

**DRAFT**

**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 APPLICATION PERMIT FEES FOR RENT-CONTROLLED APARTMENTS, 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 came 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 and 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 No. 79446 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. Since the moratorium expired, tenants are required to repay the back-owed rent by September 2021; 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**, on April 28, 2020, the City Council, under its police powers, adopted urgency Ordinance No. 30405, approved Ordinance No. 30406 (the “Ordinances”), thereby enacting a temporary moratorium on rent increases for rent-stabilized apartments and mobilehomes subject to the Mobilehome Rent Ordinance; and

**WHEREAS**, since the holiday season 2020, Santa Clara County (“County”) has experienced a tremendous surge in COVID-19 infections and hospitalizations. As of January 26, 2021, the County has a seven-day rolling average of 829 new cases per day. The number of COVID-19 confirmed cases in the County reached 100,468 and 1,344 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 implemented the State's Regional Stay At Home Order in Santa Clara County. This Directive was to remain in effect until 12:01 a.m. on the day after the California Department of Public Health announced that the County was no longer subject to the Regional Stay at Home Order, unless the County Health Officer otherwise rescinds, modifies, or extended this Directive; and

**WHEREAS**, the California Department of Public Health ended the Regional Stay at Home Order on January 25, 2021, thereby returning the County to the Purple Tier of the State's [Blueprint for a Safer Economy](#), with some additional local restrictions remaining in place. The Purple Tier continues limitations on business operations that 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 December 2020, employment in leisure and hospitality is down 31.6% and restaurant employment is down 33.8% compared to last year; and

**WHEREAS**, most school-aged children who attend schools in San José 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 June 30, 2021, tenants are responsible for paying 25% of their rent to avoid eviction for unpaid rent during those months. Tenants remain responsible for paying their entire contract rent and are subject to small claims actions for failure to pay back the rent due; and

**WHEREAS**, according to the November 2019 ARO Economic Roundtable study on the rent stabilization community, fifty-three percent (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. Fifty-eight thousand families in Santa Clara County made just \$15,000 to \$35,000 before the shut-down, paying an average rent of \$18,000. Thirty-six thousand two hundred 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**, even in the midst of high unemployment rates, huge financial losses, and mounting rent debt experienced by many San José residents, many landlords in San José continue to raise rents upon their tenants and mobilehome owners. While some landlords are willing to work with their residents to pay back the rent due, landlords are not obligated to do so. Those landlords who want to replace their tenants are not prevented from increasing the rent and thereby further straining the tenant's ability to pay back the rent they owe and keep up with current monthly rent; 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; 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"), it has been 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;

**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 January 29, 2021, as well any oral and written testimony at the February 2, 2021 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 and 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 through June 30, 2021, unless extended by the City Council.

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

**SECTION 1. Title**

This Ordinance shall be known as the “2021 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 and 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 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 June 30, 2021, and thereafter is repealed unless extended by Ordinance.

### **SECTION 4. Definitions**

A. "Declaration of COVID-19 -Related Financial Distress" means the following written statement:

I am currently unable to pay the rent increase because of one or more of the following:

1. Loss of income caused by the COVID-19 pandemic;
2. Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic;
3. Increased expenses directly related to the health impact of the COVID-19 pandemic;
4. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit your ability to earn income;
5. Increased costs for childcare or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic;
6. Other circumstances related to the COVID-19 pandemic that have reduced my income or increased my expenses.

Any public assistance, including unemployment insurance, pandemic unemployment assistance, state disability insurance (SDI), or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of income and/or increased expenses.

I declare under penalty of perjury under the laws of the State of California that the statements above are true and correct.

Signed:

Dated:

- 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. “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.
- H. “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.
- I. “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, who are subject to the provisions of Chapter 17.22 or Parts 1-9 of Chapter 17.23 of the San José 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 occupied by a Tenant, Tenant Household, Mobilehome Resident or Mobilehome Owner, unless: (a) the Landlord includes, simultaneously with the

notice of rent increase, the form Declaration of COVID-19-Related Financial Distress, as provided in Subsection C. below and defined above; and (b) the Tenant, Tenant Household, Mobilehome Resident or Mobilehome Owner does not submit to their Landlord a signed copy of such Declaration before the effective date of the rent increase.

- B. Notwithstanding Subsection A. above, if a rent increase is pending pursuant to a notice that was lawfully-served prior to adoption of this Ordinance, such increase in rent shall not be collected through the term of this Ordinance, unless: (a) the Landlord provides to the Tenant, Mobilehome Resident, or Mobilehome Owner the form Declaration of COVID-19-Related-Financial Distress, as set forth in Subsection C. below and defined above; and (b) the Tenant, Tenant Household, Mobilehome Resident or Mobilehome Owner does not submit to their Landlord a signed copy of such Declaration before the later date of either the effective date of the rent increase or fifteen days after receiving such Declaration.
- C. Any notice of rent increase served during the term of this Ordinance shall have attached the form Declaration of COVID-19-Related Financial Distress in no smaller than 12-point type.
- D. 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 José Municipal Code.

## **SECTION 7. Agreements to Reduce Rent**

Notwithstanding the provisions under Chapter 17.22 and Chapter 17.23 of the San José Municipal Code, a Tenant, Mobilehome Owner, or Mobilehome Resident may enter into a voluntary temporary 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 or the agreement executed under this section, whichever occurs first, the amount of rent due will be the tenancy's rent prior to execution of this agreement. Any such agreements entered into pursuant to this section 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 through June 30, 2021 for failure to pay Apartment Rent Ordinance registration fees due in fiscal year 2020-2021, as otherwise required under Chapter 17.23 of the San José Municipal Code.
- B. During the term of this Ordinance, building permit application fees related to repair/maintenance shall be waived for apartment complexes subject to Chapter 17.23 of the San José Municipal Code.

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

During the term 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. Failure to comply with any applicable component of this Ordinance shall constitute an affirmative defense in any unlawful detainer action based upon nonpayment of rent.
- B. Civil Remedies.
  - 1. Any Landlord that fail(s) to comply with this Ordinance may be subject to civil proceedings for displacement of Tenants, Mobilehome Owners, or Mobilehome Residents initiated by Tenants, Mobilehome Owners, or Mobilehome Residents or by the City 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 the Landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.