

ORDINANCE NO.

**AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE
ENACTING A TEMPORARY MORATORIUM ON RENT
INCREASES FOR TENANTS, MOBILEHOME PARK
OWNERS, AND MOBILEHOME RESIDENTS RESIDING IN
RENT-STABILIZED APARTMENTS AND MOBILEHOMES,
TEMPORARY SUSPENSION OF LATE CHARGES FOR
FAILURE TO PAY APARTMENT RENT CONTROL FEES,
PERMITTING REDUCTION IN RENT AGREEMENTS,
AND WAIVER OF REPAIR/MAINTENANCE PERMIT
APPLICATION FEES FOR SMALL APARTMENT
COMPLEXES, 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 were 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, 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, on March 17, 2020, the City Council adopted a COVID-19 Urgency Ordinance (“Urgency Ordinance”) and approved a companion ordinance (together, the

“Ordinances”), providing for a temporary moratorium on evictions in the City of San José for renters on the basis of nonpayment of rent where the failure to pay rent results from wage loss resulting from the novel coronavirus (COVID-19) pandemic. The City Council also adopted a Resolution activating a 30-day eviction moratorium. The moratorium is set to expire by April 17, 2020. Under the provisions of the Ordinances, the Council may extend the moratorium beyond thirty days by adoption of a subsequent resolution; and

WHEREAS, on March 24, 2020, the County of Santa Clara Board of Supervisors adopted an uncodified urgency ordinance imposing a temporary moratorium through May 31, 2020 on evictions in Santa Clara County for non-payment of rent by residential and commercial real property tenants directly impacted by the COVID-19 pandemic; and

WHEREAS, on March 31, 2020, the County issued a new, more restrictive Order than the one previously issued on March 16, 2020, tightening social distancing requirements by prohibiting attendance of certain outdoor and recreational facilities, placing restrictions on certain gatherings, and adding requirements of essential businesses. This Order also clarifies what is an essential business and extends the shelter in place requirements through May 3, 2020; and

WHEREAS, due to recommendations of the Governor and state superintendent of schools, Santa Clara County has decided to close schools to students for the remainder of the academic school year. These school closures have caused parents with school-age children to stay at home to care for their school-age children thereby making it more challenging, and in some cases impossible, to earn income; and

WHEREAS, California unemployment claims totaled more than 925,000 during the week that ended on April 6, on top of the 1.06 million that filed claims in the state during the week of March 28, and the 186,000 that filed for jobless benefits the week of March

21. 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. As of March, California unemployment rates jumped from 3.9% to 5.3%. Based upon the unemployment claims filed, April results are expected to show a sharp incline of unemployment; and

WHEREAS, the leisure and hospitality industry have been particularly affected by the shelter-in-place Orders. According to California's Employment and Development Division, March's record of 99,500 nonfarm payroll jobs loss was the fourth-largest on record, and driven by declines in six of California's 11 industry sectors. In particular, the leisure and hospitality industry lost 67,200 posted the biggest job losses in March, due in large part to drops in full-service restaurants as well as food services and drinking establishments. Other services industries posted a loss of 15,500 jobs and construction experienced a loss of 11,600 jobs.

WHEREAS, according to the November 2019 ARO Economic Roundtable study on the rent stabilization community, fifty-three (53%) of tenants of rent stabilized properties are rent-burdened. The loss of jobs and the ability to work due to COVID-19 has likely increased the number of rent burdened families, especially as they increase their debt for unpaid rent resulting from a substantial loss of income.

WHEREAS, on April 14, 2020, due to the increased unemployment rates and continued shelter-in-place Orders, the City Council approved by Resolution extending to May 31, 2020 the Moratorium on residential evictions for those tenants financially-impacted by COVID-19.

WHEREAS, on April 17, 2020, the number of COVID-19 cases in Santa Clara County had increased to 1,833 and 69 deaths. Statewide, there were over 26,000 reported cases and 869 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 residential rental market in the City during the COVID-19 pandemic outbreak, and to prevent avoidable homelessness by temporarily preventing rent increases that would increase financial instability for thousands individuals and families struggling during this time to pay their bills and feed their families due to being out of work, thereby serving the public peace, health, safety, and public welfare; 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, which could lead to increases in health issues, exacerbation of existing health issues, and increase in risk of earlier death.

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, and in the Memoranda from the Housing Department dated April 10, 2020 and April 17, 2020, as well any oral and written testimony at the April 14, 2020 and April 21, 2020 City Council meetings.

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 RENT INCREASES FOR RESIDENTIAL
TENANTS, MOBILEHOME RESIDENTS, AND MOBILEHOME OWNERS IN RENT-
CONTROLLED PROPERTIES**

Section 1 Title

This Ordinance shall be known as the “COVID-19 Rent Increase 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 immediately necessary for the immediate preservation of the public peace, health or safety because increasing the rent during a time where many tenants are struggling to pay their rent due to loss of work, business closure, and reduced hours, has the potential for destabilizing the residential rental market by placing tenants who are out of work in greater financial uncertainty to pay their rent and thus risk eviction by their landlords from their residences. It is intended to enable rent-stabilized tenants and mobilehome owners in the City to be temporarily exempt from rent increases in order to financially recover to reduce the risk that these events will lead to potential homelessness for the rent stabilized community, thereby serving the public peace, health, safety, and public welfare. The temporary moratorium on rent increases 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

This Ordinance is effective immediately and shall remain in effect until December 31, 2020 and thereafter is repealed unless extended by 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, Mobilehome or Mobilehome lot, and the agent, representative, or successor of any of the foregoing.
- B. "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.
- C. "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.
- D. "Mobilehome Owner" means a person who owns a Mobilehome and rents or leases the Mobilehome Park lot on which the Mobilehome is located.
- E. "Mobilehome Resident" means a person who rents a mobilehome from a Mobilehome Owner.
- F. "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.

- G. “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.
- H. “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 any Tenant, Tenant Household, Mobilehome Resident or Mobilehome Owner, and their Landlords, whom are subject to the provisions of Chapter 17.22 or Parts 1-9 of Chapter 17.23 of the San Jose Municipal Code.

SECTION 6. Moratorium on Rent Increases; Right to File for Fair Return

- A. During the term of this Ordinance, a Landlord may not increase the rent upon any Rental Unit that is subject to the provisions of Chapter 17.22 or Parts 1-9 of Chapter 17.23 of the San Jose Municipal Code.
- B. For tenancies existing on or before March 31, 2020, the monthly rent during the term of this Ordinance shall be the tenancy’s contract rent in effect as of March 31, 2020.

- C. Nothing under this Section or under this Ordinance shall preclude or otherwise prevent a Landlord from filing a fair return petition pursuant to the provisions under Chapter 17.22 or Part 8 of Chapter 17.23 of the San Jose Municipal Code.

SECTION 7. Agreements to Reduce Rent

Notwithstanding the provisions under Chapter 17.22 and Chapter 17.23 of the San Jose Municipal Code, a Tenant, Mobilehome Owner, or Mobilehome Resident may enter into a temporary voluntary agreement with their Landlord to decrease the rent, so long as it does not otherwise change the terms of their tenancy. Upon expiration of the Ordinance, the amount of rent due will be the tenancy's rent as of March 31, 2020 or the initial rent for tenancies commencing after such date. Such agreements will be without legal force or effect upon expiration of this Ordinance.

SECTION 8. Suspension of Late Fees for Failure to Pay Apartment Rent Control Fee; Waiver of Repair/Maintenance Application Permit Fees

- A. Late fees shall not accrue during the term of this Ordinance for failure to pay registration fees due in fiscal year 2019-2020, as required under Chapter 17.22 and Chapter 17.23 of the San Jose Municipal Code.
- B. During the term of this Ordinance, building permit application fees related to repair/maintenance shall be waived for apartment complexes containing less than twenty (20) Rental Units.

SECTION 9. Reduction of Service Claims Related To Common Area Amenities

During the period of this Ordinance, service reduction claims filed with the Rent Stabilization Program pursuant to Municipal Code Section 17.23.350.A. shall be denied if the claim is based upon a temporary closure or elimination of recreational common area amenities in response to a County of Santa Clara or State of California Order related to COVID-19.

SECTION 10. Affirmative Defense to Eviction; Penalties and Remedies

- A. Affirmative Defense. 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(2) or California Civil Code Section 798.56(e), 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 Affected Tenant(s) initiated by the City or the Affected Tenant Household for actual and exemplary damages.
 - 2. 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.