

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE AMENDING UNCODIFIED ORDINANCE NO. 30382 WHICH ESTABLISHED A TEMPORARY MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT FOR RESIDENTIAL TENANTS WHERE THE FAILURE TO PAY RENT RESULTS FROM INCOME LOSS DUE TO THE NOVEL CORONAVIRUS (COVID-19), TO INCLUDE THE FOLLOWING PROVISIONS: A) ALLOW AFFECTED TENANTS WITH SEVEN DAYS FOLLOWING SERVICE OF A NONPAYMENT OF RENT NOTICE TO NOTIFY THEIR LANDLORDS IF THEY HAVE BEEN FINANCIALLY IMPACTED, B) EXPAND THE DEFINITION OF AFFECTED TENANT, C) ADD ANTI-RETALIATION PROTECTION, D) ADD A PROHIBITION ON NOTICES SERVED IN BAD FAITH, E) ADD A PROHIBITION OF LATE FEES, INTEREST, AND PENALTY CHARGES TO AFFECTED TENANTS DURING MORATORIUM, AND F) ADD A REPAYMENT PERIOD THROUGH DECEMBER 31, 2020, 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, 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 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 (5) 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 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, on March 16, 2020, California Governor Gavin Newsom issued Executive Order N-28-20, providing for local government’s exercise of their police power to impose substantive limitations on residential and commercial evictions and that state law would not preempt or otherwise restrict a local government from limiting residential or commercial evictions; and

WHEREAS, on March 17, 2020, the City Council adopted urgency Ordinance No. 30381 and approved Ordinance No. 30382 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 COVID-19. The moratorium was extended through May 31, 2020; 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; and

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; and

WHEREAS, on April 29, 2020, the County issued an updated Order, effective May 4th through May 31, 2020, to continue the shelter-in-place requirements and restricting certain non-essential businesses from operating through the term of the Order; and

WHEREAS, on May 11, 2020, the number of COVID-19 cases in Santa Clara County had increased to 2,341 and 129 deaths. Statewide, as of May 10, 2020, there were over 66,680 reported cases and 2,745 deaths; and

WHEREAS, on March 17, 2020, the Council adopted Ordinance No. 30381 ("Urgency Ordinance") to temporarily establish for sixty (60) days a moratorium on evictions for nonpayment of rent for Affected Tenants. On April 7, 2020, the Council further adopted Ordinance No. 30382 to continue the moratorium for up to six (6) additional months after the Urgency Ordinance expires. Under both Ordinances, the moratorium was activated by Resolution of the City Council; and

WHEREAS, phone calls have been received from Affected Tenants during the moratorium that landlords have resorted to harassing and retaliating against Affected Tenants who have asserted their rights under the moratorium in an effort to get them to vacate the property without having a good faith basis.

WHEREAS, due to Ordinance No. 30381 expiring, Council desires to amend Ordinance No. 30382 to include new provisions that: a) allow Affected Tenants, within seven (7) days following service of a nonpayment of rent notice, to notify their landlords if they

have been financially impacted, b) add anti-retaliation protections, c) prohibit notices served in bad faith, d) add a repayment period for Affected Tenants to pay their unpaid rent during the moratorium by December 31, 2020 for Affected Tenants, and e) expand the definition of Affected Tenant to include those who have been infected or have suffered from COVID-19 or have cared for someone in their Tenant Household who was infected. Further, additional amendments are included to prohibit late fees, interest, and penalty charges to Affected Tenants during the moratorium, in order to align with the County Ordinance; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance.

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 continues 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; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

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

SECTION 1. The amendments to uncodified Ordinance No. 30382, the COVID-19 Moratorium Ordinance, set out in the attached Exhibit A are 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 memorandum to the City Council from Councilmember Carrasco dated April 10, 2020 and the Memorandum from the Housing Department, as well any oral and written testimony at the May 12, 2020 City Council meeting.

SECTION 3. This Ordinance 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

**AMENDMENT TO CERTAIN TERMS OF ORDINANCE NO. 30382, A TEMPORARY
MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT FOR
RESIDENTIAL TENANTS WHERE THE FAILURE TO PAY RENT RESULTS FROM
WAGE LOSS DUE TO THE NOVEL CORONAVIRUS (COVID-19)**

SECTION 1. Paragraph A of Section 3, “Effective Date; Termination Date”, of Ordinance 30382 is hereby amended to read as follows:

- A. This Ordinance shall be effective thirty (30) days after date of its adoption and shall remain in effect through December 31, 2020 ~~for a period of six (6) months after its effective date~~ and thereafter is repealed unless extended by Ordinance.

SECTION 2. Paragraph A of Section 4, “Definitions”, of Ordinance 30382 is hereby amended to read as follows:

- A. “Affected Tenant” shall mean a Tenant or Tenant Household, Mobilehome Resident, or Mobilehome Owner, who~~se~~ 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; 5) loss of income due to being infected by COVID-19 or caring for a person in the Tenant Household who was infected by COVID-19; or 6) other similarly-caused reason resulting in a loss of income due to COVID-19.

SECTION 3. Paragraph A.1. of Section 7, "Just Cause Termination", of Ordinance 30382 is hereby amended to read as follows:

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~~ within seven (7) days of the Landlord serving the Notice of Termination, 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.

SECTION 4. A new Section 10 is added to Ordinance 30382, to be numbered, entitled, and to read as follows:

SECTION 10. Anti-Retaliation Protections

A. No Landlord may threaten to bring, or bring, an action to recover possession, cause the Affected Tenant to quit the Rental Unit involuntarily, serve any notice

to quit or Notice of Termination, reduce any housing services, report or threaten to report the Affected Tenant, Tenant Household, or individuals the Landlord knows to be associated with the Affected Tenant to the immigration authorities, where the Landlord's intent is retaliation against the Affected Tenant for the Affected Tenant's assertion or exercise of rights under this Ordinance.

- B. No Landlord shall in bad faith serve a notice, influence or attempt to influence an Affected Tenant to vacate a Rental Unit through fraud, intimidation or coercion.

SECTION 5. A new Section 11 is added to Ordinance 30382, to be numbered, entitled and to read as follows:

**SECTION 11. Repayment of Unpaid Rent accruing during the COVID-19
Moratorium**

Affected Tenants shall have until December 31, 2020 to repay any past due rent accruing during the period of the COVID-19 Eviction Moratorium established by Council Resolution 79446 and further amended by Council. Prior to January 1, 2021, Affected Tenants shall not be subject to eviction for nonpayment of rent for failure to pay the past due rent accruing under during the eviction moratorium.

SECTION 6. A new Section 12 is added to Ordinance 30382, to be numbered, entitled and to read as follows:

SECTION 12. Prohibition Against Late Fees or Interest

Affected Tenants shall not be charged late fees, penalties, or interest for failure to pay rent during the period of the moratorium.

SECTION 7. A new Section 13 is added to Ordinance 30382, to be numbered, entitled and to read as follows:

SECTION 13. Severability

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.