



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: April 14, 2020

Approved		Date	4/14/20
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INFORMATION

SUBJECT: EXTENSION OF THE RESIDENTIAL EVICTION MORATORIUM, CONSIDERATION OF A RENT FREEZE AND EXPLORATION OF SOLUTIONS FOR THE RENTAL COMMUNITY IMPACTED BY COVID-19

This information memo includes an updated analysis on the eviction moratorium provisions from the City of San José, Santa Clara County, and State Executive Order in **Attachment A**. The updated comparison includes highlighted provisions from the respective legislation that would have the most restrictive protections for tenants.

/s/
JACKY MORALES-FERRAND
Director, Housing Department

For questions, please contact Deputy Director, Rachel VanderVeen at (408) 535-8231.

ATTACHMENT:

Attachment A – Eviction Moratorium Analysis – Comparison between City of San José, Santa Clara County, and State Executive Order



Eviction Moratorium Analysis

Comparison between City of San José, Santa Clara County, and State Executive Order

A summary of the key differences between the components of the City of San José Eviction Moratorium, Santa Clara County Eviction Moratorium, and State Executive Order N-37-20 are analyzed below:

- Coverage, term and expiration, and nonpayment of rent protection,
- How to qualify as an affected tenant, notification by tenant to landlord, rent repayment period, and late fees, and
- Eviction procedures.

A. Coverage, Term and Expiration, and Nonpayment of Rent Protection in Table 1

The City of San José eviction moratorium applies to the San José city boundaries. The County Ordinance applies to all 15 cities within Santa Clara and in unincorporated areas. The Statewide Executive Order applies to all residential tenants in California.

The terms and expiration vary across the legislation. San José's Moratorium ends April 17, 2020, but can be extended by 30 day increments. The County moratorium will expire on May 31, 2020 and can also be extended. The State Executive Order also expires on May 31, 2020.

The City Moratorium and State Executive Order only apply to residential tenants, while the County Ordinance applies to both residential and commercial tenants.

For all of the tables included in this document, the legislation providing the greatest level of protections to tenants are bolded. It is likely that these provisions will apply in cases where provisions differ.

Table 1: Geographic Limitations, Term, and Expiration, and Nonpayment of Rent Protection

	SAN JOSÉ	COUNTY OF SANTA CLARA	STATE EXECUTIVE ORDER
Geographic Limitations	City of San José only	Includes cities in incorporated and unincorporated areas	Protects any tenant in State
Term & Expiration	3/18/2020 until 4/17/2020	3/24/2020 to 5/31/2020	3/27/2020 to 5/31/2020
Nonpayment of Rent Protection	Residential only	Residential & commercial real property	Residential only

B. How to Qualify as an Affected Tenant, Notification by Tenant to Landlord, Rent Repayment Period, and Late Fees in Table 2

In order to qualify as an affected tenant under the City ordinance, a tenant must provide documentation of a loss in income through job loss, reduction of hours, employer's business closure, missing work due to a minor child's school closure, or other reasons resulting in loss of income due to COVID-19. The County Ordinance and the State Executive Order include a reduction of income, as well as an increase in medical expenses due to COVID-19. The State Executive Order also explicitly includes tenants who are infected with COVID-19 or suspected of being infected.

The City Ordinance, County Ordinance, and State Executive Order differ in the notification obligations tenants have to landlords. Under the City Ordinance, a tenant must notify the landlord of their status as an affected tenant before the expiration of the Notice of Termination. The County does not include this obligation and provides that a tenant may provide documentation at any time prior to the execution of a judgment for possession. By comparison, the State Executive Order requires a tenant to notify the landlord before rent is due or within a reasonable period of time afterwards, not to exceed seven days. Each have different requirements to provide notice to the landlord in order to qualify for the protection under their respective laws. The County requires no tenant notice, the City requires notice prior to the notice of termination expiring. The State Executive Order has the strictest requirement of all three. If tenants seek protections under the State's Executive Order, they must demonstrate compliance with the notification requirements.

Regarding a repayment period for past due rent, the County is the only legislation that includes a repayment period provision. Upon the expiration of the County Ordinance, tenants who demonstrate substantial loss of income or out-of-pocket medical expenses will have 120 days to repay any outstanding rent due. The City Ordinance and State Executive Order are silent on a repayment period.

In addition, the County Ordinance is the only ordinance that addresses late fees by prohibiting landlords from charging or collecting them during the moratorium and for 120 days afterwards. The City and State's moratoriums do not include a late fees provision. However, the County's Ordinance applies to the City.

Table 2: How to Qualify as an Affected Tenant, Notification by Tenant to Landlord, Rent Repayment Period, and Late Fees

	SAN JOSÉ	COUNTY OF SANTA CLARA	STATE EXECUTIVE ORDER
How to Qualify as an Affected Tenant	(1) job loss; (2) a reduction of compensated hours of work; (3) employer’s business closure; (4) missing work due to a minor child’s school closure; or (5) other similarly-caused reason resulting in a loss of income due to COVID-19.	(1) Substantial loss of income from (i) job loss (ii) layoffs (iii) a reduction in the number of compensable hours of work (iv) a store, restaurant, office, or business closure (v) a substantial decrease in business income caused by a reduction in opening hours or consumer demand (vi) the need to miss work to care for a home-bound school-age child or family member infected with coronavirus or (vii) other similarly-caused loss of income where the conditions listed in (i) through (vii) resulted from the 2020 COVID-19 pandemic	<p>The tenant was unavailable to work because the tenant was sick with a suspected or confirmed case of COVID-19 or caring for a household or family member who was sick with a suspected or confirmed case of COVID-19.</p> <p>The tenant experienced a layoff, loss of hours, or other income reduction resulting from COVID-19, the state of emergency, or related government response, or</p> <p>The tenant needed to miss work to care for a child whose school was closed in response to COVID-19.</p>
Notification by Tenant to Landlord	Affected Tenant has notified their landlord of their status as an Affected Tenant before the expiration of the Notice of Termination. For a nonpayment of rent, the notice expires within 3 days.	No notification required	Tenant notifies landlord in writing before the rent is due or within a reasonable period of time afterwards within 7 days

	SAN JOSÉ	COUNTY OF SANTA CLARA	STATE EXECUTIVE ORDER
Rent Repayment Period	Does not address, but includes authority for Council to implement a rent repayment period	120 days from the date of expiration of this Ordinance for tenants who is impacted by COVID-19, as defined in the Ordinance	Does not address
Late Fees	Does not address late fees	Cannot be charged during the Ordinance and for 120 days after expiration	Does not address late fees

C. Days to Answer an Unlawful Detainer in Table 3

Neither the City of San José Eviction Moratorium nor the County Ordinance are affected by the State Executive Order, which narrowly regulates only procedural deadlines in an unlawful detainer action and stays any enforcement of a sheriff's lockout. The State Executive Order extends the procedural timeline in unlawful detainer actions for respondents to submit an answer, from five days to 60 days for any tenant who is served with a summons and complaint for nonpayment of rent. Only the State has the authority to extend the procedural timeline for unlawful detainer actions under the California Code of Civil Procedure.

Table 3: Days to Answer an Unlawful Detainer

	SAN JOSÉ	COUNTY OF SANTA CLARA	STATE EXECUTIVE ORDER
Days to Answer an Unlawful Detainer	Does not address	Does not address	An extension of the answer period for an Unlawful Detainer of 5 days to 60 days for nonpayment of rent

As of April 14, 2020, this summarizes the key differences between the components of the City of San José Eviction Moratorium, Santa Clara County Eviction Moratorium, and State Executive Order N-37-20.