

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE ENACTING A TEMPORARY MORATORIUM ON NO-CAUSE EVICTIONS AND 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), 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. The City of San José has extended the Proclamation of Local Emergency every sixty days, through March 12, 2021; and

WHEREAS, on March 9, 2020, the County of Santa Clara (“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”). On March 13, 2020, the County issued an updated 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. Such restrictions impacted how businesses operate that rely on customer patronage have resulted in significant revenue loss 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, supporting local government’s exercise of their police power to impose substantive limitations on residential and commercial evictions and ensuring 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, under its police powers, adopted urgency Ordinance No. 30381, approved Ordinance No. 30382 (the “Ordinances”), and passed Resolution thereby 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 August 31, 2020 and thereafter terminated due to the passage of Assembly Bill 3088; and

WHEREAS, on March 24, 2020, pursuant to Government Code section 8634, the County 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 small business tenants directly impacted by the COVID-19 pandemic. The County extended their temporary moratorium through August 31, 2020, thereafter expiring due to the passage of Assembly Bill 3088. The County’s small business eviction moratorium has been extended through March 31, 2021; and

WHEREAS, since the holiday season 2020, Santa Clara County, has experienced a tremendous surge in COVID-19 infections and hospitalizations. As of January 3, 2021, the County has a seven-day rolling average of 1,240 new cases per day. The number of COVID-19 confirmed cases in the County reached 84,872 and 1,271 deaths; and

WHEREAS, due to an uptick in infections across the County and the State, on December 3, 2020, the State of California’s Department of Public Health issued a new Regional Stay at Home Order that created five Regions within California and imposes tight restrictions on any Region in which ICU capacity drops below 15%. Accordingly, the County issued a Mandatory Directive that implements the State’s Regional Stay At Home Order in Santa Clara County. This Directive shall remain in effect until 12:01 a.m. on the day after the California Department of Public Health announces that the County is no longer subject to the Regional Stay at Home Order, unless the County

Health Officer otherwise rescinds, modifies, or extends this Directive. Currently, the County's ICU capacity is at approximately 0% vacancy; and

WHEREAS, under the Regional Stay at Home Order ("Order"), all retailers may operate indoors at no more than 20% capacity and must follow the guidance for retailers. Additionally, restaurants are only permitted to provide takeout orders. Additionally, hair salons and barbershops, personal care services, museums, zoos, aquariums, movie theaters, wineries, bars, breweries, family entertainment centers, live audience sports, and amusement parks must remain closed while the Order remains in effect. These limitations on business operations continue to strain finances of business owners and employers who are directly impacted by these limitations to their operations. According to the U.S. Bureau of Labor Statistics, as of November 2020, employment in leisure and hospitality is down 23.4% and restaurant employment is down 28.8% compared to last year; and

WHEREAS, most school-aged children who attend schools in the City of San Jose have been distant learning for the duration of the 2020-2021 academic year. As a result, many parents with school-age children have struggled to provide at-home care for their school-age children who would typically be in a classroom five days a week. There has been widespread reporting on the negative impacts of distance learning on a child's development and the emotional toll that shelter-in-place puts on families with children; and

WHEREAS, the California State Legislature ("Legislature") passed and the Governor signed Assembly Bill 3088 that includes the COVID-19 Tenant Relief Act, providing protections for tenants who have not paid their rent due to COVID-19 impacts. These protections prevent eviction of tenants who have submitted a Declaration to their landlord of COVID-19 financial impacts through August 2020. From September 2020

through January 31, 2021, tenants are responsible for paying 25% of their rent to avoid eviction for unpaid rent during those months. This particular protection ends January 31, 2021; therefore, many tenants impacted by COVID-19 will no longer be protected from eviction for failure to pay February 2021 rent. While the Legislature is considering extending these protections, there remains uncertainty whether the Legislature will and to what extent those protections will be extended; 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. A report published in October 2020 by the Healing Grove Health Center, found that 14,600 households in Santa Clara County are at imminent risk of homelessness when the eviction moratorium expires in 2021 because of an inability to pay rent. 58,000 families in Santa Clara County made just \$15,000 to \$35,000 before the shut-down, paying an average rent of \$18,000. 36,200 extremely low income (ELI) households in Santa Clara County have a rent debt they can't repay due to the COVID shutdown. The combined rent debt of ELI families in Santa Clara County is more than 110 million dollars. That number includes 63,000 children and 133,000 individuals in total; 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 are 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, the Ordinances implement a temporary and not a general ordinance in force required to be codified pursuant to Section 606 of the City Charter; and

WHEREAS, the Ordinances are 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.

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 memorandum to the City Council from the Housing Department dated January 22, 2021, as well any oral and written testimony at the January 26, 2021 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 until the City of San Jose’s Proclamation of Declared Local Emergency expires, or until the effective date of any new State new legislation providing eviction protections for tenants affected by COVID-19 that preempts this Ordinance.

ADOPTED IN ACCORDANCE WITH CHARTER SECTION 605(d) this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT A
**TEMPORARY MORATORIUM ON NO-CAUSE EVICTIONS AND 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 Title

This Ordinance shall be known as the “2021 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 immediately 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 enacted 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

This Ordinance shall take effect February 1, 2021 and shall remain in effect until expiration of the City of San Jose's Proclamation of Declared Local Emergency, or until the effective date of any new State legislation providing eviction protections for tenants affected by COVID-19 that preempts this Ordinance.

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; 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.

- 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, 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, 8, 10, 11, 12, and 13 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 ("Moratorium Period"), 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.
- C. A Landlord must mail or deliver to the City a true and accurate copy of any Notice of Termination delivered to a Tenant within 3 days of delivering such notice to a Tenant or Tenant Household.

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 by a Tenant who is not also an Affected Tenant. After being provided with written Notice of Termination that includes 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, who does not otherwise qualify as an Affected 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. A notice terminating tenancy for nonpayment of rent must include that the notice is being served in good faith and that information regarding the notice terminating tenancy, including information on homeless prevention, is available from the Rent Stabilization Program, phone (408) 975-4480 or www.sanjoseca.gov. Notwithstanding the preceding, a Notice of Termination for Nonpayment of Rent that otherwise meets the requirements of this subsection will not qualify as a Just Cause Termination if the Tenant provides written notice to their Landlord of their status as an Affected Tenant within seven (7) days of the Landlord serving the Notice of Termination.

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 capital improvement 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 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 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 and California Civil Code sections 1946 and 1946.1, as amended.

Nonpayment of Rent. As a defense to an action brought under Subsection A.1 of Section 7 above, an Affected Tenant must have notified their Landlord 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, has suffered substantial loss of income caused by 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, 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

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.

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 11. Repayment of Unpaid Rent accruing during the 2021 COVID-19 Moratorium

- A. Following expiration of the Moratorium Period, Affected Tenants shall have twelve (12) months to repay any past due rent accrued during the Moratorium Period (the "Repayment Period") pursuant to subsection C. of this Section 11.
- B. During the first six (6) months of the Repayment Period, Affected Tenants shall not be subject to eviction for failure to pay the past due rent that accrued during the Moratorium Period, provided that Affected Tenants comply with subsection C. below.
- C. Affected Tenants shall pay at least fifty percent (50%) of the past due rent accrued during the Moratorium Period within six (6) months of commencement of

the Repayment Period. The remaining balance of the unpaid rent shall be paid by no later than the expiration date of the Repayment Period.

- D. Nothing under this Section shall preclude a Landlord and Affected Tenant from entering into a voluntary repayment agreement to provide a different repayment schedule other than those set forth in subsections A. and C. above. The terms of any such voluntary repayment agreements shall govern the repayment of the past due rent accrued during the Moratorium Period, provided that they are: 1) consistent with California law and this Ordinance, and 2) the Landlord has provided the Affected Tenant prior to execution of such agreement with a notice approved by the Director of Housing of the Affected Tenant's rights under this Section.
- E. This Section shall be superseded and have no legal force or effect on the effective date of any new State legislation providing eviction protections for tenants affected by COVID-19 that preempts the repayment provisions set out in this Section.

SECTION 12. Prohibition Against Late Fees or Interest

Affected Tenants shall not be charged late fees, penalties, or interest for failure to pay rent that would otherwise accrue during the Moratorium Period.

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

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1/22/2021

or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.