

GOLDEN STATE MANUFACTURED - HOME OWNERS  
LEAGUE



GSMOL Region Manager Region 1 Zone A-1

---

January 30, 2021

TO: Mayor and Council

FROM: Martha O'Connell, GSMOL Regional Manager

RE: **CC 2-2-21 Item 8.2:** Support Rent Increase Freeze as Emergency Ordinance

As the Zone A-1 Regional Manager for GSMOL, the jurisdiction of which includes San Jose, I urge you to approve the **targeted** Rent Increase Freeze as an Emergency Ordinance. GSMOL, Golden State Manufactured Homeowners League, represents Mobilehome Park residents who reside in one of the last bastions of affordable housing.

The compromise incorporated into the staff recommendation helps protect the 98% of mobilehome owners who are current in their rent while offering help to the 2% that are not. This compromise will help lessen the chances of the 100% being hit with large rent increases following a "petition for fair return - PFR" hearing. Such PFR raises are not subject to any freeze and are in addition to the annual raise approved by the City.

**First do no harm.**

**Avoid the terrible unintended consequences of a non-targeted rent freeze.**

Because this item was previously addressed in correspondence as Item 8.3 CC 1-26-21, I attach those emails noticed now as Item 8.2 CC 2-2-21.

San Jose GSMOL chapters across the City support this issue:

President Glenna Howcroft, GSMOL Chapter 0018/0018A  
President Gary Smith, GSMOL Chapter 1280  
President Wallace Owens, GSMOL Chapter 0890-  
President Maria Munoz, GSMOL Chapter u714

Ryan Jasinsky/Martha O'Connell compromise proposal.

January 25, 2021

Dear Mayor Liccardo, Vice Mayor Jones and City Council members:

RE: Item 8.3 City Council Meeting 1-26-2021

On behalf of GSMOL Super Chapter 0018/0018A I support the Jasinsky/ O'Connell proposal, Item 8.3 City Council meeting January 26, 2021. It is a sensible approach to a complicated and life impacting problem.

Sincerely,

A black rectangular redaction box covering the signature of Glenna Howcroft.

Glenna Howcroft

Golden State Manufactured Homeowners League

Super Chapter President #0018/0018A

**Item 8.3 San Jose City Council Meeting Jan 26,2021**

GARY SMITH [REDACTED]

Mon 1/25/2021 4:57 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>; Martha O'Connell [REDACTED]

[External Email]

ON BEHALF OF GSMOL CHAPTER 1280 (MILLPOND MHP) I SUPPORT THE  
JASINSKY/O'CONNELL PROPOSAL.

GARY C.SMITH  
ASSOCIATE ZONE MANAGER  
and President, Millpond MHP Chapter GSMOL

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## Jasinsky/O'Connell proposal

Wally Jay [REDACTED]

Tue 1/26/2021 8:12 AM

To: Agendadesk <Agendadesk@sanjoseca.gov>; Martha O'Connell [REDACTED]

[External Email]

On behalf of GSMOL Chapter 890 I support the Jasinsky/O'Connell proposal.  
This is item 8.3 of City Council meeting January 26, 2021.

Sincerely,

Wallace Owens  
President Chapter 890  
Quail Hollow Mobilehome

Community

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**Item 8.3 January 26th meeting**

Maria Munoz [REDACTED]

Tue 1/26/2021 10:57 AM

To: Agendadesk <Agendadesk@sanjoseca.gov>

[External Email]

**On behalf of GSMOL Chapter U714. I support the Jasinsky/ O'Connell proposal. Item 8.3 City Council meeting January 26, 2021.**

**Thank you,**

**María Munoz  
Chapter U714 president**

Sent from my iPhone

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January 24, 2021

Dear Mayor Liccardo, Vice Mayor Jones and City Council members:

RE: Item 8.3 City Council Meeting 1/26/2021

Ryan Jasinsky represents the Mobilehome Landlords and Martha O'Connell represents the Mobilehome Tenants on the Housing and Community Development Commission (HCDC). The opinions in this letter are that of Ryan Jasinsky and Martha O'Connell and do not represent that of HCDC.

On April 28, 2020, the City of San Jose adopted a Rent Increase Moratorium that effectively froze Mobilehome Park Owners from increasing rents until December 31, 2020. Martha and I originally assisted in creating language to support the adoption of this proposal in the spirit of providing relief to Mobilehome Owners during the COVID-19 pandemic while also preserving Mobilehome Park Community anniversary dates.

While we understand Councilmember Esparza's interest in extending the adoption of the Rent Increase Freeze, we believe a more targeted approach to assist Mobilehome Owners in need is a fairer and more appropriate response. Throughout the pandemic Mobilehome Park Owners have been working closely with their Mobilehome Owners who have been financially impacted by COVID-19 to provide relief either through rent increase freezes or rent deferrals. This collaborative effort and communication between Park Owners and Mobilehome Owners provided direct financial relief to those who need it and has offered security during uncertain times.

Creating a program that provides targeted relief to Mobilehome Owners who are financially impacted by COVID-19 will continue to protect those that are most vulnerable, while also allowing Park Owners to maintain their operations. This also continues to preserve community anniversary dates which provide predictability for all mobilehome communities. Per GSMOL Corporate Attorney Bruce Stanton's letter to the City Council on April 24, 2020, "Park Owners internal accounting systems and cash flows are based upon the anniversary cycles which they have been used to for many years. Changing those dates could potentially expose the City to objections and challenges from all of the City's park owners. Homeowners representatives agree that those dates should **not** need to change."

Below is our proposal for a targeted rent increase freeze.


- We suggest providing a rent increase freeze for Mobilehome Owners who report being financially impacted due to COVID-19.
- If a Mobilehome Owner is currently financially impacted by COVID-19, by law they are required to complete and return a Declaration of COVID-19 Related Financial Distress form indicating they are unable to pay rent and other financial obligations and sign the form under penalty of perjury. Park Owners or Operators must provide this notice to any Mobilehome Owner indicating that they have been financially-impacted by COVID-19.
- If the Mobilehome Owner is currently enrolled or enrolls in the COVID-19 Financial Distress Program, they will receive a rent increase credit until the end of the state of emergency connected to the pandemic as declared by county, State or federal government(s).


- Mobilehome parks have a fixed rent increase anniversary date, which are typically outlined in the lease agreement. The State requires that mobilehome park management provide a Homeowner with a 90-day written notice before the effective date of an increase (Mobilehome Residency Law 798.30)
  - *For example, if Community A has a rent anniversary date of July 1, then on that date all the residents of Community A may receive a rent increase. However, before this can happen, in accordance with state law, management is required to send a notice of the rent increase to the residents before April 1.*
- We recommend allowing Park Owners to notify their financially impacted COVID-19 Mobilehome Owners of their annual increase in order to maintain that fixed anniversary date.
- Instead of initiating the increase upon the anniversary date, financially impacted COVID-19 Homeowners will have the increase applied and credited to the Homeowners account on the same monthly bill.
  - *For instance, if there is an increase of \$30 there will be a credit on the Homeowner's account of \$30. The net effect will equal zero.*

We want to continue to work with the City to create solutions and protections for those that have been financially impacted by COVID-19 while also ensuring that our mobilehome communities are still maintained to a high standard.

Thank you for your consideration.

Sincerely,

  
 Ryan Jasinsky  
 Brandenburg, Staedler & Moore  
 Director of Property Management

  
 Martha O'Connell  
 GSMOL  
 Golden State Manufactured Homeowners  
 League -Regional Manager

## Proposed Rent Freeze

don murdoch [REDACTED]

Sun 1/31/2021 1:31 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>; Martha O'Connell [REDACTED]; don murdoch [REDACTED]

[External Email]

TO: City Council

FROM: Don Murdoch

CC 2-2-21

Item 8.2

I am a Resident of Colonial Mobil Manor, [REDACTED] and I have a concern I want to raise.

On 8-12-16 the San Jose Mercury reported “In a decision cheered by affordable-housing advocates, a petition by the Colonial Mobile Manor park owner to raise the rent above what is allowed in the city’s Mobilehome Rent Ordinance has been denied.”

[San Jose mobile park residents celebrating victory after hearing officer rules against space rent increase – The Mercury News](#)

The article went on to say, “The decision in the case, **which had drawn attention from the City Council**, comes at a time when the skyrocketing cost in the rental market is one of Silicon Valley’s hot-button issues.”

That was 2016. The Park owner appealed that decision in Superior Court and FOUR YEARS LATER he got his blood money: an additional \$45.06 per month plus the 3% allowed by the City. He had already gotten an additional \$46.30 plus the 3% in an earlier Petition for Fair Return (PFR). Peter Wang, the owner of Colonial Manor, was the first Park owner in the history of San Jose to file back to back PFRs, first in 2012 and then again in 2013.



The low to moderate income Seniors in this Park therefore got a total increase of \$91.36 per month, **plus** the 3%.

Protect Mobilehome Park residents: **vote yes on staff recommendation to accept the Jasinsky/O'Connell compromise to apply a rent increase freeze only for those impacted by Covid.**

Mobilehome Park residents do not need to suffer the same fate as those in Colonial Mobile Manor.

Thank you for your attention     Don Murdoch.

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## City Council Item 8.2 Feb. 2, 2021

Glenna Howcroft <[REDACTED]>

Sun 1/31/2021 3:58 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>; District7 <District7@sanjoseca.gov>

Cc: Martha O'Connell <[REDACTED]>; Glenna Howcroft <[REDACTED]>

[External Email]

The majority of residents in my low-income park are immigrants. Many of them speak little to no English and many cannot read English. They have no money to hire an Attorney and expert witnesses to plead their cases in court against a Park Owner's Petition For Fair Return.

Therefore I am pleading with you to vote "YES" on the staff recommendation, Item 8.2 CC 2-2-21 to provide relief against rent increases for only those residents financially affected by COVID-19.

Thank you for your attention to this matter.

Sincerely,  
Glenna Howcroft  
GSMOL Chapter President #0018

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Re: CC 2-2-21 Item 8.2: Support Rent Increase Freeze as Emergency Ordinance

Gela DePutter [REDACTED]

Sun 1/31/2021 8:22 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>

[External Email]

To Mayor and Council:

As a mobile home resident for nearly 32 years, I am urging you to approve the targeted Rent Increase Freeze as an Emergency Ordinance. I understand that this is a compromise, only assisting mobile home owners who have been financially impacted during the pandemic.

I have always been current on my rent (receiving 3% increases each year), but many residents in the many mobile home parks throughout San Jose are not. We cannot predict when the pandemic will be under control and the economy restored. In the mean time, we must continue to help those in need and this rent increase freeze proposal will help.

What I don't want to see is Park Owners filing for Petition for Fair Return. While many mobile home owners/residents are, **at best**, living from paycheck to paycheck, park owners are collecting rent dollars far exceeding their operating expenses.

The big picture in all of this is we must protect affordable housing and avoid increasing homelessness in the bay area.

San Jose: the 10 largest city in the United States, 3rd largest in California, the heart of Silicon Valley. We must protect all our residents.

Thank you.

Respectfully,

Gela DePutter  
California Hawaiian Mobile Home Resident  
San Jose, California

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## Fw: 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments

City Clerk <city.clerk@sanjoseca.gov>

Mon 2/1/2021 10:56 AM

To: Agendadesk <Agendadesk@sanjoseca.gov>

 1 attachments (1 MB)

Memorandum from Foley 1252021 (1).pdf;

### Office of the City Clerk | City of San José

200 E. Santa Clara St., Tower 14<sup>th</sup> Floor

San Jose, CA 95113

Main: 408-535-1260

Fax: 408-292-6207

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---

**From:** Roberta Moore <[REDACTED]>

**Sent:** Monday, February 1, 2021 10:41 AM

**To:** Liccardo, Sam <sam.liccardo@sanjoseca.gov>

**Cc:** District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; district9@sanjosca.gov <district9@sanjosca.gov>; District 10 <District10@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>

**Subject:** 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments

[External Email]

Honorable Mayor and Council Members,

Please support the 1/25/21 Foley Memo with the Jasinsky (owners) and O'Connell (renters) recommendation.

Please adopt this proposal for apartments, as well.

This proposal received unanimous support during Housing's recent MH owner / renter meeting because it is designed to be fair and equitable for all parties while still protecting the vulnerable people. This is the way to help the most vulnerable renters without causing unnecessary burden on the vulnerable housing providers.

I am on the Housing Commission representing the apartment owners, but the opinions expressed in this email are my own.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Regards,

Roberta Moore I Broker Associate







**Advancing Justice**  
Housing | Health | Children & Youth

February 1, 2021

San José City Council  
San José City Hall  
200 East Santa Clara Street  
San José, CA 95113

**Re: Agenda Item 8.2, Adoption of 2021 Moratorium on Rent Increases for Tenants and Mobilehome Residents and Owners Financially Impacted by COVID-19**

Dear Mayor Liccardo, Vice Mayor Jones, and City Councilmembers:

The Law Foundation of Silicon Valley writes in strong support of extending the City's moratorium on rent increases for tenants of rent-controlled apartments and mobilehome residents who have been financially impacted by COVID-19. We thank Councilmember Esparza for her leadership on this issue, and appreciate Councilmember Foley's work in engaging mobilehome residents and park owners to craft a policy that will ensure these protections apply to mobilehomes in a workable manner, and support the recommendations included in her memorandum from the January 25, 2021 City Council meeting.

Local, state and federal eviction protections have helped keep tenants who have been impacted by COVID-19 housed, but these protections do not excuse their obligation to pay rent. This means tenants are facing growing rent debt as this crisis continues. San José's rent increase moratorium is a common-sense protection to prevent low-income tenants in this situation from racking up an even larger debt than they otherwise would.

According to the Bay Area Equity Atlas' analysis of U.S. Census Household Pulse Survey data, over 22,200 low-income tenants in Santa Clara County are behind on rent as of January 2021. Tenants in our county owe more on average than other low-income tenants in the state, with the average rent debt per low-income household in Santa Clara County at \$3,783 and at only \$2,924 per low-income household statewide. This rent debt and the housing instability it creates does not fall equally on all tenants – Black, Latinx, and Asian American tenants are three-times more likely than white tenants to be behind on rent in California.

That is why it is critical as a matter of equity that the City of San José continue to do everything within its power to stabilize the most vulnerable low-income tenants in our community. Extending the rent increase freeze could amount to thousands of dollars in foregone

rental debt for the over 30,000 families in ARO-covered apartments and over 10,000 families in mobilehomes here in San José. We know from having advised tenants who have asserted this protection that it has already made a difference for many families.

We welcome an opportunity to discuss these comments with you. I can be reached at (408) 280-2454 or [michael.trujillo@lawfoundation.org](mailto:michael.trujillo@lawfoundation.org).

Sincerely,

A black rectangular box redacting the signature of Michael Trujillo.

Michael Trujillo, Staff Attorney

CC:

San José City Council

City of San José City Attorney

City of San José City Manager

**Fw: [bahn] Fwd: Please send email Today re: 2/2 Council: Eviction Moratorium & Rent Freeze**

City Clerk <city.clerk@sanjoseca.gov>

Mon 2/1/2021 1:30 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>

 2 attachments (1 MB)

Memorandum from Foley 1252021 (1).pdf; 12621 City Council Agenda 8.3.pdf;

**Office of the City Clerk | City of San José**

200 E. Santa Clara St., Tower 14<sup>th</sup> Floor

San Jose, CA 95113

Main: 408-535-1260

Fax: 408-292-6207

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**From:** Grace [REDACTED]

**Sent:** Monday, February 1, 2021 1:11 PM

**To:** Liccardo, Sam <sam.liccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>; district9@sanjosca.gov <district9@sanjosca.gov>

**Subject:** Fwd: [bahn] Fwd: Please send email Today re: 2/2 Council: Eviction Moratorium & Rent Freeze

[External Email]

Subject: 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments

Honorable Mayor and Council Members,

Please support the 1/25/21 Foley Memo with the Jasinsky (owners) and O'Connell (renters) recommendation.

Please adopt this proposal for apartments, as well.

This proposal received unanimous support during Housing's recent MH owner / renter meeting because it is designed to be fair and equitable for all parties while still protecting the vulnerable people. This is the way to help the most vulnerable renters without causing unnecessary burden on the vulnerable housing providers.

Regards,

Grace Xu and Justin Liu

T: 

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## Fw: 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments

City Clerk <city.clerk@sanjoseca.gov>

Mon 2/1/2021 2:17 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>

 1 attachments (1 MB)

Memorandum from Foley 1252021 (1).pdf;

### Office of the City Clerk | City of San José

200 E. Santa Clara St., Tower 14<sup>th</sup> Floor

San Jose, CA 95113

Main: 408-535-1260

Fax: 408-292-6207

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**From:** Joe Ramey [REDACTED] >

**Sent:** Monday, February 1, 2021 2:09 PM

**To:** District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>; Liccardo, Sam <sam.liccardo@sanjoseca.gov>

**Subject:** 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments

[External Email]

Honorable Mayor and Council Members,

Please support the 1/25/21 Foley Memo with the Jasinsky (owners) and O'Connell (renters) recommendation.

Please adopt this proposal for apartments, as well.

This proposal received unanimous support during Housing's recent MH owner / renter meeting because it is designed to be fair and equitable for all parties while still protecting the vulnerable people. This is the way to help the most vulnerable renters without causing unnecessary burden on the vulnerable housing providers.

Sincerely,

Joseph Ramey



## Fw: 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments

City Clerk <city.clerk@sanjoseca.gov>

Mon 2/1/2021 2:37 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>

### Office of the City Clerk | City of San José

200 E. Santa Clara St., Tower 14<sup>th</sup> Floor

San Jose, CA 95113

Main: 408-535-1260

Fax: 408-292-6207

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**From:** Katrina Edwards [REDACTED]

**Sent:** Monday, February 1, 2021 2:20 PM

**To:** Liccardo, Sam <sam.liccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>

**Subject:** 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments

[External Email]

Honorable Mayor and Council Members,

Please support the 1/25/21 Foley Memo with the Jasinsky (owners) and O'Connell (renters) recommendation.

Please adopt this proposal for apartments, as well.

This proposal received unanimous support during Housing's recent MH owner / renter meeting because it is designed to be fair and equitable for all parties while still protecting the vulnerable people. This is the way to help the most vulnerable renters without causing unnecessary burden on the vulnerable housing providers.

Thankyou for your consideration.

Katrina Edwards  
San Jose Resident and Rental Property Owner

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## Fw: 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments

City Clerk <city.clerk@sanjoseca.gov>

Mon 2/1/2021 4:23 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>

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200 E. Santa Clara St., Tower 14<sup>th</sup> Floor

San Jose, CA 95113

Main: 408-535-1260

Fax: 408-292-6207

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**From:** Hooman <[REDACTED]>

**Sent:** Monday, February 1, 2021 3:59 PM

**To:** Liccardo, Sam <sam.liccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>

**Subject:** 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments

[External Email]

Honorable Mayor and Council Members,

Please support the 1/25/21 Foley Memo with the Jasinsky (owners) and O'Connell (renters) recommendation.

Please adopt this proposal for apartments, as well.

This proposal received unanimous support during Housing's recent MH owner / renter meeting because it is designed to be fair and equitable for all parties while still protecting the vulnerable people. This is the way to help the most vulnerable renters without causing unnecessary burden on the vulnerable housing providers.

*Hooman Sotoodeh, Ph.D., PE*



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## Fw: 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments

City Clerk <city.clerk@sanjoseca.gov>

Mon 2/1/2021 5:07 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>

### Office of the City Clerk | City of San José

200 E. Santa Clara St., Tower 14<sup>th</sup> Floor

San Jose, CA 95113

Main: 408-535-1260

Fax: 408-292-6207

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**From:** Hung Thich [REDACTED]

**Sent:** Monday, February 1, 2021 5:06 PM

**To:** District2 <District2@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; San Jose Public Reptesentatives <district9@sanjisececa.gov>; Liccardo, Sam <sam.liccardo@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>

**Subject:** Fwd: 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments

[External Email]

Honorable Mayor and Council Members,

>>>

>>> Please support the 1/25/21 Foley Memo with the Jasinsky (owners) and O'Connell (renters) recommendation.

>>>

>>> Please adopt this proposal for apartments, as well.

>>>

>>> This proposal received unanimous support during Housing's recent MH owner / renter meeting because it is designed to be fair and equitable for all parties while still protecting the vulnerable people. This is the way to help the most vulnerable renters without causing unnecessary burden on the vulnerable housing providers.

>>>

>>> Thanks,

>>>

>>> T T

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# WORKING PARTNERSHIPS USA

February 1, 2021

San José City Council  
San José City Hall  
200 East Santa Clara Street  
San José, CA 95113

**Re: San Jose City Council Agenda Item 8.2- Adoption of the 2021 Moratorium on Rent Increases for Tenants and Mobilehome Residents and Owners Financially Impacted by COVID-19**

Dear Mayor Liccardo, Vice Mayor Jones, and Councilmembers Arenas, Carrasco, Cohen, Esparza, Davis, Foley, Jimenez, Mahan, and Peralez,

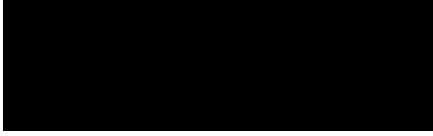
Working Partnerships USA, a Silicon Valley-based community organization bringing together the power of grassroots organizing and public policy innovation to drive the movement for a just economy, **is pleased to support this item, which would give tenants of rent stabilized homes and mobile home residents a sense of stability amidst this pandemic.**

Tenants of homes covered by the Apartment Rent Ordinance (ARO) and mobilehome residents have been some of the most impacted people during the COVID-19 pandemic. The economic volatility during this pandemic has seriously affected those working in unstable sectors such as the service and retail industry, causing many of these employees left without their regular earnings to cover essential expenses such as food, gas, and rent. Implementation of additional rent increases during this pandemic would only exacerbate the severe economic impact facing many tenants and mobilehome residents.

We urge council to approve this extension along with an urgency ordinance so we may immediately prohibit any rental increases towards tenants and mobile home residents that have been financially impacted as a result of the COVID-19 pandemic. During a time where many are already accruing significant amounts of rental debt, the last thing tenants and mobile home residents need is an additional increase in rent.

We thank you for your swift response to this matter as our community continues to fight through these uncertain times.

Sincerely,



Jeffrey Buchanan, Director of Public Policy  
Working Partnerships USA

## Fw: 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments

Gregory, Barbara <Barbara.Gregory@sanjoseca.gov>

Tue 2/2/2021 6:59 AM

To: Agendadesk <Agendadesk@sanjoseca.gov>

Good Morning

I think this is for you

Thank You,

*Barb Gregory*



**Analyst II**

**Office of the City Clerk**

**200 E Santa Clara St FL T-14**

**San Jose, C-A 95112**

**408-535-1272 Fax: 408-292-6207**

**e-mail: [barbara.gregory@sanjoseca.gov](mailto:barbara.gregory@sanjoseca.gov)**

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---

**From:** C. Lai [REDACTED]

**Sent:** Monday, February 1, 2021 8:47 PM

**Subject:** 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments

[External Email]

Honorable Mayor and Council Members,

Please support the 1/25/21 Foley Memo with the Jasinsky (owners) and O'Connell (renters) recommendation.

Please adopt this proposal for apartments, as well.

This proposal received unanimous support during Housing's recent MH owner / renter meeting because it is designed to be fair and equitable for all parties while still protecting the vulnerable people. This is the way to help the most vulnerable renters without causing unnecessary burden on the vulnerable housing providers.

*Cindy*

***To God be the glory for all the things He has done.***

**Fw: 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments**

City Clerk <city.clerk@sanjoseca.gov>

Tue 2/2/2021 10:53 AM

To: Agendadesk <Agendadesk@sanjoseca.gov>

Forwarding....

**Office of the City Clerk | City of San José**

200 E. Santa Clara St., Tower 14<sup>th</sup> Floor

San Jose, CA 95113

Main: 408-535-1260

Fax: 408-292-6207

How is our service? [Please take our short survey.](#)

---

**From:** Sunny 920 [REDACTED] >

**Sent:** Tuesday, February 2, 2021 10:30 AM

**To:** District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>; Liccardo, Sam <sam.liccardo@sanjoseca.gov>

**Subject:** 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments

[External Email]

Dear Honorable Mayor and Council Members,

Hope this email finds everyone safe and healthy!

Please support the 1/25/21 Foley Memo with the Jasinsky (owners) and O'Connell (renters) recommendation.

This proposal is designed to be fair and equitable for all parties while still protecting the vulnerable people. The majority of owners want to do what's right and help people. This is the way to help people who are most in need without causing unnecessary burden on housing providers.

Please adopt this proposal for apartments, as well!

Thank you very much for your attention.

Regards,

Lani NG

## Fw: 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments

City Clerk <city.clerk@sanjoseca.gov>

Tue 2/2/2021 11:02 AM

To: Agendadesk <Agendadesk@sanjoseca.gov>

Forwarding the email, below.

### Office of the City Clerk | City of San José

200 E. Santa Clara St., Tower 14<sup>th</sup> Floor

San Jose, CA 95113

Main: 408-535-1260

Fax: 408-292-6207

How is our service? [Please take our short survey.](#)

---

**From:** David Dolmatch <[REDACTED]>

**Sent:** Tuesday, February 2, 2021 9:27 AM

**To:** Liccardo, Sam <sam.liccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>

**Subject:** 2/2 Council: Eviction Moratorium & Rent Freeze - Please Support Foley's 1/25 Memo & Add Apartments

[External Email]

Honorable Mayor and Council Members,

Please support the 1/25/21 Foley Memo with the Jasinsky (owners) and O'Connell (renters) recommendation.

Please adopt this proposal for apartments, as well.

This proposal received unanimous support during Housing's recent MH owner / renter meeting because it is designed to be fair and equitable for all parties while still protecting the vulnerable people. This is the way to help the most vulnerable renters without causing unnecessary burden on the vulnerable housing providers.

[Sent from Yahoo Mail](#)

Sincerely,



David Dolmatch

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**Blair Beekman. sj council. February 2, 2021. Item 8.2.**

b. beekman [REDACTED]

Tue 2/2/2021 12:55 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>

[External Email]

Dear community of San Jose, and city govt,

In hoping these words can connect to, the current concerns, of Mobile Home Park owners. And to respect, the tenant rights protests, of last week.

For over, 6 months now, in this strange new era, of a global pandemic, I have been trying to learn, to speak about, in public comment,

How people, can feel more comfortable, knowledgeable, and familiar, with the concepts, of full rent forgiveness, that is possible, for both, tenants and owners.

And ways to create honest ideas, of community harmony, good feeling, and good reasoning, in this time, of a frightening global pandemic.

Each person, can have an important part, in addressing the pandemic, at this time.

I hope to continue, a simple role, to try to explain the perspective, that Covid-19, is simply not the fault, of everyday people.

And that from this, people should not be held responsible, for its debt burden.

I think, we are all understanding, this pandemic, was with human designs. And with specific intentions, of long term social planning.

And interestingly, as part of our human decency - why it has been decided, a majority of rent, can be forgiven, with good Ca. state funding practices, at this time.

Yet, it is with these same, initial good intentions, that we cannot fully commit, to cover, the remaining 20%, of rent forgiveness issues for tenants, at this time.

I hope, local mobile park owners, do not have to raise their rents, for the next few years.

It is my understanding, tax breaks and state funding plans, are specifically designed, to take care of owners, at this time.

I feel, there can be, a certain business knowledge, most apt. and small business land owners, can have, that should be able, to help address, most current financial needs for owners, at this time.

And can help, so owners, do not have to raise their rents, for the next couple of years.

From this place, is the final question, of full rent forgiveness, for tenants As they often, do not have, the same advantages, or business accumen as owners, at this time.

I hope, we can organize, good reasoning & decency, at this time. And figure out, full rent forgiveness for tenants, the same as owners, may fully have, at this time.

These are the ways, we can all address Covid-19, together, as a community.

And how to prepare, together, as a community, for the next decade, of possible natural disasters, in the SF Bay Area, as well.

sincerely,  
blair beekman

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February 1, 2021

**VIA ELECTRONIC MAIL**

City Council  
City of San Jose  
200 E. Santa Clara Street  
San Jose, CA 95113

Re: Proposed Moratorium on Rent Increases (Item 8.2 on Amended Agenda for 2/2/21)

Dear Honorable Mayor Liccardo and Members of the San Jose City Council:

This office represents a number of housing providers (“Landlords”) located within the City of San Jose (“City”). Landlords are adamantly opposed to the City’s proposed blanket ban on any rent increases for rent stabilized properties, to be addressed at the February 2, 2021 City Council meeting. (See 2/2/21 City Council Meeting Amended Agenda, 1:30 p.m., Item 8.2.) As set forth herein, the proposed blanket ban runs afoul of both state and federal law, and, in addition, may give rise to substantial monetary claims in favor of Landlords and against the City.

Preliminarily, it should be noted that the City Council lacks the authority to enact any measure taking effect prior to July 1, 2021, intended to “protect tenants from eviction.” On January 29, 2021, the Legislature adopted, and the Governor approved, Senate Bill No. 91 (“SB 91”), extending the statewide residential eviction moratorium embodied in AB 3088 through June 30, 2021. SB 91 expressly forbids local “measures” in response to the COVID-19 pandemic “to protect tenants from eviction.” As set forth in the staff memorandum accompanying the proposed “rent freeze,” the City’s purported goal in proposing the measure is to address “housing instability,” explaining that “frequent mobility increase the risk of exposure to infectious disease.” By its own terms, the proposed ordinance is designed to do that which the California Legislature has indicated may not be done until July 1, 2021. (See Code Civ. Proc. § 1179.05(a) [“Any extension, expansion, renewal, reenactment, or new adoption of a measure, however delineated, that occurs between August 19, 2020 and June 30, 2021, shall have no effect before July 1, 2021”].)<sup>1</sup>

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<sup>1</sup> The proposed ordinance itself provides that a tenant may assert the protections set forth in the ordinance as an “affirmative defense” to any unlawful detainer proceeding. Accordingly, there is no question the ordinance falls within the scope of Code of Civil Procedure § 1179.05(a) as a “measure” to “protect tenants from eviction.” As such, it could not take effect until July 1, 2021, as a matter of law.

City Council  
February 1, 2021  
Page 2

In addition, in light of the statewide residential eviction moratorium (which will now run through June 30, 2021), the City cannot demonstrate how a blanket rent freeze on tenancies protected under the state law would serve the City's interest in keeping such tenants housed in their premises. The proposed ordinance would only apply to those tenants who have provided their landlords with the requisite Declaration of COVID-19-related financial distress. Because those qualifying tenants can never be evicted for the failure to pay rent during the pandemic, the inability to pay scheduled or unscheduled rent increases has no relation to the stated goal of the proposed ordinance. As such, the proposed ordinance is not reasonably tailored to the stated emergency and, if adopted, would be clearly arbitrary and capricious and unrelated to any legitimate public interest.

To the extent the proposed ordinance bars Landlords from implementing contractual increases in rent in existing leases, the ordinance also runs afoul of the Contract Clause embodied in Article I, Section 10 of the United States Constitution. There is no question that government measures which substantially impair existing contracts and are not reasonably conditioned from the perspective of both contracting parties violate the Contract Clause and may give rise to both injunctive relief and monetary damages under 42 U.S. § 1983. (*See, e.g., Allied Structural Steel Co. v. Spannaus* (1978) 438 U.S. 234, 245.) As noted above, the blanket ban on rent increases for tenants protected under AB 3088 (and now SB 91) has no relation to the goal of keeping such tenants within their premises during the pandemic. AB 3088 and SB 91 already prohibit all such evictions.

Finally, as set forth in the attached letter submitted to the City in connection with its Eviction Moratorium on May 18, 2020, the City's actions prohibiting Landlords from replacing non-paying tenants with paying tenants, and attempting to extend its expired rent freeze through June 30, 2021 in violation of SB 91, exposes the City to potential liability for millions of dollars in back rent and rent increases. The existence of an emergency, or purported emergency, has no impact on takings claims. Indeed, even if the City's actions could be deemed legitimate in the face of an emergency, the Supreme Court has made clear that the public needs served by the government action cannot excuse the government from takings liability. (*Chevron v. Lingle* (2005) 544 U.S. 528, 542-543 [holding that "public interest" or "government objective" is irrelevant to whether the government measure has effected a taking].) At some point, the pandemic will come to an end and local governments will no longer be able to implement political agendas (such as the current proposed rent freeze that bears no relation to the stated goal of keeping tenants in their homes) under the guise of an emergency. While the once touted "tsunami" of evictions that served as the impetus for eviction moratoria never came to fruition, the City may expect a "tsunami" of takings lawsuits by landlords seeking to recoup their losses at the hands of the City.

City Council  
February 1, 2021  
Page 3

Sincerely,

RUTAN & TUCKER, LLP



Douglas J. Dennington

DJD:pj  
Enclosure

cc: Ms. Toni Taber, City Clerk, City of San Jose  
Nora Frimann, Esq., City Attorney, City of San Jose  
Mr. Dave Sykes, City Manager, City of San Jose  
Ms. Jacky Morales-Ferrand, Director of Housing, City of San Jose  
Ms. Rachel VanderVeen, Director of ARO Housing, City of San Jose

May 18, 2020

**VIA ELECTRONIC MAIL**

City Council  
City of San Jose  
200 E. Santa Clara Street  
San Jose, CA 95113

Re: City of San Jose Eviction Moratorium Ordinance & Proposed Amendments

Dear Councilmembers:

This office represents several property owners and landlords (“Owners” or “Property Owners”) throughout the City of San Jose (“City”). On March 17, 2020, the San Jose City Council, without providing a meaningful opportunity for property owners and landlords to be heard, adopted an Urgency Ordinance and Resolution known as the COVID-19 Eviction Moratorium Ordinance, Ordinance No. 30381 (“Eviction Moratorium”), purporting to prohibit residential landlords from undertaking eviction procedures for tenants experiencing a “substantial” loss of income due to COVID-19 or related emergency declarations by County, State, or federal agencies. On May 13, 2020, the City gave notice of its intent to consider amendments to extend the Eviction Moratorium beyond May 31, 2020, with a proposed repayment period through December 31, 2020 for all unpaid rent accumulated during the moratorium.

As set forth below, the Eviction Moratorium and proposed amendments are problematic on many legal fronts and single out landlords and property owners throughout the City to absorb the residential tenants’ claimed economic losses attendant to the crisis. At the same time, the Eviction Moratorium provides little to no relief to property owners and landlords, who (presumably) are expected to continue meeting their contractual obligations under the respective leases even where tenants are not honoring theirs. Consider as well that many property owners in the City are co-owned or funded by investors and partnerships which include state and union pension funds, endowments and other fixed income investors whose investment in real estate is predicated on the rule of law and the privity (and security) of contracts in which they invest. There are also many small to medium-sized real estate management companies whose income streams will be destroyed by the Eviction Moratorium if further extended. Any further extension of the Eviction Moratorium will set a bad precedent and warning to future investors about heightened risks of investing in assets in the City of San Jose versus other cities in Santa Clara County who respect the necessity for contract security and have not passed similar ordinances.

Given the magnitude of the rent loss Property Owners anticipate from continued implementation and further extension of the Eviction Moratorium, Property Owners will have no choice but to pursue any and all available legal relief against the State of California and City to recover all losses attributable to the government interference with their private contractual

City Council  
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Page 2

relationships. As discussed below, such legal relief will include an award of litigation expenses including attorney's fees and expert fees. Property Owners urge the City to remove itself from their contractual relationships which are already controlled by Governor Newsom's March 27<sup>th</sup> Executive Order and the California Judicial Council's emergency order temporarily delaying residential and commercial evictions during the pandemic. Property Owners urge the City to limit its massive liability for these losses and not extend the Eviction Moratorium beyond its existing expiration on May 31, 2020.

### ***1. The COVID-19 Response From Governor Newsom***

On March 27, 2020, Governor Newsom issued Executive Order N-37-20, placing temporary limitations on eviction remedies available to landlords. Executive Order N-37-20 temporarily extended the 5-day period by which impacted residential tenants must respond to an unlawful detainer complaint to 60 days. To qualify for the relief, the tenant must notify the landlord of an inability to pay all or a portion of the rent due within 7 days after the rent is due. The tenant must also demonstrate that he or she contracted COVID-19 or needed to care for someone who contracted COVID-19, or suffered a layoff, loss of hours or other loss of income attributable to COVID-19 or the government response to COVID-19. Importantly, Executive Order N-37-20 requires tenants seeking to qualify for such relief to verify their claims with documentation. The relief available to qualifying tenants extends through May 31, 2020. Finally, Executive Order N-37-20 makes clear that the relief is ***only for a two-month period*** and that tenants are still required to meet their monthly rent obligations, even for the 60-day period during which the eviction process is delayed. (EO N-37-20 ["Nothing in this Order shall prevent a tenant who is able to pay all or some of the rent due from paying that rent in a timely manner or relieve a tenant of liability for unpaid rent."].)

While Governor Newsom's Executive Order has its own problems and unintended consequences, it does not purport to modify the terms of existing contractual relationships and simply delays eviction proceedings for a two-month period for those specific residential tenants who can meet the (more) specific criteria to qualify for relief.

### ***2. The Emergency Order Issued by the California Judicial Council***

On April 6, 2020, the California Judicial Council issued a set of emergency rules impacting utilization of the courts to evict tenants. Except in certain rare situations posing an immediate threat to health and safety, Emergency Rule 1 generally forbids the issuance of summons for new unlawful detainer proceedings until 90 days after Governor Newsom declares an end to the state of emergency. The emergency rules do not purport to interfere with existing contracts by waiving contractual interest or late fees or extending deadlines for the payment of rent. Nor do they attempt to declare "winners and losers" by offering substantive relief to tenants claiming to suffer from impacts created by the pandemic or, more egregiously, the response to the pandemic implemented at all levels of government.



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***3. The City's Order Mandating Residential Rent Forbearance and Proposed Amendments to Unreasonably Extend the Eviction Moratorium***

On March 17, 2020, the City Council adopted an Urgency Ordinance and Resolution known as the COVID-19 Eviction Moratorium Ordinance, Ordinance No. 30381 ("Eviction Moratorium") setting in place a moratorium on evictions in the City of San Jose for residential tenants on the basis of nonpayment of rent, when their income has been "reduced" due to the novel coronavirus (COVID-19) pandemic. The Eviction Moratorium is effective for 60 days after adoption and is set to expire on May 17, 2020. The Eviction Moratorium went into effect on March 18, 2020 for a period of 30 days until April 17, 2020. Thereafter, on April 14, 2020, the City Council approved a Resolution extending the Eviction Moratorium until May 31, 2020. On April 28, 2020, the City Council also approved a Moratorium on Rent Increases, which, among other things, prohibited rent increases through December 31, 2020.

During the April 14, 2020 Council meeting, the City Council directed the City Attorney to amend the COVID-19 Eviction Moratorium Ordinance to include the following:

- Prevent landlords from serving an eviction notice on a tenant if they have reason to know that the tenant is currently impacted by COVID-19,
- Prevent a landlord from evicting a tenant because the tenant has been infected or is suffering from COVID-19, under the pretext of another viable reason for eviction such as owner move-in, breach of agreement, or a COVID-19 related nuisance,
- After a tenant has been served notice from a landlord, allow tenant up to seven (7) days to provide a notice informing the landlord that they have been impacted by COVID-19;
- Protect tenants unable to provide COVID-19-related documentation to landlords from harassment and retaliation under section 17.23.1270 Anti Retaliation Protections of the City's moratorium, and
- Provide a template affidavit that tenants can submit in cases where tenants are unable to provide any other verifiable evidence of their COVID-19-related impacts, as is often the case with undocumented individuals working in the informal economy.

During the April 14, 2020 meeting, City Council allegedly held a discussion about the proposed duration of both the Moratorium on Rent Increases and the proposed repayment period. The City Council then directed staff to use the date of December 31, 2020 for both the duration of the rent increase freeze and the repayment period for tenants.

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City Council is now considering adopting amendments to the Eviction Moratorium during its May 19, 2020 City Council meeting, which propose to do the following:

- Extend the notification period from three (3) to seven (7) days for a tenant to notify their landlord they have been impacted by COVID-19 after the landlord serves a notice to terminate;
- Expand the definition of “Affected Tenant” to include loss of income due to being infected or caring for someone infected by COVID-19;
- Provide harassment and retaliation protections for tenants impacted by COVID-19;
- Prohibit late fees, interest, and penalties on outstanding rent while the moratorium is in effect;
- Include a repayment period through December 31, 2020, for unpaid rent accumulated during the moratorium; and
- Extend the Eviction Moratorium beyond May 31, 2020.

The Eviction Moratorium is not a model of clarity and raises more questions than it resolves. Unlike Governor Newsom’s Executive Order N-37-20, the Eviction Moratorium prohibits landlords from even “seeking” rent through the lengthy rent freeze period, up through December 31, 2020, and expressly prohibits service of a notice to terminate pursuant to California Code of Civil Procedure Section 1161 *et seq.* The Eviction Moratorium and its proposed amendments fail to provide any meaningful standard for determining whether or not a particular tenant qualifies for protection, and allows for an unreasonably wide variety of documentation to support a tenant’s claim for protection. The proposed amendment to the Eviction Moratorium, rather, simply states in conclusory fashion that tenants who suffer a “substantial loss in income through their employment as a result of any of the following: (1) job loss, (2) 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 (6) other similarly-caused reason resulting in a loss of income due to COVID-19,” qualify for protection.

Most troubling (and in stark contrast to Governor Newsom’s executive order and the Judicial Council emergency rules), the proposed amendments to the Eviction Moratorium provide that ***property owners and landlords may not seek to recover back due rent until after December 31, 2020.*** The Eviction Moratorium also purports to directly modify existing contractual relationships by nullifying any late fees while the rent freeze is in place and throughout the period until after December 31, 2020. The Eviction Moratorium provides no relief for landlords and property owners and, presumably, the City expects landlords to continue paying all costs associated with the management and ownership of their rental communities. While the Eviction Moratorium purports to require tenants to repay any back rent due after the freeze period concludes

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on December 31, 2020, the practical effect is that many tenants will never be able to repay the back due rent and will, instead, move to a different property later after exhausting the rent forbearance benefit provided by the City. Indeed, for many tenants, the Eviction Moratorium will mandate rent forgiveness. The Eviction Moratorium is the functional equivalent of forcibly requiring landlords to become involuntary lenders to their tenants and to eliminate any charges a lender would impose after evaluating the risks of any particular “debtor.”

**4. *Property Owners Will Suffer Millions of Dollars in Rent Losses as a Result of the Eviction Ban***

The extent of Property Owners’ losses are not yet known, but the loss in revenue will be more than “substantial.” Property Owners have already suffered staggering losses from tenants taking advantage of the Moratorium to avoid paying any rent during the months of April and May. Owners have also been informed by numerous residents of a claimed inability to pay June rent. The prospects for recovering back due rent from residents is grave, at best. This is true even for tenants who have the ability to pay and, incredibly, have received government benefits to offset their losses. There is no question that Owners will suffer hundreds of thousands of dollars in losses every month and, by December 31, 2020, will, the total rent loss will run in the millions City-wide, rent losses due to the Moratorium will total hundreds of millions of dollars.

**5. *Owners Will Seek to Recover All Their Losses from the City***

It is unclear why the City would provide more protection than that afforded by Governor Newsom and the Judicial Council. Doing so clearly exposes the City to liability for inverse condemnation, substantive due process, procedural due process, equal protection, breach of entitlement agreements, interference with contract, and a host of other legal theories. The fact that the Eviction Moratorium was enacted to advance a public interest is irrelevant to the City’s liability for damages stemming from the drastic impact of the Moratorium on Owners’ communities.

While at one time the public interest served by local legislation tended to lessen the risk of liability for a regulatory taking, the United States Supreme Court has made clear that the public interest advanced by government regulation has no relevance to takings liability. (*Chevron v. Lingle* (2005) 544 U.S. 528, 542-543 [holding that the “public interest” or “government objective” is irrelevant to whether the government action effected a taking.].) Indeed, Justice O’Connor, writing for the majority, made clear that the language in prior takings cases relating to whether the government regulation “substantially advances a legitimate government interest” has no place in takings law: “A test that tells us nothing about the actual burden imposed on property rights, or how that burden is allocated, cannot tell us when justice might require that burden be spread among taxpayers through the payment of compensation.” (*Id.* at 543.)

The City’s Eviction Moratorium in this matter falls squarely within the “physical occupation” line of cases the United States Supreme Court (and California courts) have held constitute “per se” categorical takings. (*See, e.g., Loretto v. Teleprompter Manhattan CATV Corp.*

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(1982) 458 U.S. 419, 435 [holding that any government-imposed physical occupation of private property, no matter how small or trivial, constitutes a taking of private property for which the owner is entitled to just compensation and reasoning that ***“the power to exclude has traditionally been considered one of the most treasured strands in an owner’s bundle of property rights.”*** [emphasis added].) As implemented, the Eviction Moratorium and its proposed amendments will force property owners to accept occupants on their property who are not paying rent. Coupled with California landlord tenant law imposing mandatory obligations on the part of landlords, the owners will also be required to continue incurring the expenses associated with the ownership. In this case, as noted above, those costs are more than “substantial.”

As you may know, a property owner is no longer required to attempt to invalidate an offending regulation in state court as a precondition to filing a regulatory takings claim in federal court. Just last year in *Knick v. Township of Scott* (2019) 139 S.Ct. 2162, the U.S. Supreme Court overturned *Williamson County Regional Planning Com. v. Hamilton Bank of Johnson City* (1985) 473 U.S. 172, holding that property owners need not exhaust state judicial remedies as a prerequisite to filing a regulatory takings claim in federal court. *Knick* made abundantly clear that an aggrieved property owner may pursue its takings claims under 42 U.S.C. § 1983 directly in federal court.<sup>1</sup> The Supreme Court reasoned that a taking under the Fifth Amendment to the United States Constitution occurs when the government makes a decision impacting private property and such a taking is not a function of judicial remedies that may or may not be available in the state judicial system.<sup>2</sup>

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<sup>1</sup> This stands in contrast to California’s law on regulatory takings, which generally requires a landowner to attempt to invalidate a particular law or regulation by writ of administrative mandamus before seeking monetary damages on a regulatory takings theory. (*Hensler v. Glendale* (1994) 8 Cal.4<sup>th</sup> 1, 13-16.) Because state judicial remedies are no longer a prerequisite to pursuing monetary relief directly in federal court, Owners need not waste time and money challenging the validity of the Eviction Moratorium on the grounds that it is fatally incomprehensible, denies due process of law and equal protection, or is otherwise arbitrary and capricious and contrary to law.

<sup>2</sup> Cities and Counties have attempted to justify their egregious overreach by referencing antiquated cases dating back to the end of World War I, which do not address the nearly 100-year evolution of regulatory takings jurisprudence since the doctrine was born in *Pennsylvania Coal v. Mahon* (1922) 260 U.S. 393. *Block v. Hirsh* (1921) 256 U.S. 135, a favorite among government lawyers attempting to justify their government clients’ efforts to shift all economic losses to landowners, will not save public agencies from the massive liability they have willingly taken on. *Block* addressed an emergency measure undertaken by Congress to address the monopolization of rental housing in Washington D.C. and sky-rocketing rent created by a severe housing shortage attributable to the return of soldiers from the war and the lack of new housing construction when all industry in the United States was redirected to the war effort. The law required landlords, for a temporary period of time, to allow tenants to “remain in possession at the same rent that they have been paying” unless the government commission established under the law allowed the

City Council  
May 18, 2020  
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Accordingly, Property Owners have no obligation to file a petition for writ of mandamus in California Superior Court attempting to invalidate the Eviction Moratorium before seeking damages under 42 U.S.C. § 1983 in federal court. In such case, Owners would also be entitled to their litigation expenses and attorney's fees under 42 U.S.C. § 1988.

**6. *Owners Insist the City Not Extend the Eviction Moratorium***

The foregoing should make clear that by extending the Eviction Moratorium to continue providing benefits well beyond what the State has provided, the City has exposed itself to significant liability risk for all damages associated with the Moratorium, including the exorbitant damages stemming from the rent freeze period through December 31, 2020. The City may significantly limit its exposure by simply repealing the Eviction Moratorium now.

In the event the City chooses to Eviction Moratorium, Owners request the City to provide some level of clarity with respect to the following questions:

- *If residential tenants are not required to notify landlords of their intent to take advantage of the Eviction Moratorium until 7 or 30 days after rent is due, does the Eviction Moratorium prohibit landlords from serving statutory notices (such as notices of termination and 3-day pay or quit notices) on ALL tenants including those who do not intend to qualify for protection for the 30-day period?*
- *Does the Eviction Moratorium prohibit requests of any form for rental payments during the 30-day period set forth in the Eviction Moratorium?*
- *Does the Eviction Moratorium prohibit the imposition of interest payments on missed rent payments while the Moratorium is in effect??*
- *Does the Eviction Moratorium prohibit evictions for those residents who have received federal stimulus benefits intended to be used for rent payments?*

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landlord to charge more. (*Id.* at 157.) The United States Supreme Court refused to invalidate the law, noting the law only applied to expired tenancies, required the tenant to continue paying rent concurrent with occupancy, and established a commission to oversee the tenancy and potential rent increases during the temporary emergency period with a set “end date.” Unlike the City’s Eviction Moratorium, the law did not force landowners to accept occupants without any rent payments, or deferred rent payments. Nor did the law force landowners to become involuntary lenders to their tenants with no allowable returns. Indeed, no U.S. Supreme Court case has ever held, even in an “emergency,” that the government can force private parties to loan money to their tenants for “free” or to allow for rent payments to be “deferred” for any period of time, let alone the indefinite “deferral” provided in the Eviction Moratorium.

City Council  
May 18, 2020  
Page 8

- *Does the Eviction Moratorium prohibit landlords from seeking rent from those tenants who have received federal stimulus or other governmental monetary benefits intended by the government to be used for rental payments?*
- *What authority does the City have to modify existing statutory notices (such as notices to terminate, 3-day pay or quit notices, etc.) imposed by California landlord/tenant law, when Governor Newsom's executive order and the Judicial Council Emergency Rules were careful not to do so?*
- *What specific documentation must a tenant provide to the landlord to take advantage of the benefits set forth in the Eviction Moratorium?*
- *May landlords require financial records from tenants seeking to qualify for protection under the Eviction Moratorium in order to verify whether the tenants have experienced a "substantial decrease in business or household income"?*
- *May landlords require medical records from tenants seeking to qualify for protection under the Eviction Moratorium?*
- *May landlords require certifications from tenants under penalty of perjury as a condition to qualifying for protection under the Eviction Moratorium?*
- *Is the City prepared to reimburse landlords for the administrative costs needed to ascertain whether a tenant qualifies for protection under the Eviction Moratorium?*
- *Would a resident be allowed to take advantage of the Eviction Moratorium if despite a decrease in wages or business income, they still have the means to pay rent?*
- *What impact does a person's net worth have on the determination as to whether a resident qualifies for protection under the Eviction Moratorium?*
- *Would the Eviction Moratorium apply to residents who had co-signors/guarantors on the individual leases who have not suffered a substantial decrease in household or business income?*
- *How would the Eviction Moratorium apply to tenancies which are due to expire during the emergency period or the grace period following the declared end of the emergency?*
- *Does the Eviction Moratorium require landlords to renew tenancies which expire during the course of the stated emergency or within the grace period as set forth in the Moratorium?*



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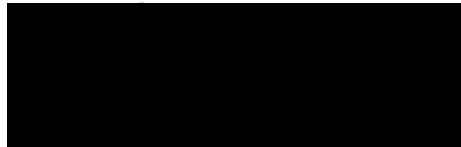
**7. Conclusion**

As discussed above, the City's Eviction Moratorium was not well thought out and will very likely expose the City to tens of millions of dollars in liability (if not more) to landlords and property owners throughout the City. While public agencies understandably feel compelled to "do something to help" in times of crisis, such urgent actions are often not well thought out and lead to much more damage than good. That is certainly the case with the City's Eviction Moratorium.

The City has also assumed the worst when it comes to property owners and landlords. Property Owners take great pride in their communities and the relationships they have fostered with their residents.. Owners are in a much better position than the City to understand the particular hardships faced by their residents and do not intend to run into court every time a resident is unable to pay rent when due. Some tenants will require special arrangements when they experience a short-term loss of income and are unable to pay rent, and Owners will address the needed accommodations from a standpoint of understanding and compassion. The City's Eviction Moratorium, however, has provided tenants with the ability to ignore their contractual obligations during the course of the declared emergency and the grace period set forth in the Eviction Moratorium. As discussed above, Owners will, at minimum, suffer eight-figure losses as a direct result of the Eviction Moratorium. The City may wish to limit this significant liability by immediately repealing the Ban. Under no circumstances should the City extend the Moratorium beyond May 31<sup>st</sup>.

Respectfully submitted,

RUTAN & TUCKER, LLP

A large black rectangular redaction box covering the signature and name of Douglas J. Dennington.

Douglas J. Dennington

DJD:pj

cc: Ms. Toni Taber, City Clerk, City of San Jose  
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