

LEGAL SERVICES

of

NORTHERN CALIFORNIA

MEMORANDUM

DATE: March 23, 2020
 TO: Supervisor Virginia Bass, County of Humboldt
 CC: Blair Angus, County Counsel
 FROM: Lynn Martinez, Managing Attorney
 RE: Adoption of a County Moratorium on Evictions

I. Legal Authority to Enact an Eviction Moratorium

A. Local Jurisdictions Have Broad Police Power to Pass a Moratorium

Cities have broad police powers to protect the public health, safety, and welfare of their residents. See *Berman v. Parker* (1954) 348 U.S. 26, 32-33. The California Constitution sets forth this right by stating “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Cal. Const. at XI, § 7. Those powers extend to the regulation of “the development and use of real property within its jurisdiction,” for which local governments have “broad authority.” *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 455; Cal. Const., art. XI, § 7. “As a general matter, so long as a land use restriction or regulation bears a reasonable relationship to the public welfare, the restriction or regulation is constitutionally permissible.” *City of San Jose*, 61 Cal. 4th at 455. Such police powers are at their height when a state of emergency is declared. See Cal. Gov. Code § 8630.

Although a county’s police power is broad, it is not absolute in that it cannot conflict with the general laws of the State of California. A conflict exists between a local ordinance and state law if the ordinance “duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.” See *Viacom Outdoor Inc. v. City of Arcata* (2006) 140 Cal.App.4th 230, 236. It is well-established that local governments in California are free to regulate the grounds for eviction without any preemption by state laws. *Birkenfeld v. City of Berkeley* (1976) 17 Cal. 3d 129; *Fisher v. City of Berkeley* (1984) 37 Cal. 3d 644. For example, local governments (both general law, such as Humboldt County, and charter jurisdictions) can permit eviction only for specific reasons. Local governments may even go so far as to “permissibly eliminate a ground for eviction specified in [state law] without creating a conflict with the unlawful detainer statutes.” *Rental Housing Assn. of N. Alameda Cnty. v. City of Oakland* (2009) 171 Cal.App.4th 741, 764 (citing *Fisher*, 37 Cal. 3d at 707). Only laws that attempt to modify the eviction process are preempted by state law. See generally *Birkenfeld* and *Fisher*.

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Thus, the County of Humboldt may pass laws to regulate the permissible grounds for eviction without any preemption concerns. It may ban certain types of eviction that are allowed under state law, such as no-fault evictions. See *City of Oakland*, 171 Cal. App. 4th at 764. In times of emergency, this authority is heightened (see Section I.B), conferring the power to ban evictions for nonpayment of rent as long as property owners can eventually be made whole, thus eliminating any takings concerns. Cities and counties, including e.g., Redwood City and San Mateo County, recently used these police powers to pass urgency ordinances banning certain types of eviction in the wake of the passage of California's Tenant Protection Act of 2019. This use of emergency police powers has been upheld by California courts. As another example, the general law city of West Hollywood adopted an emergency ordinance nearly four decades ago to roll back rents, place a moratorium on rent increases, and limit evictions for a period of 180 days. The 1984 ordinance was upheld in *Berman v. Downing* (1986) 184 Cal.App.3d Supp. 1.

B. Local Police Powers Are Heightened and Extended in Times of State or Local Emergency

An eviction moratorium to protect a county's residents falls within a county's police powers, which are heightened during a state or local emergency. During a public health emergency, both state and local governments are afforded expanded powers to address the emergency. As outlined above, the governing body of a city or county, whether a board of supervisors or a city council, is at all times required to take measures that may be necessary to preserve and protect the public health in its jurisdiction. Cal. Health & Saf. Code §§ 101025, 101450. The governing body of a city or county may also proclaim a local emergency under the Emergency Services Act—so long as the criteria for such a proclamation is satisfied—thereby broadening its powers to adequately address the public health crisis. Cal. Gov. Code § 8630.

Under a proclaimed local emergency, the local governing body may promulgate orders and regulations necessary to provide for the protection of life and property. Cal. Gov. Code § 8634. Often, this means enacting measures that would ordinarily exceed the local governing body's powers. For instance, though the right to travel is constitutionally protected in the United States, this right may be curtailed by the institution of a local curfew when a community has been ravaged by flood, fire, looting, rioting, or disease, and its safety and welfare are threatened. See *In re Juan C.* (1994) 28 Cal.App.4th 1093,1100 (citing *Zemel v. Rusk* (1965) 381 U.S. 1, 15-16); see also Cal. Gov. Code § 8634. While the government must make every effort not to trample on citizens' rights, a government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's interest. See *In re Juan*, 28 Cal.App.4th at 1101.

Thus, during this current public health emergency, the County of Humboldt, as well as other incorporated cities in the county, has a great interest in protecting the health and well-being of their community by slowing the spread of the COVID-19 disease. A moratorium on non-payment and no-fault evictions is the best-suited vehicle for ensuring tenants stay housed throughout the entirety of this public health emergency and follow the state and county public health officials' orders to "shelter in place." Such a moratorium, if the cities and county choose to use the sample ordinance provided with this memorandum, would still permit landlords to evict tenants who are breaching the lease or causing a public nuisance. The government interest in ensuring community health during a public health emergency outweighs any individual landlord's right to regain possession of a rental unit during this crisis.

C. Enacting an Eviction Moratorium Would Not Constitute a Taking

1. Municipalities Have Authority to Enact an Eviction Moratorium

Municipalities are empowered to enact temporary eviction moratoriums under their general and heightened police powers, and thus such government action would not constitute a “taking.” See *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 455 (“[U]nder the California Constitution a municipality has broad authority, under its general police power, to regulate the development and use of real property within its jurisdiction to promote the public welfare.”).

In a wide array of contexts, courts have upheld government restrictions on the use of private property against takings challenges, where the restrictions served a substantial public purpose. The U.S. Supreme Court “has often upheld substantial regulation of an owner’s use of his own property where deemed necessary to promote the public interest,” *Loretto v. Teleprompter Manhattan Catv Corp.* (1982) 458 U.S. 419, 426, and has even upheld land use regulations that destroyed or adversely affected private property interests in cases where it was reasonably concluded that the health, safety, morals, or general welfare would be promoted by prohibiting particular contemplated uses of land, *Penn Cent. Transp. Co. v. New York City* (1978) 438 U.S. 104, 124-25.

Enacting a temporary eviction moratorium does not constitute a taking because it does not deprive property owners of their property without just compensation. U.S. Const., amend. 5; Cal. Const., art. XI, § 7(a). A governmental regulation constitutes a *per se* taking if it effectuates a permanent physical invasion of property or if it deprives a property owner of all economically beneficial or productive use of land. *Lucas v. S.C. Coastal Council* (1992) 505 U.S. 1003, 1015-17.

Nevertheless, government conduct that falls short of a *per se* taking may still constitute a “regulatory taking.” In such case, the governmental conduct must be evaluated under an “essentially ad hoc” fact-specific inquiry to determine whether a regulatory taking has occurred. *Yee v. Escondido* (1992) 503 U.S. 519; *Penn Cent. Transp. Co. v. New York City* (1978) 438 U.S. 104, 124; *Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal.4th 761, 774. With the ad hoc analysis, courts use two basic tests in its application. The first test focuses on the government’s purpose for enacting the regulation. Under this test, “a regulation of property effects a taking if [it] does not substantially advance legitimate state interests.” *Kavanau*, 16 Cal.4th at 776, 781. The second test focuses on the impact of the regulation on the property owner and whether the state action denies the owner economically viable use of the property. See *id.* at 776; see also *Agins v. Tiburon* (1980) 447 U.S. 255, 260.

In this case, a time-limited eviction moratorium clearly would not constitute a *per se* taking because it neither effectuates a permanent physical invasion of property nor deprives the property owner of all economically beneficial use of his or her land. See *Lucas*, 505 U.S. at 1015. Therefore, any eviction moratorium adopted by the County of Humboldt must be evaluated under the fact-specific “ad hoc” analysis.

Initially, under the first test, the government’s purpose for enacting an eviction moratorium in response to the COVID-19 public health emergency is clear. Humboldt County residents are already struggling in

the face of tremendous housing instability and unaffordability. The impacts of widespread closures and shelter in place orders are potentially ruinous for low-income renters who are especially susceptible to losing their incomes and jobs as a result of COVID-19. It is vital for Humboldt County to take action to keep all residents housed so that we can all take the basic measures prescribed to protect ourselves and our communities. This unprecedented public health emergency calls for a swift governmental response to safeguard the collective public health and safety. Such action certainly substantially advances legitimate state interests and is within the government's authority and emergency powers.

The second test evaluates whether the governmental action denies the property owner economically viable use of the property. Property owners cannot convincingly argue that a time-limited eviction moratorium would deny them an economically viable use of their property. First, an eviction moratorium would not cancel a renter's obligation to pay rent—it would simply extend the period in which the renter is permitted to pay rent because of the widespread public health emergency. If an eviction moratorium is enacted, the property owner is entitled to recover any back rent owed. We are not aware of any authority to support the proposition that a regulation postponing the payment of rent is tantamount to a regulatory taking. "Although no precise rule determines when property has been taken, the question necessarily requires a weighing of private and public interests." *Agins*, 447 U.S. at 260-61. It is overwhelmingly clear that amidst this COVID-19 public health emergency, the public interest in keeping those in our community safe, housed, and able to "shelter in place" far outweighs the private interests of property owners to collect rent payments immediately.

2. Assistance Should Be Made Available to Rental Property Owners

Governor Newsom's Executive Order calls on state agencies to work with financial institutions to develop tools to combat foreclosure and displacement, and to otherwise promote housing stability and security. The Governor's call to state agencies to develop strategies to address housing instability and ease the financial issues which could lead to foreclosure and displacement may provide relief to rental property owners who are unable to make their mortgage payments as a result of the eviction moratorium. The impacts of the COVID-19 virus and our responses to it will be felt by many for quite some time, and it is important that we develop these strategies while also taking the immediate action necessary to protect residents who are at immediate risk.

Municipalities should also consider establishing an assistance fund for rental property owners who can demonstrate hardship related to the inability to collect rent or institute eviction proceedings related to nonpayment of rent during the effective period of the eviction moratorium. *See, e.g.*, the attached Eviction Moratorium Policy Template. Core service agencies could establish an application process that enables rental property owners with demonstrated hardship to receive timely financial assistance for the purpose of preventing foreclosure. In addition, the Federal Housing Finance Agency has directed Fannie Mae and Freddie Mac to suspend foreclosures and evictions for at least 60 days. A 60-day foreclosure moratorium has also gone into effect for homeowners with FHA-insured mortgages.

II. Policy Arguments

A. A Broad Moratorium Is Necessary - All Nonpayment Evictions

While much focus has been placed on non-payment of rent for COVID-19-related reasons, such as layoffs or increased childcare costs, any truly effective moratorium must include coverage for *all* non-payment evictions. Providing protections for tenants who are unable to pay rent for any reason throughout the duration of this public health crisis is necessary to protect susceptible families and individuals from homelessness and from avoidable exposure to the COVID-19 disease. Many of the most vulnerable residents in our communities are those who were already living paycheck-to-paycheck and barely making ends meet even before the onset of this public health emergency. Tenants who cannot afford and/or fall behind on their rent are significantly more at-risk of homelessness than others. Should these individuals be forced out of their homes at any point during this public health emergency, many will undoubtedly be unable to comply with the “shelter in place” orders issued by both the Governor and our local public health officials, will not be able to access basic sanitation services, and will risk increased exposure to this virus.

B. A Broad Moratorium Is Necessary - No-fault Evictions

Similarly, a broad moratorium that covers no-fault evictions is necessary to protect vulnerable tenants and prevent unnecessary exacerbation of the public health crisis. It is critical that we take immediate action to slow the impending pace of community spread and avoid unnecessary strain on our health care system. During this local emergency, and in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement, to protect the County’s affordable housing stock, and to prevent housed individuals from falling into homelessness.

The Governor’s March 16, 2020 Order N-28-20 stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health. Governor Newsom specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow. The cities of Santa Monica, Berkeley and others have done just that, leading the way by prohibiting no-fault evictions during this public health crisis.

Moreover, many tenants were issued no-fault 30-, 60- or 90-day notices in the weeks or months prior to the pandemic or during the pandemic. Many of these tenants, including seniors and/or people with disabilities, received assistance from our office. These notices will expire in the coming weeks and unless protected by a moratorium, tenants who received such no-fault notices will be required to move while there is still a directive to “shelter in place.” In addition, many of the clients seeking legal assistance are now advising of difficulties in finding new housing. Because they are deemed to be “non-essential services”, leasing offices are closed. Moreover, property managers, realtors and landlords are not showing rental properties due to the mandatory practice of “social distancing” and fear of contracting COVID-19.

The retroactive application of a moratorium to already-issued no-fault notices should not give rise to contract clause concerns. Legislative bodies are generally entitled to restrict pre-existing contractual

rights so long as their actions do not violate constitutional provisions against the impairment of contractual obligations. See *Home Building & Loan Assn. v. Blaisdell* (1933) 290 U.S. 398, 447-48. It is undisputed that the contract clause imposes limits on a state's power "to abridge existing contractual relationships, even in the exercise of its otherwise legitimate police power." *Allied Structural Steel Co. v. Spannaus* (1978) 438 U.S. 234, 242. However, the threshold inquiry is whether the legislative action has "operated as a substantial impairment of the contractual relationship," where "minimal alteration of contractual obligations may end the inquiry at the first stage." *Id.* at 244-45. Thus, in determining the extent of the impairment, whether the industry has been regulated in the past is a consideration. See *Energy Reserves Group v. Kansas Power & Light* (1983) 459 U.S. 400, 411.

Government action that reasonably modifies a tenant's obligations under a residential lease agreement is not novel; California and its local jurisdictions have successfully regulated rent limits, grounds for eviction and notice requirements in residential tenancies for decades. See *Birkenfeld v. City of Berkeley* (1976) 17 Cal. 3d 129, 143 ("[T]he mere fact that a [local] rent control measure would nullify tenants' liabilities to landlords for rent in excess of stated ceilings does not render the measure invalid."). Even where these legislative actions have altered the nature of the residential tenancy retroactively, they have been upheld by the courts. *Oceanside Mobilehome Park Owners Ass'n v. City of Oceanside* (1984) 157 Cal.App.3d 887, 906 ("constitutionality" of ordinances rolling back rents to a retroactive date "has been universally upheld") (quoting *Marshal House, Inc. v. Rent Control Bd. of Brookline* (Mass. 1971) 266 N.E. 2d 876, 886); see also *Berman v. Downing* (1986) 184 Cal.App.3d Supp. 1, 5-6 (retroactive rent rollback provision of West Hollywood's emergency ordinance did not violate contract clause because it was tied to legitimate government interest and was limited in duration and reach).

In recent years, local jurisdictions, such as the city of Mountain View, have passed rent stabilization ordinances that include "rent rollback" provisions. These provisions rolled back individual tenants' rents to past levels. Similarly, and as noted above, in the wake of the passage of the Tenant Protection Act of 2019, California cities and counties invoked their police powers to retroactively apply "just cause" protections to notices that had been issued before the emergency ordinance was adopted. In both these situations, these legislative actions altered the terms of the residential lease agreements without severely impairing the agreements.

Should a local jurisdiction desire to restrict the grounds for eviction *for the duration of this public health emergency* and to apply these restrictions retroactively to already-issued no-fault eviction notices, it may do so without concern of a contract clause violation. First, it is important to note that a tenancy is terminated not when the eviction notice is served on the tenant, but rather when such notice expires. Therefore, a moratorium on no-fault evictions would not create any contractual obligation where one does not already exist. Secondly, any language in a moratorium should be crafted in a manner that ensures that it does not altogether waive a landlord's right to terminate the tenancy under the relevant notice. Rather, moratorium language should make clear that this government action extends the notice period to, for example, thirty days after the state of emergency is lifted. This "extension" will provide tenants with a reasonable amount of time to seek new housing when the state of emergency is lifted without altering the landlord's rights or requiring the landlord to reissue a new eviction notice. Lastly, the retroactive effective date of the moratorium should be carefully determined so it is not too far-reaching. For instance, a retroactive application date of January 1, 2020 would cover all 30-, 60- or 90-day notice that will expire in the coming days or weeks. Given the substantial government interest in ensuring the health and safety of vulnerable residents and the limited application and duration of any moratorium on no-fault evictions, any such measures would likely withstand a constitutional challenge.

C. An Extended Repayment Period Is Essential to Ensure Impacted Tenants Have Sufficient Time to Resume Work and Pay Their Rent

To prevent a cascade of evictions and homelessness after the emergency orders are lifted, tenants will need enough time to repay past due rent. It is unreasonable to expect that impacted tenants will be able to pay back the entirety of the balance owed in a lump sum as soon as, or very soon after, the state of emergency is lifted.

Many impacted individuals will emerge from this crisis either entirely without employment (because they were laid off) or with significantly reduced hours (because the businesses where they are employed will be unable to afford their full-time employment due to an economic downturn). It will take time for impacted individuals to return to full-time employment. Moreover, once the public health emergency has passed, these impacted tenants will also be expected to keep up with their regular housing payment obligations. Rent and utility payments will become due at their regular time and in their normal fashion once the emergency has passed. For those who were already living paycheck-to-paycheck prior to this public health crisis, and/or trying to regroup after temporary or permanent layoffs, any expectation of an ability to make *additional payments* of back rent owed, together with regular ongoing rent and utility payments, is extremely unrealistic. Finally, it will take time for government, social service agencies and our legal organization to assist tenants, especially when these core service agencies are already understaffed. To ensure that these service providers can effectively facilitate the income needs of impacted clients, tenants must be afforded a prolonged repayment period. Thus, a 180-day period is needed to ensure maximum flexibility and repayment and minimum disruption, displacement and homelessness.

Additionally, documentation requirements for a tenant seeking the 180-day grace period should be flexible and reasonable. For example, low-wage workers who do not receive a paycheck should be able to provide a note or a text from their employer stating that they lost income due to the public health emergency, or a photograph, Facebook or other social media post, or newspaper article confirming that their workplace is closed. Small business owners, artists, day laborers, independent contractors, house cleaners, and others without the ability to provide clear documentation should be able to sign a declaration under penalty of perjury that their income has been reduced due to the public health emergency. Because many examples like these are likely to exist, this provision of a moratorium should be broad.

TEMPLATE URGENCY ORDINANCE

Ordinance to prohibit evictions during the Coronavirus state of emergency for nonpayment of rent or for no-fault reasons, as defined herein

Section 1. Findings and Purpose.

On March 19, 2020, Governor Newsom issued Executive Order N-33-20, ordering Californians to stay at home except for essential business. On March 16, 2020, Governor Newsom issued Executive Order N-28-20 giving cities broad authority to enact eviction moratoria in the face of the COVID-19 public health crisis. On March XX, 2020, the County of Humboldt declared a state of emergency based on coronavirus (COVID-19) (hereinafter referred to as "the state of emergency"), and on March 19, 2020, the County of Humboldt issued its Shelter in Place Order. As a result of the state of emergency and the government-ordered precautions, many tenants have experienced sudden income loss, and further income impacts are anticipated, leaving tenants vulnerable to eviction. Given the severe consequence of evictions, including potential homelessness and potential for families moving into overcrowded conditions with the potential to spread the virus, we find that an unconditional moratorium on evictions that are based on non-payment of rent and no-fault terminations of tenancy is necessary while the public health emergency remains. During this state of emergency, and in the interests of protecting the public health and preventing transmission of the coronavirus, it is essential to avoid unnecessary displacement and homelessness.

Section 2. Urgent Need.

Based on the foregoing findings and purpose, all of which are deemed true and correct, this ordinance is urgently needed for the immediate preservation of public peace, health, safety or welfare. This ordinance shall take effect immediately upon adoption in accordance with the provisions set forth in (*local code Section . . .*), is retroactive to all notices of eviction issued on or after January 1, 2020, and shall

remain in effect through May 31, 2020. The effective period of this ordinance may be extended if deemed necessary.

Section 3. Prohibited Conduct.

(a) Until after May 31, 2020, no landlord shall endeavor to evict a tenant in either of the following situations: (1) for nonpayment of rent, or (2) for a no-fault eviction as defined herein. Endeavors to evict that are prohibited by this ordinance includes issuance of a three-day notice to pay rent or quit or a notice of no-fault termination of tenancy after the effective date of this ordinance, or attempting to enforce a termination of tenancy through an unlawful detainer filing based on any notice issued but not yet expired prior to the effective date of this ordinance.

(b) Nothing in this Ordinance shall relieve the tenant of liability for the unpaid rent, payment of which the landlord may seek after May 31, 2020. However, with respect to any Delayed Payment covered by this Ordinance, a tenant shall not be deemed in default of rent payment obligations unless the tenant fails to tender the full amount of the Delayed Payment within 180 days of May 31, 2020, or within 180 days of the date upon which an extension of this Ordinance expires, whichever is later. Further, a landlord may not charge or collect a late fee for a Delayed Payment as defined in this ordinance. Any three-day notices to pay or quit or no-fault eviction notices served prior to the effective date of this ordinance but not yet expired are automatically deemed served upon the expiration of this Ordinance on May 31, 2020.

(c) Until after May 31, 2020, the County hereby suspends (i) the discontinuation or shut off of water service for residents and businesses in the County for non-payment of water and sewer bills and (ii) the imposition of late payment penalties or fees for delinquent water and/or sewer bills.

Section 4. Notice to Tenants

Owners of rental property shall serve all residential tenants with written notice of the provisions of this Ordinance and the contact information for the owner, landlord, or

agent to whom documentation of a Delayed Payment must be provided as specified below. Failure to provide such notice during the effective period of this Ordinance and prior to service of a notice to pay rent or quit shall be a complete defense to any unlawful detainer action based upon failure to pay rent that accrues during the effective period of this Ordinance.

Section 5. Definitions.

(a) "Delayed Payment" includes, but is not limited to, a payment made late as a result of any of the following: (1) Tenant lost household income as a result of being sick with Coronavirus, or caring for a household or family member who is sick with Coronavirus; (2) Tenant lost household income as a result of a lay-off, loss of hours, loss of business, or other income reduction resulting from Coronavirus or the state of emergency; (3) Tenant lost household income due to compliance with a recommendation from a government agency to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (4) Tenant lost household income as a result of caring for minor children affected by school, pre-school and/or childcare closures; or (5) Tenant lost household income as a result of the discontinuance or reduction of a government aid program. To qualify as a Delayed Payment under this ordinance, a tenant must notify the landlord in writing of lost income and inability to pay full rent and provide documentation to support the claim on or before May 31, 2020, or prior to the date of actual displacement of the tenant by execution of an unlawful detainer judgment, whichever is later. For purposes of this section, "in writing" may include email, text or online communications to a landlord or the landlord's representative with whom the tenant has previously corresponded by email, text or an online program. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim for protection under this Ordinance.

(b) "No-fault eviction" as used in this Ordinance refers to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant, including

but not limited to eviction notices served pursuant to California Civil Code Section 1946.2(b)(2) and Code of Civil Procedure sections 1161(1), 1161(5), or 1161c.

Section 6. Application.

This Ordinance applies to nonpayment eviction notices, no-fault eviction notices as defined herein, and unlawful detainer actions based on such notices, served or filed on or after the date of introduction of this ordinance through May 31, 2020. With respect to any Delayed Payment covered by this Ordinance, a tenant shall not be deemed in default of rent payment obligations unless the tenant fails to tender the full amount of the Delayed Payment within 180 days of May 31, 2020, or within 180 days of the date upon which an extension of this Ordinance expires, whichever is later.

Section 7. Remedies.

In the event of a violation of this Ordinance, an aggrieved tenant may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages (including damages for mental or emotional distress as specified below), and whatever other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of this Ordinance. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of 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. In addition, this Ordinance grants a defense to eviction to any unlawful detainer actions in violation of this Ordinance.

Section 8. Financial Assistance to Mitigate Hardship

The County shall establish a fund with the [core service agency] to be made available to rental property owners with demonstrated hardship related to the inability to enforce a demand for non-payment of rent or institute eviction proceedings related

to non-payment of rent during the effective period of this ordinance. [Core service agency] shall establish an application process that enables rental property owners with demonstrated hardship to receive timely financial assistance for the purpose of preventing foreclosure, or overcoming revenue shortfall that would result in deferral of urgently needed repairs of conditions that threaten the safety of the rental property residents. Financial assistance paid to a rental property owner due to non-payment of rent shall be credited against the rental payment owed for that particular rental unit.

Section 9. Severability.

If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

LEGAL SERVICES
— of —
NORTHERN CALIFORNIA

March 28, 2020

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Re: Item A.3, Special City Council Meeting, March 30, 2020

Dear Honorable Mayor, Councilmembers, and Ms. Powell:

We strongly support the City's proposed ordinance and ask that the City Council enact the ordinance to protect low-income renters during the current public health crisis.

As you may know, Legal Services of Northern California (LSNC) provides free legal services to the low-income communities throughout northern California. In this capacity, we work to defeat the causes and effects of poverty within our communities. The LSNC Redwood Regional Office, serving Humboldt, Del Norte, and Trinity Counties, handled over 400 housing cases in calendar year 2019, providing us with insight into the shelter struggles of low-income residents in our region. We participate in a variety of housing-based advocacy groups in the community, including the Humboldt Housing and Homeless Coalition.

We commend the City's approach to mitigate the impact of COVID-19 on low-income renters in Eureka. The health, safety, and welfare of all of Eureka's residents—not only low-income renters—depends on the City's response to this crisis. It is vital to the

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entire community's health that residents stay housed during this challenging time. Those most at risk of losing their homes during this time are the low-income workers whom we represent every day, and for whom a reduction in hours or other COVID-19-related closures will dramatically impact their income. There is also a need to limit evictions beyond those for non-payment of rent, as the COVID-19 crisis has effectively shut down the housing market, leaving people who are evicted with no place to go. Moreover, it is in everyone's interest for people to abide by the shelter-in-place orders issued by the State and County, and the logistics of eviction and moving do not allow the social distancing that experts tell us is necessary to overcome this crisis.

It is imperative that the City pass this ordinance to protect our community members because the Governor has failed to protect renters harmed by the COVID-19 pandemic. Although some headlines suggest the Governor has implemented a 60-day moratorium on evictions, this is not true. The Governor's March 16, 2020 Executive Order N-28-20 merely permitted local jurisdictions to enact protections, and did not by itself enact them. More recently, Executive Order N-37-20, dated March 27, 2020, puts in place some substantive protections, but only for a subset of the many tenants who will be affected by the crisis, and only with procedural burdens on the tenants that are both confusing and difficult to meet. Under the Governor's new order, a tenant who has lost income due to the COVID-19 pandemic can still be evicted for non-payment of rent, even when the tenant is able to pay back the rent within a reasonable time. As our comments detail, we implore the Council to adopt the proposed Eviction Urgency Ordinance to protect *all* tenants in Eureka and to provide a workable process that is reasonable and fair for both tenants and landlords in our community.

1. Eureka tenants who cannot pay their rent because of COVID-19 impacts need protection

In the short time since Humboldt County initiated active measures to mitigate the COVID-19 pandemic, our low-income clients are already experiencing the adverse impacts very acutely. Residents who work in industries most likely to be affected by shutdowns, including retail service, restaurants, gyms, housekeeping, and childcare, are reporting lost wages because their workplaces have been forced to close. They are now extremely vulnerable. Although some can apply for unemployment, the massive increase in claims is overwhelming the system. We expect that the State will encounter delays in processing benefits to eligible applicants, and that there will be some applicants for whom advocacy will be necessary to obtain the benefits.

This ordinance addresses the need for a temporary moratorium on evictions for non-payment of rent arising out of the COVID-19 crisis. Its provisions are superior to the State's order, and should be adopted for three reasons:

First, the ordinance is simple. It is easy for both landlords and tenants to understand, and the requirements imposed on tenants are easy to comply with. Unlike the state's purported "moratorium", the City's ordinance simply requires the landlord to notify the tenant of the provisions of the ordinance, which will make it more likely that both the landlord and tenant communicate and comply with its terms. This creates a non-adversarial and trusting relationship, which supports both public health and human dignity.

Second, the City's ordinance is workable. The State's order is difficult to enforce *even where it applies* because it does not stop the landlord from serving a notice of non-payment, filing a lawsuit, and obtaining a default judgment against a tenant whose non-payment was caused by COVID-19. The order puts the onus on the court clerks, at initial filing, and then the Sheriff, presumably during a lockdown, to determine whether the conditions have been satisfied. These entities are already burdened, and will not, indeed should not in the fairness of justice, be "judge and jury" about the facts related to an eviction. The City's ordinance, by contrast, prohibits a landlord from serving the notice in the first place, and permits the tenant to use the ordinance as a defense during eviction proceedings. That properly allows *judges* to make decisions about the application of the ordinance in the courtroom instead of court clerks after a lawsuit is filed, or law enforcement officers on a doorstep after a judgment of eviction.

Third, the City's ordinance is fair to landlords and tenants. It requires repayment of amounts due, but permits the tenant 180 days to get caught up. It does not permit the imposition of late fees. And it permits landlords to evict tenants who are causing problems.

2. Eureka tenants need protection from eviction for non-financial reasons

We appreciate that the City's proposed ordinance also addresses no-fault evictions. This important provision protects our entire community by keeping landlords and tenants in their homes, out of courthouses, and out of contact with the public. As long as landlords are still serving notices, filing lawsuits, and coming to court, there is more risk of exposure to the coronavirus that causes COVID-19 for court staff, judicial officers, and the public. Moreover, with the rental market effectively shut down, it is virtually impossible for a tenant who receives a no-fault notice to timely comply as there is simply nowhere else to move. By including a moratorium on no-fault eviction

notices pending the COVID-19 crisis, the City's proposed ordinance will effectively keep tenants from being forced onto the streets when they are unable to find alternative housing.

Conclusion

The City of Eureka has the authority and the moral imperative to protect its residents from a worldwide pandemic unlike any seen in modern history. Passing its ordinance—a true eviction moratorium—is the only way to support public health and our low-income neighbors in these extraordinary times. Thank you for your consideration of our comments, and please do not hesitate to contact me should you have further questions about the impact of COVID-19 on low-income Eureka residents.

Sincerely,

LEGAL SERVICES OF NORTHERN CALIFORNIA

Gregory M. Holtz

Gregory M. Holtz
Staff Attorney



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April 5, 2020

PRESIDENT

Sara Prendergast

PRESIDENT-ELECT

Jill Rice

SECRETARY/TREASURER

Joshua Cook

PAST PRESIDENT

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DIRECTORS

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Jeremy Stanfield

Somer Wallan

Hannah Winans

AFFILIATE LIAISON

Marysa Castro

EXECUTIVE OFFICER

Kristen Kelley

Dear Supervisor Fennell,

With the entire nation experiencing recent hardships due to the COVID-19 pandemic, the Humboldt Association of Realtors® would like to advise that the Humboldt County Board of Supervisors do not create an Eviction Moratorium Ordinance that is more restrictive than the Governor's recent Statewide Executive order related to evictions of residential tenants who are unable to pay rent due to COVID-19. The Executive Order N-37-20 extends the time period during which a tenant who is served with a complaint seeking their eviction from a residence for non-payment of rent must respond to the complaint by 60 days. We would like to advise that the Humboldt County Board of Supervisors do not make an Eviction Moratorium Ordinance that is more restrictive than the current order.

We urge the Humboldt County Board of Supervisors to follow the Governor's order in which a tenant must have paid any rent due to the landlord prior to March 27th, and must notify the landlord in writing within a specified time period that the tenant is unable to pay the full rent amount due to a loss of income related to COVID-19. We also urge the Board to have the tenant retain and provide to the landlord verifiable documentation to support the assertion of the inability to pay.

Many investors or owners of rental property rely on their rental income to pay their own bills, buy groceries and live off of. If we allow all tenants in Humboldt County to essentially not pay their rent by not putting the correct safeguards in place, we could create the same problem that we were trying to avoid. We need to make sure that any rental protections that are provided to renters are justified and not another program that can be abused by the masses. The non-payment of rent to landlords can result in many negative situations and should not be something that is a blanket wide allowable action. Showing financial hardship should be a requirement of an eviction moratorium ordinance that allows the non-payment of rents.

The Executive order protections are in effect through May 31st, 2020 and we would like to ask that the Board does not put a lengthy time period after the May 31st end date for the tenant(s) to pay the past due amount back to their landlord. We understand that a tenant may not be able to pay the back rent in one lump sum, but allowing tenants to have for example, a 180 day payback period, could potentially put the landlord (Home Owner) in a financial deficit that could lead to potential foreclosure of their home or other assets. If homes are foreclosed upon because

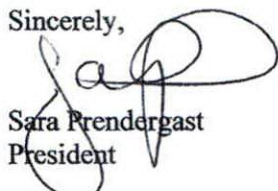


a tenant is not paying their rent and therefore the homeowner cannot pay their mortgage, the tenant will still end up with a loss of home and place to live in addition to the financial hardship that the homeowner will then have to go through.

Although Governor Newsom has called on state agencies to work with financial institutions to develop tools to combat foreclosure and displacement, not all mortgage companies or private lenders are allowing payment forgiveness or grace periods for non-payment of mortgages. If a landlord doesn't get rent from their tenants, but is expected to pay their mortgage payment, they are being set up for failure. We hope that the Board can make a decision that benefits all parties and that is why we again urge against making an Eviction Moratorium that is more restrictive than the Governor's Statewide Order.

If you have any questions, don't hesitate to contact the Humboldt Association of Realtors® at (707) 442-2978 or email kristen@hmarealtors.com.

Sincerely,



Sara Prendergast
President

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Hayes, Kathy

From: tinacutten@gmail.com
Sent: Monday, April 6, 2020 9:54 AM
To: COB
Subject: Eviction

Board of Supervisors

I received information last night that this was on a meeting scheduled for today without all of the attachments, I hope that you will take no action on this item because the public has not been notified in a reasonable manner and all people in our community need to be heard. In going through everything that I read from Legal Services, I find that there might be a lot of arguments to what they are trying to implement both through Humboldt County and the City of Eureka. I am very confused are they now taking over for County Counsel because I see an ordinance drafted by their attorneys. I hope that you either consider postponement of any decision until your Constituents have and an opportunity to read and respond to the request. I am sure the Governor of California very wisely used reason to have the Eviction last until May 31st of this year. Thank you for your time, and stay safe and remember we are all in this together.

Tina Christensen
Coldwell Banker Cutten Realty
2120 Campton Road
Eureka, CA 95503
707-445-8811 Office
707-845-2070 Cell
DRE #00476701
tinacutten@gmail.com

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LEGAL SERVICES
of
NORTHERN CALIFORNIA

April 5, 2020

via email: cob@co.humboldt.ca.us

Chair Estelle Fennell
County of Humboldt Board of Supervisors
825 Fifth Street
Eureka, CA 95501

Kathy Hayes
Clerk of the Board
825 Fifth Street
Eureka, CA 95501

Re: Public Comment: Item D.1 for April 6, 2020 Special Meeting

Dear Chair Fennell, Supervisors Rex Bohn, Virginia Bass, Mike Wilson, and Steve Madrone:

As you know, Legal Services of Northern California (LSNC) provides free legal services to the low-income communities throughout northern California. In this capacity, we work to defeat the causes and effects of poverty within our communities. The LSNC Redwood Regional Office, serving Humboldt, Del Norte, and Trinity Counties, handled over 400 housing cases in calendar year 2019, providing us with insight into the shelter struggles of low-income residents in our region. We participate in a variety of housing-based advocacy groups in the community, including the Humboldt Housing and Homeless Coalition.

We appreciate the County's consideration of an eviction moratorium for the County of Humboldt, and implore the Board to act now to protect the health, safety, and welfare of all of the County's residents. However, we are concerned that, as outlined on the Agenda report File #20-430, the proposed moratorium discussion (which describes the Governor's recent Executive Order, does not go far enough to protect residents living in

Redwood Regional Office:
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Eureka, CA 95502
P: 707.445.0866
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www.lsnc.net

A Legal Services Corporation Program 

Humboldt County. *However, as noted in the Agenda Report, the Executive Order also provides local jurisdiction the authority to adopt more restrictive COVID-related eviction measures.* The Report further correctly acknowledges that many jurisdictions have adopted moratoria that is much more restrictive than the EO, as the City of Eureka did last week.

We encourage the County to look beyond the Governor's Executive Order and adopt an ordinance that protects all tenants and landlords affected by the COVID-19 pandemic. At the request of supervisors, we submitted a proposed protective ordinance and a legal memorandum explaining the County's authority to adopt such an ordinance. This packet was also sent to County Counsel for its review. We attached these documents to these public comments as Exhibits A and B.

As we explain below, the Governor's Executive Order is gravely insufficient to afford the protections that low-income residents need in our county. If the County does not act now to enact its own protections, we will likely see both confusion in the courts as well as a wave of evictions as soon as the public health crisis abates, compounding an already severe housing crisis. It is vital to the entire community's health that residents are supported in staying housed during this challenging time.

1. The Governor's Executive Order is a misleading failure

The Governor's March 16, 2020 Executive Order N-28-20 merely permitted local jurisdictions to enact protections, and did not by itself enact them. More recently, Executive Order N-37-20, dated March 27, 2020, puts in place some substantive protections, but only for a subset of the many tenants who will be affected by the crisis, and only with procedural burdens that are both confusing and difficult to meet. Executive Order N-37-20 is insufficient for the following reasons:

- The Executive Order requires tenants who cannot pay rent due to the COVID-19 pandemic to notify their landlord within 7 days of rent becoming due, a requirement that many tenants do not know about and have already missed.
- The Executive Order requires court clerks and Sheriff's deputies to determine whether a tenant is protected on a case-by-case basis, without the information necessary to make a decision which is more appropriately made by a judge.
- The Executive Order does not permit tenants to make up the back rent and save their tenancies; even tenants who can pay their rental debt in full within 6 months can still be evicted.

- By changing timelines but not providing a defense to eviction, the Executive Order merely delays evictions, it does not stop them. Thus, after the delay, tenants will still be faced with homelessness.
- The Order does not apply to no-fault evictions that will put even people who can pay their rent on the streets when the rental market is effectively shut down by shelter-in-place orders.

2. Humboldt tenants need protection due to COVID-19 impacts

In the short time since Humboldt County initiated active measures to mitigate the COVID-19 pandemic, our low-income clients are already experiencing the adverse impacts very acutely. The vast majority of tenants at risk for eviction live paycheck-to-paycheck and work in the industries most likely to be affected by shutdowns, including retail service, restaurants, gyms, housekeeping, and childcare. These residents are now extremely vulnerable and are reporting lost wages because their workplaces have been forced to close. Although they can apply for unemployment, there was typically a 3-week delay between application and receipt of benefits before the pandemic. Now, with a massive increase in claims that is overwhelming the system, even the earliest applicants are still not receiving benefits. We expect that the State will continue to encounter further delays in processing benefits to eligible applicants, and that there will be some applicants for whom advocacy will be necessary to obtain the benefits.

Our residents, both landlords and tenants, need an ordinance that is simple, workable, and fair. A strong ordinance will have the following components:

- **Requiring landlords to notify their tenants** of the protections that are enacted, making it more likely that both the landlord and tenant communicate and comply with its terms. Creating a non-adversarial and trusting relationship supports both public health and human dignity.
- **Putting decisions about whether the protections apply in the hands of courts**, not court clerks and Sheriff's deputies. These entities are already burdened, and will not, indeed should not in the fairness of justice, be "judge and jury" about the facts related to an eviction. Permitting a tenant to use the ordinance as a defense during eviction proceedings properly allows *judges* to make decisions about the application of the ordinance.

- **Permitting tenants to save their tenancies** by paying back rent that became due during the public health crisis will keep people housed and support stability in the housing market. Allowing tenants to get caught up, without the imposition of late fees, is fair to both tenants and landlords because it avoids a potential massive churn in the market when the crisis ends.
- **Applying protections to no-fault evictions** will protect our entire community by keeping landlords and tenants in their homes, out of courthouses, and out of contact with the public. As long as landlords are still serving notices, filing lawsuits, and coming to court, there is more risk of exposure to the coronavirus that causes COVID-19 for court staff, judicial officers, and the public. Moreover, with the rental market effectively shut down, it is virtually impossible for a tenant who receives a no-fault notice to timely comply as there is simply nowhere else to move. Finally, the confusion created by a narrow eviction moratorium applying only to certain, proved instances of COVID-19-related non-payment, and by the misleading reports of its broad application, means that many tenants facing no-fault evictions will erroneously believe that they are protected.

The County of Humboldt has the authority and the moral imperative to protect its residents from a worldwide pandemic unlike any seen in modern history. Passing a true eviction moratorium is the only way to support public health and our low-income neighbors in these extraordinary times.

Thank you for your consideration of our comments. We will be available during public comment to answer any questions about the impact of COVID-19 on low-income Humboldt County residents.

Sincerely,

LEGAL SERVICES OF NORTHERN CALIFORNIA



Gregory M. Holtz
Staff Attorney

encls.: Exhibit A – Draft ordinance

Exhibit B – Legal memorandum re: authority to enact ordinance

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Hayes, Kathy

From: Uri Driscoll <humboldthorse@yahoo.com>
Sent: Monday, April 6, 2020 9:11 AM
To: Fennell, Estelle
Cc: Hayes, Kathy
Subject: Rent moratorium

County Board of Supervisors,

Yes, we are in trying times regarding the alterations to our life that the Covid Virus is causing.

I would like to make comment regarding the drafting of a rental payment/eviction moratorium. It is of utmost care that alterations, if any, be made to the state ordered moratorium.

Humboldt County property owners are critical to the functioning of our country through property taxes while providing housing and business opportunities for a wide variety of businesses and families. Most property owners work with and help take care of their tenants in their symbiotic relationship. They also have their own financial obligations to loan payments and property taxes, etc.

Please consider holding to the Governor's directive for the May 31 date for the eviction moratorium rather than extend it for an additional six months. If it is deemed absolutely essential, please consider that any extension should include the same extension for the payment of property taxes presuming banks will provide appropriate measures for non-payment/ foreclosure options for property owners.

Hopefully we will all come through this more supportive of each other. Extending an eviction moratorium till the end of the year is excessive at this point and may well prevent tenants and property owners from working out their own solutions.

Uri Driscoll

Hayes, Kathy

From: Suzanne Tibbles <suzanne.cbcr@gmail.com>
Sent: Monday, April 6, 2020 10:26 AM
To: COB
Subject: Comments to Template Urgency Ordinance
Attachments: 20200406104858505.pdf

To Whom it May Concern:

Our policy with our tenants who have let us know they are unable to pay rent because of loss of income related to Covid-19 is to have them provide proof written documentation and to try and pay us when they receive their government relief payments. We have had 1 eviction in the past 4 years.

I have a number of issues with the proposed Template Urgency Ordinance. Please see attached in red.

Section 4. Notice to Tenants

This clause needs to be removed.

Having to serve all my tenants and receiving proof of service during this time would be a major burden.

Most of our staff who operate the rental office have children who are out of school. Our workload has increased not decreased at this time.

Section 5. Definitions - This ordinance needs to be limited to those affect by loss of income related to Covid-19. This is not the time to ask the private sector to extend credit to those who have not lost income related to Covid-19. Tenants need to notify landlord within 7-10 days of rent due date in writing with proof so landlords can plan to pay their bills.

Respectfully,

--



Suzanne Tibbles
Property Manager/Realtor at Coldwell Banker Cutten Realty

A 3943 Walnut Dr. Suite B, Eureka, CA 95503
P 707-445-8822 **M** 707-498-0107
E suzanne.cbcr@gmail.com

TEMPLATE URGENCY ORDINANCE

Ordinance to prohibit evictions during the Coronavirus state of emergency for nonpayment of rent or for no-fault reasons, as defined herein

Section 1. Findings and Purpose.

On March 19, 2020, Governor Newsom issued Executive Order N-33-20, ordering Californians to stay at home except for essential business. On March 16, 2020, Governor Newsom issued Executive Order N-28-20 giving cities broad authority to enact eviction moratoria in the face of the COVID-19 public health crisis. On March XX, 2020, the County of Humboldt declared a state of emergency based on coronavirus (COVID-19) (hereinafter referred to as "the state of emergency"), and on March 19, 2020, the County of Humboldt issued its Shelter in Place Order. As a result of the state of emergency and the government-ordered precautions, many tenants have experienced sudden income loss, and further income impacts are anticipated, leaving tenants vulnerable to eviction. Given the severe consequence of evictions, including potential homelessness and potential for families moving into overcrowded conditions with the potential to spread the virus, we find that an unconditional moratorium on evictions that are based on non-payment of rent and no-fault terminations of tenancy is necessary while the public health emergency remains. During this state of emergency, and in the interests of protecting the public health and preventing transmission of the coronavirus, it is essential to avoid unnecessary displacement and homelessness.

Section 2. Urgent Need.

Based on the foregoing findings and purpose, all of which are deemed true and correct, this ordinance is urgently needed for the immediate preservation of public peace, health, safety or welfare. This ordinance shall take effect immediately upon adoption in accordance with the provisions set forth in (*local code Section . . .*), ~~is retroactive to all notices of eviction issued on or after January 1, 2020, and shall~~

remain in effect through May 31, 2020. The effective period of this ordinance may be extended if deemed necessary.

Section 3. Prohibited Conduct.

(a) Until after May 31, 2020, no landlord shall endeavor to evict a tenant in either of the following situations: (1) for nonpayment of rent, or (2) for a no-fault eviction as defined herein. Endeavors to evict that are prohibited by this ordinance includes issuance of a three-day notice to pay rent or quit or a notice of no-fault termination of tenancy after the effective date of this ordinance, or attempting to enforce a termination of tenancy through an unlawful detainer filing based on any notice issued but not yet expired prior to the effective date of this ordinance.

(b) Nothing in this Ordinance shall relieve the tenant of liability for the unpaid rent, payment of which the landlord may seek after May 31, 2020. However, with respect to any Delayed Payment covered by this Ordinance, a tenant shall not be deemed in default of rent payment obligations unless the tenant fails to tender the full amount of the Delayed Payment within 180 days of May 31, 2020, or within 180 days of the date upon which an extension of this Ordinance expires, whichever is later. Further, a landlord may not charge or collect a late fee for a Delayed Payment as defined in this ordinance. Any three-day notices to pay or quit or no-fault eviction notices served prior to the effective date of this ordinance but not yet expired are automatically deemed served upon the expiration of this Ordinance on May 31, 2020.

(c) Until after May 31, 2020, the County hereby suspends (i) the discontinuation or shut off of water service for residents and businesses in the County for non-payment of water and sewer bills and (ii) the imposition of late payment penalties or fees for delinquent water and/or sewer bills.

Section 4. Notice to Tenants

Owners of rental property shall serve all residential tenants with written notice of the provisions of this Ordinance and the contact information for the owner, landlord, or

agent to whom documentation of a Delayed Payment must be provided as specified below. Failure to provide such notice during the effective period of this Ordinance and prior to service of a notice to pay rent or quit shall be a complete defense to any unlawful detainer action based upon failure to pay rent that accrues during the effective period of this Ordinance.

Section 5. Definitions.

(a) "Delayed Payment" includes, but is limited to ~~not limited to~~, a payment made late as a result of any of the following: (1) Tenant lost household income as a result of being sick with Coronavirus, or caring for a household or family member who is sick with Coronavirus; (2) Tenant lost household income as a result of a lay-off, loss of hours, loss of business, or other income reduction resulting from Coronavirus or the state of emergency; (3) Tenant lost household income due to compliance with a recommendation from a government agency to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (4) Tenant lost household income as a result of caring for minor children affected by school, pre-school and/or childcare closures; or (5) Tenant lost household income as a result of the discontinuance or reduction of a government aid program. To qualify as a Delayed Payment under this ordinance, a tenant must notify the landlord in writing of lost income and inability to pay full rent and provide documentation to support the claim within 7-10 days of rent due date or before May 31, 2020, or prior to the date of actual displacement of the tenant by execution of an unlawful detainer judgment, whichever is later. For purposes of this section, "in writing" may include email, ~~text or online communications~~ to a landlord or the landlord's representative with whom the tenant has previously corresponded by email, ~~text or an online program~~. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim for protection under this Ordinance.

(b) "No-fault eviction" as used in this Ordinance refers to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant, including

but not limited to eviction notices served pursuant to California Civil Code Section 1946.2(b)(2) and Code of Civil Procedure sections 1161(1), 1161(5), or 1161c.

Not feasible to serve all tenants and obtain proof of service during this time.

Landlords and their employees are being impacted at this also. Remove this entire clause!

Section 6. Application.

This Ordinance applies to nonpayment eviction notices, no-fault eviction notices as defined herein, and unlawful detainer actions based on such notices, served or filed on or after the date of introduction of this ordinance through May 31, 2020. With respect to any Delayed Payment covered by this Ordinance, a tenant shall not be deemed in default of rent payment obligations unless the tenant fails to tender the full amount of the Delayed Payment within 180 days 90-120 days of May 31, 2020, or within 180 90-120 days of the date upon which an extension of this Ordinance expires, whichever is later.

Section 7. Remedies.

In the event of a violation of this Ordinance, an aggrieved tenant may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages (including damages for mental or emotional distress as specified below), and whatever other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of this Ordinance. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of 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. In addition, this Ordinance grants a defense to eviction to any unlawful detainer actions in violation of this Ordinance.

Section 8. Financial Assistance to Mitigate Hardship Does county have funds for this

The County shall establish a fund with the [core service agency] to be made available to rental property owners with demonstrated hardship related to the inability to enforce a demand for non-payment of rent or institute eviction proceedings related to non-payment of rent during the effective period of this ordinance. [Core service agency] shall establish an application process that enables rental property owners with demonstrated hardship to receive timely financial assistance for the purpose of preventing foreclosure, or overcoming revenue shortfall that would result in deferral of urgently needed repairs of conditions that threaten the safety of the rental property residents. Financial assistance paid to a rental property owner due to non-payment of rent shall be credited against the rental payment owed for that particular rental unit.

Section 9. Severability. What is county counsel review of this document say

If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.