

ORDINANCE NO.

**AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE
ENACTING A TEMPORARY MORATORIUM ON
EVICTIONS DUE TO NONPAYMENT OF RENT FOR
SMALL BUSINESS TENANTS WHERE THE FAILURE TO
PAY RENT RESULTS FROM REVENUE AND INCOME
LOSS RESULTING FROM THE NOVEL CORONAVIRUS
(COVID-19), AND SETTING FORTH THE FACTS
CONSTITUTING SUCH URGENCY**

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 March 4, 2020, California Governor Gavin Newsom (“Governor”) 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, 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; 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 crisis; 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 parents with school-age children to attend to their child and be hindered to dedicate as much time and effort to earning income; and

WHEREAS, on March 16, 2020, the County issued an Order instituting a requirement to shelter in place of an individual’s residence, permitting leave for essential activities, essential government functions, or to operate essential businesses, as defined in the Order. All businesses, except those essential businesses, are required to cease all

activities at facilities located within the County. Further, all public or private gatherings of any number of people occurring outside a household or living unit is prohibited, except in very limited circumstances. As a result of these unprecedented measures, many businesses are having to close or significantly scale back and modify their business operations to comply with the County's Order. These actions in response are having immediate consequences on businesses generating revenue to sustain their business and pay their employees and overhead costs, including rent; and

WHEREAS, on March 16, 2020, the Governor issued Executive Order N-28-20, providing for local government's exercise of their police power to impose substantive limitations on commercial evictions and that state law would not preempt or otherwise restrict a local government from limiting commercial evictions; and

WHEREAS, the Governor reported on March 25, 2020 that California has received nearly 1 million unemployment claims since March 13th. A spokesperson for California's Employment Development Department stated that they have received "An avalanche of filings" by companies issuing required warnings of upcoming layoffs and job cuts. Statewide, filings showed 18,998 planned job cuts filed so far in March; and

WHEREAS, on April 6, 2020, the number of COVID-19 cases in Santa Clara County had increased to 1,207 and 39 deaths. Statewide, there were 13,897 reported cases and 322 people have died; 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, pursuant to section 605 of the City Charter, this urgency ordinance must be "adopted as and declared by the Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety, containing a statement of the facts constituting such urgency"; and

WHEREAS, this Ordinance is a temporary moratorium intended to promote stability and fairness within the small business rental market in the City during the COVID-19 pandemic outbreak, and to prevent avoidable evictions of small businesses 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 of small businesses through eviction risks destabilizing the living situation of both business owners and their employees 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 small business tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the loss of income to pay for life's basic necessities; and

WHEREAS, during the COVID-19 pandemic outbreak, small business owners whose business has closed and is their family's and employee's sole or main source of income may be at risk of homelessness if their business is 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. The uncodified Ordinance set out in the attached Exhibit A is hereby approved.

SECTION 2. The City Council of the City of San José hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency measure, which finding is based upon the facts stated in the recitals above, the Office of Economic Development dated April 1, 2020, as well any oral and written testimony at the April 7, 2020 City Council meeting.

SECTION 3. This Ordinance and any moratorium that may be established thereunder is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth and referenced in Section 2 of this Ordinance.

SECTION 4. This Ordinance shall become effective immediately upon its adoption pursuant to Section 605 of the Charter of the City of San José and shall remain in effect for sixty (60) days, unless extended by the City Council.

ADOPTED IN ACCORDANCE WITH CHARTER SECTION 605(d) this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT A
TEMPORARY MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT
FOR SMALL BUSINESS TENANTS WHERE THE FAILURE TO PAY RENT
RESULTS FROM INCOME OR REVENUE LOSS DUE TO THE NOVEL
CORONAVIRUS (COVID-19)

Section 1 Title

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

Section 2 Policy and Purposes Declaration

The purposes of this Ordinance are to promote small business stability during the COVID-19 pandemic and to prevent avoidable business failings due to evictions causing further economic strain and potential homelessness for small business owners and their employees. This Ordinance is immediately necessary for the immediate preservation of the public peace, health or safety because the COVID-19 pandemic has the potential for destabilizing the small business community for all the reasons described herein. It is intended to enable small business commercial tenants in the City whose revenue or income have been substantially impacted 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 additional economic strain, anxiety, stress and potential homelessness for the affected small businesses and their employees, and the impact to 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 Term, Expiration

- A. This Ordinance is effective immediately and shall expire within sixty (60) days after its adoption.
- B. The moratorium will commence upon adoption by City Council of a Resolution setting forth the facts and circumstances for activation and shall expire by May 31, 2020, or such later date as set by the Governor that extends the protections set forth in Paragraph 2 of the Governor's Executive Order N-28-20.
- C. A subsequent Resolution shall set forth the facts and circumstances for activation, as well as the effective period of the non-payment moratorium set forth in the Ordinance.

Section 4 Definitions

- A. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Rental Unit, and the agent, representative, or successor of any of the foregoing.
- B. "Notice of Termination" shall mean the notice informing a Tenant of the termination of its tenancy in accordance with California Code of Civil Procedure Section 1161(2) and 1161.1, as amended.
- C. "Rental Unit" means real property, or part of real property, that is rented and used by a Tenant for either nonprofit, business or income producing purposes, or any purpose other than personal residential use.

- D. “Small Business Tenant” means a tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, to use or occupancy of a Rental Unit for business or income-producing purposes, as a nonprofit, or any purpose other than as a personal residence, and, for purposes of size requirements, meets the size standard for a small business in the industry in which that entity operates as defined in the U.S. Small Business Administration's table of size standards by industry, codified at 13 C.F.R. section 121.201.
- E. “Tenant” means the lawful occupant of a Rental Unit, through either a lease, sublease, or other written or oral rental agreement.

Section 5 Scope

This Ordinance applies to Tenants in any Rental Unit and the Landlords of such Tenants.

Section 6 Moratorium on Evictions for Nonpayment of Rent Due to COVID-19.

- A. Any Notice of Termination served on any Tenant while the moratorium is in effect must include notice of the moratorium describing the Small Business Tenant's rights under this Ordinance.
- B. A Landlord may not terminate a tenancy or declare forfeiture of a lease agreement with a Small Business Tenant due to nonpayment of rent if they demonstrates that the failure to pay rent directly resulted from a substantial loss of revenue or income to their business due to the COVID-19 pandemic, or any local, State, or federal government response to the pandemic. However, if the Landlord has deemed the Rental Unit abandoned after performing the

requirements set forth under California Civil Code 1951.35, then the moratorium shall not apply to prevent the Landlord from terminating the lease and seeking possession of the Rental Unit consistent with California law..

- C. Substantial loss of revenue or income shall be demonstrated by documentation or other objectively verifiable proof that, as a result of the COVID-19 pandemic, the Small Business Tenant has experienced any of the following: 1) a reduction in opening hours or consumer demand; 2) a store, restaurant, office, or business closure; 3) the need to care for a minor child who is home due to school closure; or 4) other similarly-caused loss of income resulting from the COVID-19 pandemic.

Section 7 Affirmative Defense to Eviction; Penalties and Remedies

- A. Affirmative Defense. Each Landlord that seeks to terminate a tenancy of an Small Business Tenant must comply with this Ordinance. Non-compliance with any applicable component of this Ordinance shall constitute an affirmative defense for a Small Business Tenant against any unlawful detainer action under California Code of Civil Procedure section 1161(2) or 1161.1, as amended.
- B. Civil Remedies.
1. Any Landlord that fail(s) to comply with this Ordinance may be subject to civil proceedings for displacement of a Small Business Tenant(s) initiated by the City or the Small Business Tenant 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.