

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CONFIRMING AND RATIFYING THE DECLARATION ISSUED BY THE DIRECTOR OF EMERGENCY SERVICES ON FEBRUARY 8, 2021 SUSPENDING THE ENFORCEMENT OF CERTAIN PROVISIONS IN LAND USE PERMITS AND APPROVALS AND ZONING REQUIREMENTS IN THE SAN JOSE MUNICIPAL CODE

WHEREAS, on March 10, 2020, the City Council of the City of San José (“City”) ratified the Director of Emergency Service’s Proclamation of Local Emergency due to the outbreak of a novel coronavirus in the City; and

WHEREAS, Government Code Section 8634 and Section 8.08.250 of Chapter 8.08 of Title 8 of the San José Municipal Code empower the Director of the Emergency Services (City Manager or Designee) to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; and

WHEREAS, Section 8.08.250 of the San José Municipal Code requires such rules and regulations made and issued by the Director of Emergency Services to be confirmed at the earliest practicable time by the City Council; and

WHEREAS, on March 16, 2020, the Health Officer of Santa Clara County issued a Shelter in Place Order; and

WHEREAS, on March 31, 2020, the Health Officer of Santa Clara County issued another Order directing all individuals to continue to shelter in place and requiring essential businesses to implement Social Distancing Protocols; and

WHEREAS, on May 4, 2020, the Health Officer of Santa Clara County extended the Shelter in Place Order to May 31, 2020, with some modifications; and

WHEREAS, on May 7, 2020, health orders in Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara counties and the City of Berkeley loosened restrictions on construction as well as outdoor activities and businesses, beginning May 8, 2020; and

WHEREAS, on May 18, 2020, the Health Officer of Santa Clara County issued a further Order modifying the Social Distance Protocol and Shelter in Place Order to allow some businesses to resume operating, with modifications based on significant progress in controlling the spread of COVID-19, and extending the Shelter in Place order until rescinded or modified; and

WHEREAS, on June 1, 2020, the Health Officer of Santa Clara County issued a further Order effective June 5, 2020 continuing the Social Distance Protocol, allowing several new categories of businesses and activities to reopen, subject to conditions and limitations, while keeping key restrictions in place, requiring people to stay in their homes except when engaging in certain essential or allowed activities; and

WHEREAS, on July 2, 2020, the Health Officer of Santa Clara County issued a new Risk Reduction Order that puts in place long-term risk reduction measures, allowing certain additional activities to resume, but also putting in place significant additional containment measures to control the spread of COVID-19, effective July 13, 2020; and

WHEREAS, on July 12, 2020, Santa Clara County was added to the State of California's ("State") Monitoring list, and on July 13, 2020, Governor Gavin Newsom announced that counties on the State's Monitoring List for three consecutive days must close some indoor business operations. In light of the Governor's announcement, Santa

Clara County ordered appropriate businesses and operations to close effective July 15, 2020 at 12:01 a.m.; and

WHEREAS, on August 28, 2020, Governor Gavin Newsom unveiled a new State framework to replace the former State County Monitoring List and Variance Processes effective Monday, August 31, 2020. This blueprint provided a new color coded four-tier framework, with different restrictions on activity for each tier; and

WHEREAS, on August 31, 2020, a new State framework went into effect with revised criteria for either loosening or tightening restrictions on business-related activities. This "Blueprint for a Safer Economy" creates a tiered system of COVID-19 restrictions that all counties in California must follow; and

WHEREAS, on September 8, 2020, Santa Clara County moved to Tier 2 (Red), per the State's Blueprint for a Safer Economy, which allows for personal care businesses to operate indoor and an increased capacity allotment for specific businesses; and

WHEREAS, on September 30, 2020, the State added a COVID-19 Equity requirement to its Blueprint for a Safer Economy framework. Under this new state requirement, counties with more than 106,000 residents must bring infections down in these places and invest heavily there in testing, contact tracing, outreach and providing means for infected people to isolate. The measure is designed to ensure that test positivity rates in the most disadvantaged neighborhoods do not significantly exceed a county's overall rate. Counties will not be permitted to reopen their economies further unless they reduce coronavirus infections in the hardest-hit places where the poor, African American, Latinos, Pacific Islanders, and essential workers live; and

WHEREAS, on October 13, 2020, as the County's COVID-19 case positivity rate continued to steadily decline, the State authorized the County to move to Tier Three

(Orange Tier) of the State's Blueprint for a Safer Economy, the County revised its Public Health Order on October 14, 2020 to reflect the changes. All Santa Clara County residents and businesses must follow both the State and County Health Officer Orders, and where there is a conflict between the two, the stricter Order must be followed; and

WHEREAS, on November 14, 2020 as COVID-19 cases continued to increase across the country, California Governor Gavin Newsom, Oregon Governor Kate Brown and Washington Governor Jay Inslee issued travel advisories urging visitors entering their states or returning home from travel outside these states to self-quarantine to slow the spread of the virus; and

WHEREAS, on November 16, 2020 just as Santa Clara County was preparing to return to the Red Tier of COVID restrictions, California Governor Newsom announced that along with most California counties, Santa Clara County would be required to go back to the restrictions of the most severe tier – Purple, in an effort to control the increasingly rapid spread of COVID-19; and

WHEREAS, on November 19, 2020, considering unprecedented, rapid increases in COVID-19 cases across California, Governor Gavin Newsom, and the California Department of Public Health ("CDPH") announced a limited Stay at Home Order which required that non-essential work, movement and gatherings stop between 10 PM and 5 AM in counties in the purple tier; and

WHEREAS, on November 28, 2020, the Health Officer of Santa Clara County announced a mandatory directive related to travel which will require people to quarantine for 14 days upon return to the county from travel of more than 150 miles; and

WHEREAS, on December 2, 2020, the Health Officer of Santa Clara County ordered more restrictions for residents and businesses, which went into effect at 12 a.m. on Monday, November 30 and will stay in effect through December 21, 2020; and

WHEREAS, on December 3, 2020, the State saw that COVID-19 case rates and hospitalizations continue to rise at an alarming pace and threaten to overwhelm the health care delivery system. California health officials announced a Regional Stay at Home Order that will be triggered if hospital Intensive Care Unit capacity drops below 15 percent in a given region; and

WHEREAS, on December 4, 2020, the Santa Clara County Health Department, along with four other counties and the City of Berkeley, announced that they would begin the State of California's regional stay-at-home order on Sunday, December 6, at 10 P.M., which will stay in effect until January 4, 2020; and

WHEREAS, on December 11, 2020, the U.S. Food and Drug Administration issued the first emergency use authorization for a vaccine to be distributed in the United States. Santa Clara County confirmed receiving the first batch of Pfizer's COVID-19 vaccine on December 15, 2020 which will be distributed to people in the highest risk categories; and

WHEREAS, on December 18, 2020, the U.S. Food and Drug Administration issued an emergency use authorization for the second vaccine for the prevention of coronavirus disease 2019; and

WHEREAS, on January 5, 2021, the State issued the Hospital Surge Order to prioritize services to those who are sickest and prioritize resources for providers directly caring for them; this Order was amended on January 6, 2021; and

WHEREAS, on January 7, 2021, the Health Officer of Santa Clara County ordered providers in the County to provide COVID-19 vaccination information on an ongoing basis to the Health Officer and to prepare comprehensive Vaccination Plans; and

WHEREAS, on January 8, 2021, the State extended its Regional State at Home Order which was originally set to expire on January 8, 2021, due to the region's ICU bed capacity remaining below 15%. The State's Regional Stay at Home Order was lifted on January 25, 2021; and

WHEREAS, on January 27, 2021, Governor Newsom signed an Executive Order to help bolster the State's vaccination efforts; and

WHEREAS, the California Department of Public Health is working with California's local health departments to distribute COVID-19 vaccines. Local health departments are identifying facilities that have the capacity to properly maintain COVID-19 vaccine and meet additional federal and state requirements; and

WHEREAS, the County of Santa Clara is partnering with community clinics to ensure that residents can access vaccines in community-based settings, and has launched a pilot mobile vaccination clinic to ensure vaccine access for staff and residents of long-term care facilities; and

WHEREAS, provisions in land use permits and planning approvals issued by the City and/or provisions in the San José Zoning Code prohibit the temporary outdoor use of property without first obtaining the City's authorization through specified application processes; and

WHEREAS, to ensure compliance with the County Social Distancing Protocol, vaccination clinics need outdoor areas to serve citizens and allow citizens to queue while waiting to receive a vaccine or after receiving a vaccine; and

WHEREAS, on February 8, 2021, the Director of Emergency Services issued a Declaration suspending enforcement of certain provisions in land use permits and planning approvals issued by the City and certain provisions in the San José Municipal Code for temporary outdoor use of property to allow for vaccination clinics in compliance with the County of Santa Clara Health Officer's Social Distancing Protocol; and

WHEREAS, the associated emergency conditions are on-going and the Declaration should not be terminated at this time;

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

1. The Declaration of the Director of Emergency Services issued on February 8, 2021 suspending enforcement of provisions contained in land use permits or other planning approvals and the provisions of the San José Municipal Code, including, without limitation, those contained in Title 20, that are in conflict with the terms of this regulation, is hereby ratified and confirmed. This regulation shall apply only to vaccine administering clinics that are authorized by the appropriate federal, state and/or local health authority. Except as expressly exempted in the Declaration of the Director of Emergency Services issued on February 8, 2021, businesses shall continue to comply with all other requirements in their approved land use permits or other planning approvals and applicable City, County, State and Federal laws, orders and regulations, including, without limitation, Orders

from the County of Santa Clara Health Officer, the San José Fire Code, the San José Building Code and the Americans with Disabilities Act ("ADA"),

2. The Declaration shall remain in place until terminated by the Director of Emergency Services, the City Council, or upon the termination or expiration of the Proclamation of Local Emergency.

ADOPTED this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk