

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE ENACTING  
A TEMPORARY MORATORIUM ON NO-CAUSE  
EVICTIONS AND EVICTIONS DUE TO NONPAYMENT OF  
RENT FOR RESIDENTIAL TENANTS WHERE THE  
FAILURE TO PAY RENT RESULTS FROM INCOME LOSS  
RESULTING FROM THE NOVEL CORONAVIRUS (COVID-  
19)**

**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 (“City”) to respond to the COVID-19 public health emergency. The City has extended the Proclamation of Local Emergency every sixty days, through June 26, 2021; and

**WHEREAS**, on March 9, 2020, the County of Santa Clara (“County”), pursuant to its authority under California Health and Safety Codes sections 101040, 101085, and 120175, ordered that private mass gatherings attended by one thousand persons are

prohibited until March 31, 2020 (the “Order”). On March 13, 2020, the County issued an updated Order mandating a countywide moratorium on gatherings of more than 100 persons and a conditional countywide moratorium on gatherings of between 35-100 persons. A “gathering” is any event or convening that brings together people in a single room or single space at the same time, such as an auditorium, stadium, arena, conference room, meeting hall, cafeteria, theater, restaurant, bar, or any other confined indoor or confined outdoor space. California Governor Gavin Newsom also called for bar, wineries, and brewery pubs to close. Such restrictions impacted how businesses operate that rely on customer patronage have resulted in significant revenue loss for those that cannot continue to operate their businesses during this time; and

**WHEREAS**, on March 16, 2020, California Governor Gavin Newsom issued Executive Order N-28-20, supporting local government’s exercise of their police power to impose substantive limitations on residential and commercial evictions and ensuring state law would not preempt or otherwise restrict a local government from limiting residential or commercial evictions; and

**WHEREAS**, on March 17, 2020, the City Council, under its police powers, adopted urgency Ordinance No. 30381, approved Ordinance No. 30382 (the “Ordinances”), and passed Resolution 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; 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 June 30, 2021; and

**WHEREAS**, in the beginning months of 2021, Santa Clara County experienced a tremendous surge in COVID-19 infections and hospitalizations, with a gradual decline in the ensuing months. Due to this surge, the economic fallout has persisted due to the restrictions to reopening that have hampered economic recovery; and

**WHEREAS**, due to the large increase in infection rates, over the past several months, San Jose businesses have continued to operate under significant restrictions through the tier-system set forth in the California Department of Health's Blueprint for a Safer Economy. As of May 17, 2021, Santa Clara County began operating under the yellow tier that provided that the following businesses can operate at 50% capacity: restaurants, gyms, theatres, cardrooms, and wineries. Bars were limited to 25% capacity and amusement parks at 35% capacity. As of June 15, 2021, these restrictions have lifted so that businesses can begin to operate at 100% of their capacity; and

**WHEREAS**, job categories primarily employing low wage workers have experienced the slowest recovery due to continued operating restrictions into June 2021. According to the Bureau of Labor Statistics, in San Jose, leisure and hospitality has only recovered 27.9%, education and health services only 53.8%, and retail trade only 41.5% from their pre-COVID employment numbers. As of April 2021, San Jose's unemployment rate stands at 6%, which is double the unemployment rate of February 2020. While these figures are expected to improve in May and June, the months of high unemployment have caused financial burdens on many San Jose renters who have been impacted by layoffs and closures; and

**WHEREAS**, according to the City's Rent Stabilization Program's ("Program"), the Program received 2,568 notices of nonpayment of rent from January through March

2021. Of these notices, 44% stated that the tenants owed two months or more in rent; and

**WHEREAS**, the need for rental assistance in the City is extraordinary. According to National Equity Atlas, an estimated 27,447 households in Santa Clara County have an average rental arrear of \$6,993, totaling \$192 million dollars. While the City and County have received millions in local rental assistance for disbursement to primarily low-income residents who submit applications for rental assistance, disbursement has been delayed for months due to negotiations with the State of California over how the funds will be prioritized and disbursed; and

**WHEREAS**, State and local rental assistance payments will continue to take time to process and disburse it out to those most in need. As of March 2021, the State began reviewing and funding applications in San José and Santa Clara County. According to the City of San Jose's most recent data provided by the California's Housing and Community Development Office, more than 2,361 applications requesting \$30,602,751 in rental and utility assistance had been received for the San Jose residents. In the County, more than 1,322 applications have been received requesting \$18,671,076.49 in rental and utility assistance. Of the 3,683 applicants thus far, 2,153 applicant households are extremely low income (earning less than 30 percent of Area Median Income) and 946 are very low income (earning less than 50 percent of Area Median Income). In the City, Sacred Heart is administering the local rental assistance program with other partners through the Local Homelessness Prevention System COVID-19. As of June 14, 2021, Sacred Heart has received over 1,467 applications requesting an estimated \$11,514,888, to which 249 applications have completed review and approximately 1,218 are pending review and approval. These numbers are anticipated to significantly increase over the next several months; and

**WHEREAS**, a majority of school-aged children in the San Jose school districts have been distance learning for the duration of the 2020-2021 academic year. Schools began reopening for limited capacity in-person instruction starting in late April, but a majority of students continued with distant learning. 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. Additionally, 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 and subsequently SB 91 that includes the 2021 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 related 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. This particular protection ends June 30, 2021; therefore, many tenants impacted by COVID-19 will no longer be protected from eviction for failure to pay July 2021 rent; 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. 58,000 families in Santa Clara County made just \$15,000 to \$35,000 before the shut-down, paying an average rent of \$18,000. 36,200 extremely low income ("ELI") households in Santa Clara County have a rent debt they can't repay due to the COVID shutdown. The combined rent debt of ELI families in Santa Clara County is more than

110 million dollars. That number includes 63,000 children and 133,000 individuals in total; and

**WHEREAS**, displacement through eviction destabilizes the living situation of tenants and impacts the health of San José's residents by uprooting children from schools, disrupting the social ties and networks that are integral to citizens' welfare and the stability of communities within the City; and

**WHEREAS**, displacement through eviction creates undue hardship for tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing; and

**WHEREAS**, during the COVID-19 pandemic outbreak, affected tenants who have lost income due to impact on the economy or their employment are at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted; and

**WHEREAS**, 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**, the Ordinances enact a temporary moratorium intended to promote stability and fairness within the residential rental market in the City during the COVID-19 pandemic outbreak, and to prevent avoidable homelessness thereby serving the public peace, health, safety, and public welfare and to enable tenants in the City whose income and ability to work is affected due to COVID-19 to remain in their homes.

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

### **SECTION 1. Title**

This Ordinance shall be known as the “2021 COVID-19 Recovery Eviction Moratorium Ordinance.”

### **SECTION 2. Policy and Purposes Declaration**

The purposes of this Ordinance are to promote housing stability during the COVID-19 pandemic and to prevent avoidable homelessness. This Ordinance is necessary for the immediate preservation of the public peace, health or safety because the COVID-19 pandemic has the potential for destabilizing the residential rental market for all of the reasons described herein. It is intended to enable tenants in the City whose employment and income have been affected by the COVID-19 pandemic to be temporarily exempt from eviction for non-payment of rent and to reduce the risk that these events will lead to anxiety, stress and potential homelessness for the affected City residents and their communities thereby serving the public peace, health, safety, and public welfare. The temporary moratorium on evictions for non-payment imposed by this Ordinance is enacted pursuant to the City's general police powers to protect the health, safety, and welfare of its residents and exists in addition to any rights and obligations under state and federal law.

### **SECTION 3. Effective Date; Termination Date**

- A. This Ordinance shall be effective thirty (30) days after date of its adoption and shall remain in effect through August 31, 2021, unless extended or until the effective date of any new State legislation providing eviction protections for tenants affected by COVID-19 that preempts this Ordinance.

#### **SECTION 4. Definitions**

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

I am unable to pay the current rent due because of one or more of the following:

1. Current 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 my 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 have applied or will apply within 14 days of signing this Declaration for rental assistance.

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

Signed under penalty of perjury:

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. "Notice of Termination" shall mean the notice informing a Tenant Household or Mobilehome Resident of the termination of its tenancy in accordance with

California Civil Code Section 1946, 1946.1 and California Code of Civil Procedure Section 1161, as amended.

- H. “Rental Unit” means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which household pays Rent for the use and occupancy for periods in excess of seven days whether or not the residential use is a conforming use permitted under the San José Municipal Code.
- I. “Tenant” means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupancy of a Rental Unit.
- J. “Tenant Household” means one or more Tenant(s) who occupy any individual Rental Unit, including each dependent of any Tenant whose primary residence is the Rental Unit.

## **SECTION 5. Scope**

This Ordinance applies to Tenants in any Rental Unit and Landlords. Only Sections 1 through 6, subsection A.1. of Section 7, 8, 10, 11, 12, and 13 below apply to Mobilehome Residents and Mobilehome Owners and Landlords of Mobilehomes and Mobilehome lots.

## **SECTION 6. Moratorium on Nonpayment and No Cause Terminations**

- A. During the term of this Ordinance (“Moratorium Period”), a Landlord may not terminate the tenancy of a Tenant, Mobilehome Owner, or Mobilehome Resident unless the Landlord can demonstrate that the Landlord served a Notice of Termination to the Tenant, Mobilehome Owner, or Mobilehome Resident and that

the termination qualifies as a Just Cause Termination in compliance with Section 7 below.

- B. The Notice of Termination provided to Tenant, Mobilehome Owner, or Mobilehome Resident must contain the reason for the termination of tenancy in accordance with Section 7 below.
- C. A Landlord must mail or deliver to the City a true and accurate copy of any Notice of Termination delivered to a Tenant, Mobilehome Owner, or Mobilehome Resident within three (3) days of delivering such notice to a Tenant, Tenant Household, Mobilehome Owner, or Mobilehome Resident.

## **SECTION 7. Just Cause Termination**

- A. If a Landlord can show any of the following circumstances with respect to a Notice of Termination, the termination will qualify as a "Just Cause Termination."
  - 1. Nonpayment of Rent by a Tenant, Mobilehome Owner, or Mobilehome Resident. After being served with written Notice of Termination that includes the identity and mailing address of the Landlord, notice of the Moratorium on a form approved by the Director of Housing, a form Declaration of COVID-19-related Financial Distress, and the amount of rent due, the Tenant, Mobilehome Owner, or Mobilehome Resident has failed to pay rent to which the Landlord is legally entitled pursuant to any written or oral rental agreement and under the provisions of state or local law. A notice terminating tenancy for nonpayment of rent must include that the notice is being served in good faith and that information regarding the notice terminating tenancy, including information on homeless prevention

and rental assistance, is available from the Rent Stabilization Program, phone (408) 975-4480 or [www.sanjoseca.gov](http://www.sanjoseca.gov).

Notwithstanding the preceding, a Notice of Termination for nonpayment of rent that otherwise meets the requirements of this subsection will not qualify as a Just Cause Termination if the Tenant, Mobilehome Resident, or Mobilehome Owner delivers to their Landlord, prior to expiration of the Notice of Termination, a signed Declaration of COVID-19-Related Financial Distress, as defined, and pays at least fifty percent (50%) of their monthly rent.

2. Material or Habitual Violation of the Tenancy.
  - a. The Tenant has failed to cure a violation of any material term of the rental agreement within a reasonable time after receiving written notice from the Landlord of the alleged violation or has committed Habitual violations of the rental agreement, but only if either clause (i) or (ii) applies:
    - i. The demand to cure is based on terms that are legal and have been accepted in writing by the Tenant or made part of the rental agreement; or
    - ii. The demand to cure is based on terms that were accepted by the Tenant or made part of the rental agreement after the initial creation of the tenancy, so long as the Landlord first notified the Tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement.

- b. The following potential violations of a tenancy can never be considered material or habitual violations:
  - i. An obligation to surrender possession on proper notice as required by law.
  - ii. An obligation to limit occupancy when the additional Tenant(s) who join the Tenant Household are any of the following: a dependent child or foster child, a minor in the Tenant's care, the spouse, domestic partner, or parent (which terms may be further defined in the regulations adopted by the City Manager), of a Tenant; so long as the total number of adult Tenants in the unit does not exceed the greater of either the maximum number of individuals authorized in the rental agreement or two adults per bedroom, or in the case of a studio unit, two adults. The Landlord has the right to approve or disapprove a prospective additional Tenant who is not a dependent child or foster child, a minor in the Tenant's care, spouse, domestic partner, or parent of a Tenant, provided that the approval is not unreasonably withheld.
- 3. Substantial Damage to the Rental Unit. The Tenant, after written notice to cease and a reasonable time to cure, causes substantial damage to the Rental Unit, or common area of the structure or rental complex containing the Rental Unit beyond normal wear and tear, and refuses, after written notice, to pay the reasonable costs of repairing such

damage and to cease engaging in the conduct identified in the notice to cease.

4. Refusal to Agree to a Like or New Rental Agreement. Upon expiration of a prior rental agreement the Tenant has refused to agree to a new rental agreement that contains provisions that are substantially identical to the prior rental agreement as may be further described in the regulations adopted by the City Manager, and that complies with local, state and federal laws.
5. Nuisance Behavior. The Tenant, after written notice to cease, continues to be so disorderly or to cause such a nuisance as to destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit. Such nuisance or disorderly conduct includes violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit, and may be further defined in the regulations adopted by the City Manager.
6. Refusing Access to the Unit. The Tenant, after written notice to cease and a reasonable time to cure, continues to refuse the Landlord reasonable access to the Rental Unit, so long as the Landlord is not abusing the right of access under California Civil Code section 1954, as amended.
7. Unapproved Holdover Subtenant. The Tenant holding over at the end of the term of the oral or written rental agreement is a subtenant who was not approved by the Landlord.

8. Substantial Rehabilitation of the Unit. The Landlord after having obtained all necessary permits from the City, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of Tenants of the building, provided that:
  - a. The repairs costs not less than the product of ten (10) times the amount of the monthly rent times the number of Rental Units upon which such work is performed. For purposes of this subsection, the monthly rent for each Rental Unit shall be the average of the preceding twelve-month period; and
  - b. The repairs necessitate the relocation of the Tenant Household because the work will render the Rental Unit uninhabitable for a period of not less than thirty (30) calendar days; and
  - c. The Landlord gives advance notice to the Tenant of the ability to reoccupy the unit upon completion of the repairs at the same rent charged to the Tenant before the Tenant vacated the unit or, if requested by Tenant, the right of first refusal to any comparable vacant Rental Unit which has been offered at comparable rent owned by the Landlord; and
  - d. In the event the Landlord files a capital improvement petition under the Apartment Rent Ordinance within six (6) months following the completion of the work, the Tenant shall be party to such proceeding as if he or she were still in possession, unless the Landlord shall submit with such application a written waiver by

the Tenant of his or her right to reoccupy the premises pursuant to this subsection; and

- e. The Landlord shall have provided relocation assistance as required by subsection B, below.
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9. Ellis Act Removal. The Landlord seeks in good faith to recover possession of the Rental Unit to remove the building in which the Rental Unit is located permanently from the residential rental market under the Ellis Act and, having complied in full with the Ellis Act and Ellis Act Ordinance, including the provision of relocation assistance as required by subsection B below.
  
  10. Owner Move-In. The Owner seeks in good faith, honest intent, and without ulterior motive to recover possession for: (a) the Owner's own use and occupancy as the Owner's principal residence for a period of at least thirty-six (36) consecutive months commencing within three months of vacancy; or (b) the principal residence of the Owner's spouse, domestic partner, parent(s), child or children, brother(s), or sister(s) (each an "authorized family member") for a period of at least thirty-six (36) consecutive months and commencing within three months of vacancy, so long as the Rental Unit for the Owner's authorized family member is located in the same building as the Owner's principal residence and no other unit in the building is vacant. It shall be a rebuttable presumption that the Owner has acted in bad faith if the Owner or the Owner's qualified relative for whom the Tenant was evicted does not move into the Rental Unit within three months from the date of the Tenant's surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least thirty-six (36)



consecutive months. The Owner shall have provided relocation assistance as required by subsection B, below.

11. Order to Vacate. The Landlord seeks in good faith to recover possession of the Rental Unit in order to comply with a court or governmental agency's order to vacate, order to comply, order to abate, or any other City enforcement action or order that necessitates the vacating of the building in which the Rental Unit is located as a result of a violation of the San José Municipal Code or any other provision of law, and provides a notice of the right to reoccupy. The Landlord shall have provided relocation assistance as required by subsection B.3, below.
12. Vacation of Unpermitted Unit. The Landlord seeks in good faith to recover possession of an Unpermitted Unit in order to end the unpermitted use. The Landlord shall have provided relocation assistance as required by subsection B.3, below.
13. Criminal Activity.
  - a. The Tenant Household, after receiving a written notice to cure (which notice shall include the return provisions listed in subsection d below) by removing the Violating Tenant (as defined below) from the household, and, where necessary, amending the lease to remove the Violating Tenant's name, fails to do so within a reasonable time, by one of the following methods as further described in the regulations:
    - i. Filing a restraining order or providing evidence to the Landlord of similar steps being taken to remove the Violating Tenant from the household.

- ii. Removing the Violating Tenant from the household and providing written notice to the landlord that the Violating Tenant has been removed.
  
- b. For purposes of this subsection 13, a "Violating Tenant" shall mean an adult Tenant that is indicted by a grand jury or held to answer pursuant to Penal Code Section 872, as amended, for a serious felony as defined by Penal Code Section 1192.7(c), as amended, or a violent felony as defined by Penal Code Section 667.5(c), as amended, which occurred during the tenancy and within one thousand (1,000) feet of the premises on which the Rental Unit is located. The term "premises" shall mean "Lot", as defined in Section 20.200.660 of the San José Municipal Code.
  
- c. The past criminal history of a Tenant shall not be a factor in determining whether the Tenant is a Violating Tenant.
  
- d. If a Violating Tenant, as defined above, is acquitted from the charges or the charges are dismissed or reduced, he or she may return to the Rental Unit as a Tenant, so long as: 1) the Tenant Household still resides in the Rental Unit; and 2) the Tenant Household consents to the Violating Tenant's return.

**B. Relocation Assistance.**

- 1. Tenants who receive a Notice of Termination that relies on subsections A.8 or A.10 above as the just cause rationale to terminate the tenancy must receive, and the Landlord must provide the following relocation

assistance to the Tenant Household. The relocation assistance must be provided to the Tenant Household concurrent with delivery of the Notice of Termination to the Tenant Household.

- a. Relocation Assistance. An amount equal to the Base Assistance provided for in the Ellis Act Ordinance, Part 11 of Chapter 17.23 of the San Jose Municipal Code, as set by resolution of the City Council.
  - b. Refund of Security Deposit. Owner must refund to the Tenant Household any security deposit paid by the Tenant Household, provided, however, that the Owner may withhold any properly itemized deductions from the security deposit pursuant to California Civil Code section 1950.5, as amended.
2. Tenants who receive a Notice of Termination that relies on subsection A.9 above as the just cause rationale to terminate the tenancy must have received, and the Landlord must have provided, all applicable Relocation Assistance provided for in the Ellis Act Ordinance.
  3. Tenants who receive a Notice of Termination that relies on subsection A.11 or A.12 above as the just cause rationale to terminate the tenancy must receive, and the Landlord must provide, Relocation Assistance as defined in Part 11 of Chapter 17.20 of the San José Municipal Code, or if the unit is unpermitted, an amount equal to the Base Assistance provided for in the Ellis Act Ordinance.

## **SECTION 8. Affirmative Defense to Eviction; Penalties and Remedies**

- A. Affirmative Defense. Each Landlord that seeks to terminate a tenancy of an Affected Tenant must comply with this Ordinance. Non-compliance with any applicable component of this Ordinance shall constitute an affirmative defense for an Affected Tenant against any unlawful detainer action under California Code of Civil Procedure section 1161 and California Civil Code sections 1946 and 1946.1, as amended.

Nonpayment of Rent. As a defense to an action brought under Subsection A.1 of Section 7 above, a Tenant, Mobilehome Owner, or Mobilehome Resident may assert that, prior to expiration of the notice of nonpayment of rent, they submitted to their Landlord a signed Declaration of COVID-19-Related Financial Distress and paid at least fifty-percent (50%) of their monthly rent due.

B. Civil Remedies.

1. Any Landlord that fail(s) to comply with this Ordinance may be subject to civil proceedings for displacement of Affected Tenant(s) initiated by the City or the Affected Tenant Household for actual and exemplary damages.
2. Whoever is found to have violated this Ordinance shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees.
3. Treble damages shall be awarded for a Landlord's willful failure to comply with the obligations established under this Ordinance.
4. Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a Tenant or non-Tenant third party for the damage done to said Landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.

## **SECTION 9. Relationship to Tenant Protection Ordinance**

This Ordinance is not intended to relieve a Landlord from any obligation under the Tenant Protection Ordinance, Part 12 of Chapter 17.23 of the San José Municipal Code, or any other applicable law that would otherwise apply.

## **SECTION 10. Anti-Retaliation Protections**

- A. No Landlord may threaten to bring, or bring, an action to recover possession, cause the Affected Tenant to quit the Rental Unit involuntarily, serve any notice to quit or Notice of Termination, reduce any housing services, report or threaten to report the Affected Tenant, Tenant Household, or individuals the Landlord knows to be associated with the Affected Tenant to the immigration authorities, where the Landlord's intent is retaliation against the Affected Tenant for the Affected Tenant's assertion or exercise of rights under this Ordinance.
  
- B. No Landlord shall in bad faith serve a notice, influence or attempt to influence an Tenant, Mobilehome Owner, or Mobilehome Resident, to vacate a Rental Unit through fraud, intimidation or coercion.

## **SECTION 11. Prohibition Against Late Fees or Interest**

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

**SECTION 12. Severability**

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

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI TABER, CMC  
City Clerk