

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSE ENACTING
A TEMPORARY MORATORIUM ON EVICTIONS DUE TO
NONPAYMENT OF RENT FOR RESIDENTIAL TENANTS
WHERE THE FAILURE TO PAY RENT RESULTS FROM
INCOME LOSS RESULTING FROM THE NOVEL
CORONAVIRUS (COVID-19)**

WHEREAS, in late December 2019, several cases of unusual pneumonia began to emerge in the Hubei province of China. On January 7, 2020, a novel coronavirus now known as COVID-19 was identified as the likely source of the illness; and

WHEREAS, as infections began to rapidly increase in China and other countries throughout the world, on January 24, 2020 the City of San José (“City”) initiated planning for a possible outbreak of COVID-19 in San José. A Pandemic Management Team was formed to lead the effort. This action put the City at level 1, monitoring, the lowest level of the 5-point City response matrix; and

WHEREAS, on January 30, 2020, the World Health Organization (“WHO”) declared COVID-19 a Public Health Emergency of International Concern. On January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency; and

WHEREAS, the County of Santa Clara (“County”) Public Health Department received confirmation from the Centers for Disease Control and Prevention of two cases of novel coronavirus in the County, one on Friday, January 31 and the second on Sunday, February 2. Both cases had traveled to Wuhan, China in the 14 days before they became ill. As a result, the City increased its response level to 2-low risk; and

WHEREAS, on February 28, 2020, the County confirmed its third case of COVID-19 in Santa Clara County, the first transmission with unknown origin. The person does not have a travel history or any known contact with a traveler or infected person. As a result, the City increased its response level to 3-medium risk; and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for a broader spread of COVID-19. The proclamation comes as the number of positive California cases rises and following one official COVID-19 death; and

WHEREAS, on March 4, 2020, the County issued updated guidance for workplaces and businesses, stating that employers should take steps to make it more feasible for their employees to work in ways that minimize close contact with large numbers of people, including: 1) suspend nonessential employee travel; and 2) minimize the number of employees working within arm's length of one another, including minimizing or canceling large in-person meetings and conferences. The County also recommended that persons at higher risk of severe illness should stay home and away from crowded social gatherings of people as much as possible such as parades, conferences, sporting events, and concerts where large numbers of people are within arm's length of one another; and

WHEREAS, on March 6, 2020, due to an escalating increase in the number of cases in Santa Clara County, under San José Municipal Code Chapter 8.08, City Manager David Sykes signed a Proclamation of Local Emergency, which determines the legal, operational and recovery resources available for the City of San José to respond to the COVID-19 public health emergency; and

WHEREAS, as of March 9, 2020, the County reported that there are forty-three (43) cases of persons testing positive for COVID-19, an increase of twenty-three (23) in five days. The County also experienced its first death due to the virus. In response, the County, pursuant to its authority under California Health and Safety Codes sections 101040, 101085, and 120175, ordered that private mass gatherings attended by one thousand persons are prohibited until March 31, 2020 (the “Order”). This Order was based upon evidence of increasing transmission of COVID-19 within the County, scientific evidence regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect vulnerable members of the public from avoidable risk of serious illness or death resulting from exposure to COVID-19; and

WHEREAS, both large and smaller events across the Bay Area and in San José are cancelling or being postponed due to the County’s Order and recommendations at all levels of government to cancel large gatherings amid concerns over spread of the virus. These cancellations and postponements cause loss in revenue for the event, as well as surrounding local businesses that rely on such events to bring in patrons to their businesses; and

WHEREAS, since the COVID-19 outbreak, **at least** thirteen conferences and twenty-eight theater performances have cancelled in Team San Jose (“TSJ”) managed facilities. To date, the accumulated revenue lost due to San Jose Convention Center cancellations is approximately \$14.6 million. This loss of business supported 79,000 projected employee work hours throughout TSJ managed buildings. **These events will continue to cancel or be rescheduled, leading to loss of work hours, loss of revenue from the event, and loss of income for those employed for such events;** and

WHEREAS, due to the cancellation of local conferences and other large-attendance events, there has been a significant loss of business opportunities locally. To date,

since the COVID-19 outbreak, an estimated \$18 million has been lost in projected direct spending – that is spending in the business community around San José and not inclusive of revenues within the TSJ facilities. Also, there is also a projected loss of an estimated additional \$8.6 million in indirect spending – the ripple effect of incremental spending within the community that would have occurred from the direct spending in local businesses; and

WHEREAS, the effects of COVID-19 on the global economy and supply chains are impacting many Bay Area companies in both technology and non-technology sectors. Companies such as Apple and HP Inc. have indicated that quarterly earnings will be negatively impacted due to overseas factories operating at two-thirds their capacity, thus leading to missing their growth targets, potentially leading to personnel and other expense cuts. Some companies are having their employees work remotely or from home in order to prevent exposure in the workplace. With more businesses moving towards working from home, less of the workforce will be patronizing restaurants and other retail establishments that employ hourly workers, which is expected to lead to hourly cutbacks and potentially employee terminations; and

WHEREAS, on March 13, 2020, the County issued a new Order mandating a countywide moratorium on gatherings of more than 100 persons and a conditional countywide moratorium on gatherings of between 35-100 persons. A “gathering” is any event or convening that brings together people in a single room or single space at the same time, such as an auditorium, stadium, arena, conference room, meeting hall, cafeteria, theater, restaurant, bar, or any other confined indoor or confined outdoor space. California Governor Gavin Newsom also called for bar, wineries, and brewery pubs to close. These restrictions will impact how businesses operate that rely on customer patronage and will result in loss revenue for those that cannot continue to operate their businesses during this time; and

WHEREAS, the County Superintendent of Schools and all district superintendents in the County have decided to close schools to students for three weeks beginning Monday, March 16, 2020. These school closures will cause children to have to remain at home, leading to many parents adjusting their work schedules to take time off work, whether paid or unpaid. Hourly wage earners are unlikely to be paid for time off. The inability to work due to school closures will economically strain those families who cannot afford to take off time from work to stay at home; and

WHEREAS, this Ordinance is temporary and not a general ordinance in force required to be codified pursuant to Section 606 of the City Charter; and

WHEREAS, this Ordinance is a temporary moratorium intended to promote stability and fairness within the residential rental market in the City during the COVID-19 pandemic outbreak, and to prevent avoidable homelessness thereby serving the public peace, health, safety, and public welfare and to enable tenants in the City whose income and ability to work is affected due to COVID-19 to remain in their homes; and

WHEREAS, displacement through eviction destabilizes the living situation of tenants and impacts the health of San José's residents by uprooting children from schools, disrupting the social ties and networks that are integral to citizens' welfare and the stability of communities within the City; and

WHEREAS, displacement through eviction creates undue hardship for tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing; and

WHEREAS, during the COVID-19 pandemic outbreak, affected tenants who have lost income due to impact on the economy or their employment may be at risk of

homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Title

This Ordinance shall be known as the “COVID-19 Eviction Moratorium Ordinance.”

SECTION 2. Policy and Purposes Declaration

The purposes of this Ordinance are to promote housing stability during the COVID-19 pandemic and to prevent avoidable homelessness. This Ordinance is necessary for the immediate preservation of the public peace, health or safety because the COVID-19 pandemic has the potential for destabilizing the residential rental market for all of the reasons described herein. It is intended to enable tenants in the City whose employment and income have been affected by the COVID-19 pandemic to be temporarily exempt from eviction for non-payment of rent and to reduce the risk that these events will lead to anxiety, stress and potential homelessness for the affected City residents and their communities thereby serving the public peace, health, safety, and public welfare. The temporary moratorium on evictions for non-payment imposed by this Ordinance is created pursuant to the City's general police powers to protect the health, safety, and welfare of its residents and exists in addition to any rights and obligations under state and federal law.

SECTION 3. Effective Date; Termination Date

- A. This Ordinance shall be effective thirty (30) days after date of its adoption and shall remain in effect for a period of six (6) months after its effective date and thereafter is repealed unless extended by Ordinance.
- B. The moratorium will commence upon adoption by City Council of a Resolution setting forth the facts and circumstances for activation and shall expire thirty (30) days after adoption, unless the Resolution is otherwise extended by approval of the City Council.

SECTION 4. Definitions

- A. “Affected Tenant” shall mean a Tenant or Tenant Household, Mobilehome Resident, or Mobilehome Owner, whose has, as a result of COVID-19 pandemic, or declaration of the County Public Health Officer, or other local, State or Federal Authority, suffered a substantial loss in income through their employment as a result of any of the following: 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.
- B. “Landlord” means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Rental Unit, Mobilehome or Mobilehome lot, and the agent, representative, or successor of any of the foregoing.
- C. “Mobilehome” means a structure transportable in one or more sections, designed and equipped to contain not more than one dwelling unit, to be used with or without a foundation system.

- D. "Mobilehome Park" means any area or tract of land where two or more mobilehome lots are rented or leased, or held out for rent or lease, to accommodate mobilehomes used for human habitation for permanent, as opposed to transient, occupancy.
- E. "Mobilehome Owner" means a person who owns a Mobilehome and rents or leases the Mobilehome Park lot on which the Mobilehome is located.
- F. "Mobilehome Resident" means a person who rents a mobilehome from a Mobilehome Owner.
- G. "Notice of Termination" shall mean the notice informing a Tenant Household or Mobilehome Resident of the termination of its tenancy in accordance with California Civil Code Section 1946.1 and California Code of Civil Procedure Section 1161, as amended.
- H. "Rental Unit" means a structure or the part of a structure 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, and which household pays Rent for the use and occupancy for periods in excess of seven days whether or not the residential use is a conforming use permitted under the San José Municipal Code.
- I. "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 occupancy of a Rental Unit.
- J. "Tenant Household" means one or more Tenant(s) who occupy any individual Rental Unit, including each dependent of any Tenant whose primary residence is the Rental Unit.

SECTION 5. Scope

This Ordinance applies to Affected Tenants in any Rental Unit and Landlords of Affected Tenants. Only Sections 1 through 6, Subsection A.1. of Section 7 and Section 8 below apply to Mobilehome Tenants and Mobilehome Owners who are Affected Tenants and Landlords of Mobilehomes and Mobilehome lots.

SECTION 6. Moratorium on Nonpayment and No Cause Terminations

- A. During the term of this Ordinance, while a moratorium is activated by Resolution of the City Council, a Landlord may not terminate the tenancy of an Affected Tenant unless the Landlord can demonstrate that the Landlord served a Notice of Termination to the Affected Tenant and that the termination qualifies as a Just Cause Termination in compliance with Section 7 below.
- B. The Notice of Termination provided to Affected Tenants must contain the reason for the termination of tenancy in accordance with Section 7 below:

SECTION 7. Just Cause Termination

- A. If a Landlord can show any of the following circumstances with respect to a termination of tenancy, the termination will qualify as a "Just Cause Termination."
 - 1. Nonpayment of Rent. After being provided with written notice of the identity and mailing address of the Landlord, notice of the Moratorium **on a form approved by the Director of Housing**, and the amount of rent due, the Tenant, has failed to pay rent to which the Landlord is legally entitled pursuant to any written or oral rental agreement and under the provisions of state or local law, unless the Tenant is an Affected Tenant, as defined

above, who is unable to pay rent as a result of COVID-19 pandemic, declaration of County Public Health Officer, or other local, State or Federal Authority related to the COVID-19 pandemic, and has notified their Landlord of their status as an Affected Tenant before expiration of the Notice of Termination provided their Landlord before expiration of the Notice of Termination with documentation or other objectively verifiable proof of the same, or has withheld rent pursuant to applicable law, and said failure to pay has continued after service on the Tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three (3) days.

2. Material or Habitual Violation of the Tenancy.
 - a. The Tenant has failed to cure a violation of any material term of the rental agreement within a reasonable time after receiving written notice from the Landlord of the alleged violation or has committed Habitual violations of the rental agreement, but only if either clause (i) or (ii) applies:
 - i. The demand to cure is based on terms that are legal and have been accepted in writing by the Tenant or made part of the rental agreement; or
 - ii. The demand to cure is based on terms that were accepted by the Tenant or made part of the rental agreement after the initial creation of the tenancy, so long as the Landlord first notified the Tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement.

- b. The following potential violations of a tenancy can never be considered material or Habitual violations:
 - i. An obligation to surrender possession on proper notice as required by law.
 - ii. An obligation to limit occupancy when the additional Tenant(s) who join the Tenant Household are any of the following: a dependent child or foster child, a minor in the Tenant's care, the spouse, domestic partner, or parent (which terms may be further defined in the regulations adopted by the City Manager), of a Tenant; so long as the total number of adult Tenants in the unit does not exceed the greater of either the maximum number of individuals authorized in the rental agreement or two adults per bedroom, or in the case of a studio unit, two adults. The Landlord has the right to approve or disapprove a prospective additional Tenant who is not a dependent child or foster child, a minor in the Tenant's care, spouse, domestic partner, or parent of a Tenant, provided that the approval is not unreasonably withheld.
- 3. Substantial Damage to the Rental Unit. The Tenant, after written notice to cease and a reasonable time to cure, causes substantial damage to the Rental Unit, or common area of the structure or rental complex containing the Rental Unit beyond normal wear and tear, and refuses, after written notice, to pay the reasonable costs of repairing such

damage and to cease engaging in the conduct identified in the notice to cease.

4. Refusal to Agree to a Like or New Rental Agreement. Upon expiration of a prior rental agreement the Tenant has refused to agree to a new rental agreement that contains provisions that are substantially identical to the prior rental agreement as may be further described in the regulations adopted by the City Manager, and that complies with local, state and federal laws.
5. Nuisance Behavior. The Tenant, after written notice to cease, continues to be so disorderly or to cause such a nuisance as to destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit. Such nuisance or disorderly conduct includes violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit, and may be further defined in the regulations adopted by the City Manager.
6. Refusing Access to the Unit. The Tenant, after written notice to cease and a reasonable time to cure, continues to refuse the Landlord reasonable access to the Rental Unit, so long as the Landlord is not abusing the right of access under California Civil Code section 1954, as amended.
7. Unapproved Holdover Subtenant. The Tenant holding over at the end of the term of the oral or written rental agreement is a subtenant who was not approved by the Landlord.

8. Substantial Rehabilitation of the Unit. The Landlord after having obtained all necessary permits from the City, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of Tenants of the building, provided that:
 - a. The repairs costs not less than the product of ten (10) times the amount of the monthly rent times the number of Rental Units upon which such work is performed. For purposes of this subsection, the monthly rent for each Rental Unit shall be the average of the preceding twelve-month period; and
 - b. The repairs necessitate the relocation of the Tenant Household because the work will render the Rental Unit uninhabitable for a period of not less than thirty (30) calendar days; and
 - c. The Landlord gives advance notice to the Tenant of the ability to reoccupy the unit upon completion of the repairs at the same rent charged to the Tenant before the Tenant vacated the unit or, if requested by Tenant, the right of first refusal to any comparable vacant Rental Unit which has been offered at comparable rent owned by the Landlord; and
 - d. In the event the Landlord files a petition under the Apartment Rent Ordinance within six (6) months following the completion of the work, the Tenant shall be party to such proceeding as if he or she were still in possession, unless the Landlord shall submit with such application a written waiver by the Tenant of his or her right to reoccupy the premises pursuant to this subsection; and

- e. The Landlord shall have provided relocation assistance as required by subsection B, below.
9. Ellis Act Removal. The Landlord seeks in good faith to recover possession of the Rental Unit to remove the building in which the Rental Unit is located permanently from the residential rental market under the Ellis Act and, having complied in full with the Ellis Act and Ellis Act Ordinance, including the provision of relocation assistance as required by subsection B below.
10. Owner Move-In. The Owner seeks in good faith, honest intent, and without ulterior motive to recover possession for: (a) the Owner's own use and occupancy as the Owner's principal residence for a period of at least thirty-six (36) consecutive months commencing within three months of vacancy; or (b) the principal residence of the Owner's spouse, domestic partner, parent(s), child or children, brother(s), or sister(s) (each an "authorized family member") for a period of at least thirty-six (36) consecutive months and commencing within three months of vacancy, so long as the Rental Unit for the Owner's authorized family member is located in the same building as the Owner's principal residence and no other unit in the building is vacant. It shall be a rebuttable presumption that the Owner has acted in bad faith if the Owner or the Owner's qualified relative for whom the Tenant was evicted does not move into the Rental Unit within three months from the date of the Tenant's surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least thirty-six (36) consecutive months. The Owner shall have provided relocation assistance as required by subsection B, below.

11. Order to Vacate. The Landlord seeks in good faith to recover possession of the Rental Unit in order to comply with a court or governmental agency's order to vacate, order to comply, order to abate, or any other City enforcement action or order that necessitates the vacating of the building in which the Rental Unit is located as a result of a violation of the San José Municipal Code or any other provision of law, and provides a notice of the right to reoccupy. The Landlord shall have provided relocation assistance as required by subsection B.3, below.
12. Vacation of Unpermitted Unit. The Landlord seeks in good faith to recover possession of an Unpermitted Unit in order to end the unpermitted use. The Landlord shall have provided relocation assistance as required by subsection B.3, below.
13. Criminal Activity.
 - a. The Tenant Household, after receiving a written notice to cure (which notice shall include the return provisions listed in subsection d below) by removing the Violating Tenant (as defined below) from the household, and, where necessary, amending the lease to remove the Violating Tenant's name, fails to do so within a reasonable time, by one of the following methods as further described in the regulations:
 - i. Filing a restraining order or providing evidence to the Landlord of similar steps being taken to remove the Violating Tenant from the household.

- ii. Removing the Violating Tenant from the household and providing written notice to the landlord that the Violating Tenant has been removed.
- b. For purposes of this subsection 13, a "Violating Tenant" shall mean an adult Tenant that is indicted by a grand jury or held to answer pursuant to Penal Code Section 872, as amended, for a serious felony as defined by Penal Code Section 1192.7(c), as amended, or a violent felony as defined by Penal Code Section 667.5(c), as amended, which occurred during the tenancy and within 1,000 feet of the premises on which the Rental Unit is located. The term "premises" shall mean "Lot", as defined in Section 20.200.660 of the San José Municipal Code.
- c. The past criminal history of a Tenant shall not be a factor in determining whether the Tenant is a Violating Tenant.
- d. If a Violating Tenant, as defined above, is acquitted from the charges or the charges are dismissed or reduced, he or she may return to the Rental Unit as a Tenant, so long as: 1) the Tenant Household still resides in the Rental Unit; and 2) the Tenant Household consents to the Violating Tenant's return.

B. Relocation Assistance.

- 1. Tenants who receive a Notice of Termination that relies on subsections A.8 or A.10 above as the just cause rationale to terminate the tenancy must receive, and the Landlord must provide the following relocation assistance to the Tenant Household. The relocation assistance must be

provided to the Tenant Household concurrent with delivery of the Notice of Termination to the Tenant Household.

- a. Relocation Assistance. An amount equal to the Base Assistance provided for in the Ellis Act Ordinance, Part 11 of Chapter 17.23 of the San Jose Municipal Code, as set by resolution of the City Council.
 - b. Refund of Security Deposit. Owner must refund to the Tenant Household any security deposit paid by the Tenant Household, provided, however, that the Owner may withhold any properly itemized deductions from the security deposit pursuant to California Civil Code section 1950.5, as amended.
2. Tenants who receive a Notice of Termination that relies on subsection A.9 above as the just cause rationale to terminate the tenancy must have received, and the Landlord must have provided, all applicable Relocation Assistance provided for in the Ellis Act Ordinance.

Tenants who receive a Notice of Termination that relies on subsection A.11 or A.12 above as the just cause rationale to terminate the tenancy must receive, and the Landlord must provide, Relocation Assistance as defined in Part 11 of Chapter 17.20 of the San José Municipal Code, or if the unit is unpermitted, an amount equal to the Base Assistance provided for in the Ellis Act Ordinance.

SECTION 8. Affirmative Defense to Eviction; Penalties and Remedies

- A. Affirmative Defense. Each Landlord that seeks to terminate a tenancy of an Affected Tenant must comply with this Ordinance. Non-compliance with any

applicable component of this Ordinance shall constitute an affirmative defense for an Affected Tenant against any unlawful detainer action under California Code of Civil Procedure section 1161, as amended.

~~Nonpayment of Rent. To assert this defense~~ As a defense to an action brought under Subsection A.1 of Section 7 above, an Affected Tenant shall ~~provided~~ ~~must have notified~~ their Landlord ~~with written documentation or other objectively verifiable information establishing that the Affected Tenant has prior to the Notice of Termination expiring that they are an Affected Tenant and establish that,~~ as a result of the novel coronavirus (COVID-19) pandemic or declaration of County Public Health Officer, or other State or Federal Authority, suffered substantial loss of income caused by any of the following: 1) job loss; 2) a reduction of compensated hours of work; 3) work 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, ~~and has provided written documentation or other objectively verifiable proof of the same.~~ The following documents shall create a rebuttable presumption that the Affected Tenant has met the documentation requirement set forth above, however, they are not the exclusive form of documentation demonstrating impacts to income due to COVID-19:

1. Letter from employer citing COVID-19 as a reason for reduced work hours or termination;
2. Employer paycheck stubs;
3. ~~Bank statements. Notification from a school declaring a school closure related to COVID-19.~~

B. Civil Remedies.

1. Any Landlord that fail(s) to comply with this Ordinance may be subject to civil proceedings for displacement of Affected Tenant(s) initiated by the City or the Affected Tenant Household for actual and exemplary damages.

2. Whoever is found to have violated this Ordinance shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees.
3. Treble damages shall be awarded for a Landlord's willful failure to comply with the obligations established under this Ordinance.
4. Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a Tenant or non-Tenant third party for the damage done to said Landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.

SECTION 9. Relationship to Tenant Protection Ordinance

This Ordinance is not intended to relieve a Landlord from any obligation under the Tenant Protection Ordinance, Part 12 of Chapter 17.23 of the San José Municipal Code.

ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI TABER, CMC
City Clerk