that expired on June 30, 2021. Both the County and State eviction moratoriums were limited to evictions based on non-payment of rent due to COVID-19 and do not prohibit other types of evictions.

In September 2020, City and County elected officials and staff joined representatives from the Canal Alliance, Community Action Marin, and Legal Aid of Marin to form the Canal Policy Working Group (CPWG). This group was formed to work collaboratively on the development of a range of actions aimed at keeping residents in their homes and addressing the growing burden of rental debt. The CPWG has been working urgently towards a path to recovery that puts equity front and center, for residents, businesses, and landlords alike. The Canal Policy Working Group quickly identified housing instability as the most critical issue facing the City.

On November 2, 2020, City Council adopted [Resolution No. 14867](#), which recognized the disproportionate impact that COVID-19 has had on historically marginalized and under-resourced communities of color in Marin County and committed to pursuing bold, collaborative solutions to address this crisis. The resolution also articulated the City Council's commitment to protect housing for our essential workers and to preserve the ability for many community members to stay in their homes in San Rafael. On November 3, 2020, the Marin County Board of Supervisors adopted [a matching resolution](#).

On January 19, 2021, City Council adopted an urgency ordinance enacting a temporary moratorium on rent increases for tenants residing in certain residential units and in census tracts most disproportionately impacted by COVID-19, and on June 21, 2021, City Council adopted an urgency ordinance barring evictions in the City of San Rafael through September 2021.

On March 31, 2022, Acting Governor Kounalakis signed Assembly Bill 2179 into law, which extended the term of eviction protections initially enacted by Assembly Bill 3088 and Senate Bill 91 through July 1, 2022 for those who applied for rent relief before March 31, 2022. Assembly Bill 2179 also extended the temporary preemption of a local jurisdiction's ability to enact new or amend existing eviction protections for nonpayment of rent due to financial distress related to COVID-19 through July 1, 2022.

On June 21, 2022, the County will consider adoption of a new eviction moratorium that only covers unincorporated areas of the County, leaving each jurisdiction in the County to consider implementing their own eviction moratoriums.

The County's Emergency Rental Assistance program provides rent relief to Marin County landlords and renters who have faced financial hardships due to the COVID-19 pandemic. The program is funded through Federal funds administered through the U.S. Treasury and State Block Grant funds. The program was awarded a total of \$36,414,871 of which \$22,605,930 has been paid out to assist 1,141 households and \$3,229,448 is obligated. The remaining balance is \$10,579,493, which will serve the remaining applicants and waitlist. It is anticipated that all funds will be spent by September 30, 2022.

ANALYSIS:

The proposed urgency ordinance would provide stability to the tenants residing in residential rental units in San Rafael who face on-going impacts from COVID-19, by preventing evictions and late fees for nonpayment of rent due to COVID-19 financial loss. Federal and state rental assistance funding is available through the County's Emergency Rental Assistance program through September 30, 2022 to help mitigate the pandemics' financial impacts on property owners and renters, and for essential workers and those who live in under-resourced communities. Community partners report that court evictions for

non-payment have spiked for those unable to pay April and May 2022 rent, many of whom have submitted applications for the Emergency Rental Assistance program.

The proposed ordinance would be adopted as an urgency ordinance under Government Code Government Code section 36937(b). Ordinarily, to adopt a City ordinance, the City Council would introduce the ordinance and hold a public hearing, and then schedule the final adoption for a second meeting, with publication of a summary of the ordinance in between. The ordinance would not go into effect until 30 days after the final adoption. As an urgency ordinance however, the proposed ordinance would be adopted in a single meeting and could become effective immediately, if it is approved by at least 4/5 of the Councilmembers. In this case, instead of taking immediate effect upon adoption, the urgency ordinance provides that it will go into effect on July 1, 2022, after the expiration of the City's ordinance No. 1994 and after the temporary preemption period in Assembly Bill 2179 expires. In order to be adopted under section 36937(b), the ordinance must include findings explaining that the urgency ordinance is necessary to protect the public peace, health or safety. The ordinance includes these findings.

FISCAL IMPACT:

There is no immediate financial impact to the City's budget.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Staff's recommended action to approve an eviction moratorium urgency ordinance.
2. Adopt ordinance with modifications.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

Adopt, by at least 4/5 vote, an urgency ordinance enacting a temporary moratorium through September 30, 2022 on evictions of tenants residing in residential rental units in San Rafael and setting forth the facts constituting such urgency.

ATTACHMENTS:

1. Urgency Ordinance

ORDINANCE NO.

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL,
PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 36937(B),
BARRING EVICTIONS IN THE CITY OF SAN RAFAEL THROUGH SEPTEMBER 30,
2022 DUE TO THE PUBLIC HEALTH EMERGENCY ARISING FROM COVID-19**

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

WHEREAS, Government Code Section 36937(b) authorizes the adoption of an urgency ordinance for the immediate preservation of the public peace, health or safety; and

WHEREAS, on June 21, 2021 the City of San Rafael adopted Ordinance No. 1994 Barring Evictions In The City Of San Rafael through September 30, 2021 (“The COVID-19 Eviction Moratorium” attached hereto as Exhibit A), and this urgency Ordinance hereby adopts and incorporates by reference all findings included in Ordinance No. 1994; and

WHEREAS, on February 26, 2020, community transmission of a widespread, ongoing global outbreak of respiratory illness known as COVID-19 was confirmed by the Centers for Disease Control and Prevention (CDC) in the Bay Area; and

WHEREAS, on March 4, 2020, California Governor Newsom declared a state of emergency in the State of California; and

WHEREAS, on March 16, 2020, a Shelter-in-Place Order for all of Marin County was issued by the Marin County Health Officer; and

WHEREAS, on March 17, 2020, the San Rafael City Council ratified and confirmed the Emergency Services Director’s Proclamation of Local Emergency; and

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-2 authorizing local governments to halt evictions for renters and homeowners, slow foreclosures, and protect against utility shutoff for Californians affected by COVID-19. These protections were extended on August 31, 2020 by California Assembly Bill (AB) 3088, the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020, and again on January 29, 2021 by California Senate Bill (SB) 91, with an effective date through June 30, 2021; and

WHEREAS, SB 91 includes provisions establishing a rental assistance program, and provides parameters for distribution of those funds; and

WHEREAS on March 24, 2020, pursuant to the powers established under Government Code sections 8630 and 8634, the Marin County Board of Supervisors adopted Resolution No. 2020-27 barring evictions in Marin County due to the public health emergency arising from COVID-19 (the “Eviction Ban” Resolution). The Eviction Ban Resolution encompassed properties located within the incorporated and unincorporated areas of the County and thus included properties located within the City of San Rafael; and

WHEREAS, on April 28, 2020, the Marin County Board of Supervisors adopted Resolution 2020-40 amending and updating the Eviction Ban Resolution, including adding in a 90-day repayment provision for renters to repay back rent, and requiring landlords to provide a notice of the Eviction Ban prior to serving a notice of eviction on any tenant. Resolution 2020-40 included properties located within the City of San Rafael. The Eviction Ban was updated and extended on May 26, 2020, June 23, 2020, July 28, 2020, and most recently on January 12, 2021; and

WHEREAS, on June 28, 2021, Governor Newsom signed AB 832 into law, which further modified the eviction protections and the temporary preemption provisions of AB 3088, AB 81, and SB 91 (collectively "AB 3088, as amended") and extended eviction protections through September 30, 2021, as well as the temporary preemption of a local jurisdiction's ability to enact new or amend existing eviction protections for nonpayment of rent due to financial distress related to COVID-19 through March 31 2022; and

WHEREAS, on March 31, 2022, Acting Governor Kounalakis signed AB 2179 into law, which extended eviction protections through July 1, 2022 for those who applied for rent relief before March 31, 2022 and which temporarily preempted a local jurisdiction's ability to enact new or amend existing eviction protections for nonpayment of rent due to financial distress related to COVID-19 through July 1, 2022; and

WHEREAS, as of June 7, 2022, the City of San Rafael has experienced a total of 10,417 cases of COVID-19, with 281 of those cases occurring in the prior 14 days in this latest surge of COVID-19 cases; and

WHEREAS, many residents from the City of San Rafael continue to experience sudden and substantial income loss due to business, layoffs or reductions in work hours and extraordinary medical expenses, making it challenging for them to pay rent on time and thus, more likely to face the prospect of eviction; and

WHEREAS, housing instability continues to threaten the public space, health and safety as eviction can lead to homelessness; loss of community; stress and anxiety caused by the experience of displacement; increased incidence of families moving into overcrowded conditions creating greater risk for the spread of COVID-19; and

WHEREAS, without local protection, eviction notices for failure to pay rent due are likely to surge following the expiration of State eviction protections on June 30, 2022; and

WHEREAS, it continues to be essential, to the maximum feasible extent, to prevent displacement and homelessness due to evictions for non-payment of rent related to the COVID-19 emergency; and

WHEREAS, given the severe consequences to public health and safety throughout the City of San Rafael that would result from evictions of residential tenants during the State of Emergency, the City of San Rafael finds and determines that a temporary moratorium on evictions based on non-payment of rent due to COVID-19 is necessary to allow tenants to seek complete applications for the Marin County Emergency Rental Assistance program, minimize evictions and thereby serve the public peace, health and safety; and

WHEREAS, the Marin County Emergency Rental Assistance program, which provides rental relief to Marin County landlords and renters who have faced financial hardships due to the COVID-19 pandemic, has a substantial number of applications to be processed and funds awarded; and

WHEREAS, the Marin County Emergency Rental Assistance program continues to process applications, and anticipates that the remaining funds will be administered by September 30, 2022; and

WHEREAS, if the current June 30, 2022 end to the statewide eviction moratorium stands and a local moratorium is not put in place through September 30, 2022, the City of San Rafael's landlords and tenants eligible for rental assistance may undergo evictions, thereby losing the opportunity to receive these available funds to help mitigate their personal financial and business losses during the pandemic; and

WHEREAS, preventing further displacement and homelessness due to evictions for non-payment of rent related to the COVID-19 emergency remains essential to protecting the health and safety of San Rafael residents.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES HEREBY ORDAIN AS FOLLOWS:

- (1) A temporary moratorium on eviction from residential units for non-payment of rent by tenants impacted by the COVID-19 crisis is imposed as follows:
 - a. This Ordinance applies to terminations of tenancies for nonpayment of rent, including eviction notices, no-fault eviction notices as defined herein, and unlawful detainer actions based on such notices, served or filed during the effective period of this urgency Ordinance.
 - b. No landlord or owner of residential unit(s) shall endeavor to evict a residential tenant or otherwise require a tenant to vacate if the residential tenant has provided a Declaration of COVID-19-related financial distress to the landlord, owner or landlord or owner's representative within 15 days after receiving notice demanding payment of rent from landlord, that the residential tenant is unable to pay rent due to COVID-19 financial distress, as further detailed below.

For purposes of the Ordinance, the following definitions shall apply:

- i. "COVID-19 Financial Distress" means:

Loss of income caused by the COVID-19 pandemic; Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic; Increased expenses directly related to health impacts of the COVID-19 pandemic; Childcare responsibilities or responsibilities for care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit my ability to earn income; Increased costs for childcare or attending to an elderly, disabled or sick family member directly related to the

COVID-19 pandemic; Other circumstances related to the COVID-19 pandemic that have reduced my income or increased my expenses.

ii. "Declaration of COVID-19 -related financial distress" means the following written statement:

I am currently unable to pay my rent or other financial obligations under the lease in full because of one or more of the following:

1. Loss of income caused by the COVID-19 pandemic.
2. Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic.
3. Increased expenses directly related to health impacts of the COVID-19 pandemic.
4. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit my ability to earn income.
5. Increased costs for childcare or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic.
6. Other circumstances related to the COVID-19 pandemic that have reduced my income or increased my expenses.

Any public assistance, including unemployment insurance, pandemic unemployment assistance, state disability insurance (SDI), or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of income and/or increased expenses.

Signed under penalty of perjury:

Dated:

iii. "Landlord" or "Owner" means any natural person, partnership, corporate or fictitious entity, acting as a lessor or sublessor, whether as a principal or through an agent, who receives or is entitled to receive rent in exchange for the use or occupancy of any residential unit for rent, and includes a predecessor in interest.

iv. "No-fault eviction notice" means any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant.

v. "Notice demanding payment of rent" means any notice demanding payment of rent or any notice informing a tenant of the termination of their right to occupy the Residential Unit in accordance with applicable California law, including but not limited to a 3- or 30-day notice to pay or quit.

vi. "Rent" means any financial obligation, monetary payment, or other consideration a tenant owes an owner for the occupancy or use of a residential unit whether by written or oral agreement.

vii. "Residential unit" means a structure or the part of a structure, including, but not limited to, houses, apartments, mobile homes and recreational vehicles, that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

viii. "Tenancy" means the occupancy of residential unit(s).

ix. "Tenant" means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupy a Residential Unit.

- c. A landlord who has been provided with a Declaration of COVID-19-related financial distress under subsection (a), shall not serve, file, prosecute, or otherwise pursue an unlawful detainer action based on a notice of termination, or otherwise seek to evict for nonpayment of rent, for unpaid rents owed after April 1, 2022.
- d. A landlord may not take any actions to evict or attempt to evict a residential tenant unless the landlord demonstrates that the landlord provided a copy of this resolution and the following notice in English and Spanish in at least 12-point font to tenants when serving tenants with a Notice demanding payment of rent:

"NOTICE: THE CITY OF SAN RAFAEL HAS ADOPTED A TEMPORARY MORATORIUM ON EVICTIONS FOR RESIDENTIAL TENANTS FOR NONPAYMENT OF RENT DUE TO COVID-19. A COPY OF THE CITY OF SAN RAFAEL'S RESOLUTION IS ATTACHED.

If you are unable to pay the amount demanded in this notice, and have decreased income or increased expenses due to COVID-19, your landlord will not be able to evict you for this missed payment if you sign and deliver the declaration form included with your notice to your landlord within 15 days, excluding Saturdays, Sundays, and other judicial holidays, but you will still owe this money to your landlord. If you do not sign and deliver the declaration within this time period, you may lose the eviction protections available to you. You must return this form to be protected. You should keep a copy or picture of the signed form for your records.

You will still owe this money to your landlord and can be sued for the money, but you cannot be evicted from your home if you comply with these requirements. You should keep careful track of what you have paid and any amount you still owe to protect your rights and avoid future disputes. Failure to respond to this notice may result in an unlawful detainer action (eviction) being filed against you.

UPDATED INFORMATION MAY BE AVAILABLE BY VISITING
<https://www.cityofsanrafael.org/departments/housing/> OR BY
CONTACTING HOUSING@CITYOFSANRAFAEL.ORG.

- e. For purposes of this Ordinance, the declaration required under subsection (a) may be provided in writing, including through paper copy, email, or text communications to a landlord or the landlord's representative with whom the residential tenant has previously corresponded by email or text.
- f. Landlords and owners of residential unit(s), and those acting on their behalf, are prohibited from harassing or intimidating residential tenants for acts or omissions expressly permitted under this Ordinance, as amended.
- g. A residential tenant who demonstrated financial distress due to COVID-19 as required and defined under this Ordinance shall have up to 90 days after the expiration or termination date of this Ordinance to tender the past-due rent, before the tenant shall be deemed to be in default of rent payment obligations. Nothing in this Ordinance shall otherwise relieve the residential tenant of liability for the unpaid rent.
- h. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance.
- i. Landlords and tenants of residential units are encouraged to agree on a payment plan that would allow landlords to accept partial rent payments during the term of the eviction moratorium if tenants are able to make such payments.
- j. The Director of the Community Development Department, or the Director's designee, is authorized to develop and publish guidelines and forms consistent with this Ordinance, if needed.
- k. The remedies available under this Ordinance shall be in addition to any existing remedies which may be available to the residential tenant under local, state or federal law.
- l. The effective period of this Ordinance shall be July 1, 2022 through September 30, 2022, unless abrogated or superseded by local action, or state or federal law.

(2) Affirmative Defense to Eviction, Unlawful Detainer Action; Civil Remedies

This Urgency Ordinance grants a defense where an unlawful detainer action is commenced in violation of this Urgency Ordinance. Additionally, an aggrieved tenant may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages, and whatever other relief the court deems appropriate. The prevailing party shall be entitled to reasonable attorney's fees and costs as determined by the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the tenant under local, state or federal law.

(3) Severability

If any provision of this Ordinance or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Ordinance, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Ordinance are severable.

(4) Effective Date Of Ordinance

This Ordinance is hereby declared to be an urgency measure and shall take effect immediately upon adoption by at least a four-fifths (4/5) vote of the City Council pursuant to Government Code section 36937(b). The City Clerk is directed to publish forthwith a copy of this Ordinance, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Kate Colin, Mayor

ATTEST:

LINDSAY LARA, City Clerk

I, LINDSAY LARA, City Clerk of the City of San Rafael, certify that the foregoing Ordinance was passed by the City Council of the City of San Rafael, California, by a vote of at least four-fifths (4/5) of the members thereof, at a regular meeting held on Tuesday, the 21st day of June 2022, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk