



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: April 1, 2020

Approved

Date

4/3/20

**SUBJECT: ACTIONS RELATING TO A MORATORIUM ON EVICTIONS OF
COMMERCIAL TENANTS DUE TO COVID-19**

RECOMMENDATION

- (a) Accept staff's report and support the Santa Clara County Board of Supervisors' decision to adopt an Urgency Ordinance establishing a moratorium on evictions for nonpayment of rent for small business tenants financially impacted by the novel coronavirus (COVID-19).

OR

- (b) Adopt an urgency ordinance that establishes a moratorium on non-payment of rent evictions for small business commercial tenants whose business was financially impacted by the COVID-19 virus. Specifically, the ordinance would:
- (1) Invoke the urgency provisions in the City Charter, as an emergency measure for immediate preservation of the public peace, health or safety, to temporarily prohibit the eviction of a commercial tenant for nonpayment of rent, if that tenant meets the criteria listed in the ordinance regarding COVID-19; and
 - (2) Provide that the moratorium will commence upon the Council's adoption of a resolution declaring the commencement and making findings regarding COVID- 19 and that such moratorium would expire in thirty days unless extended.

Please note: Approval of this urgency ordinance requires 8 or more affirmative votes (2/3).

- (c) Approve an ordinance that establishes a moratorium on non-payment of rent evictions for small business commercial tenants whose business was financially impacted by COVID-19. Specifically, the ordinance would:

- (1) Temporarily prohibit the eviction of small business tenants for non-payment of rent, if that tenant meets the criteria listed in the ordinance regarding COVID-19; and
 - (2) Provide that the moratorium will commence upon the Council adoption of a resolution declaring the commencement and making findings regarding COVID- 19 and that such moratorium would expire in thirty days unless extended.
- (d) Adopt a resolution declaring the commencement of a thirty-day temporary moratorium on evictions due to nonpayment of rent for small business commercial tenants where the failure to pay rent results from the financial impacts of COVID-19 upon the business and setting forth the facts constituting such urgency.

OUTCOME

During this rapidly changing environment caused by the COVID-19 pandemic small businesses across the city are experiencing widespread financial injury. The introduction of a temporary moratorium banning the eviction of small business tenants for the nonpayment of rent directly impacted by the COVID-19 pandemic aims to mitigate preventable business failure and support the city's economy.

BACKGROUND

On March 16, 2020, the County Public Health Officer's order required County residents to shelter in place through April 7, 2020 due to the COVID-19 pandemic and all non-essential businesses and services in the city are now severely disrupted or closed to the public. This triggered a rapid contraction in private consumption, invariably leading to widespread economic injury for many small businesses, particularly in the restaurant, entertainment and nonfood retail sectors.

Business owners are triggering layoffs in many parts of the economy, and this is directly impacting the wellbeing of residents in every community and neighborhood of the city. In the past four weeks alone, jobless claims have risen rapidly and are set to accelerate further as the pandemic undermines business confidence and immediate trading conditions. Figures released by the California State Employment Development Department indicate close to one-million jobless claims have been filed since March 13, 2020. Inevitably, the more prolonged the pandemic, the greater the risk of financial injury to small business in general. Unlike large businesses who have reserves and can raise capital, small businesses are often restricted by their internal cash flow, existing loans and fixed lines of credit. For a small business unable to secure additional working capital the unexpected shock on the scale of COVID-19 can expose within a relatively short timescale a significant risk of business failure. Larger businesses such as leading manufacturers and their supply chains who are classified as 'nonessential' by the County Public Health order are also being negatively impacted with reduced production and high fixed overhead costs. Few businesses are considered immune to the COVID pandemic.

To help cities deal with these issues on a local level, on March 16 the Governor issued an executive order N-33-20, suspending any provision of state law prohibiting a local government from exercising its police power to impose substantive limitations on residential or commercial evictions. This enabled local jurisdictions to approve measures of protecting commercial tenants whose failure to pay rent is a direct consequence of a loss of income or out of pocket medical expenses caused by the COVID-19 pandemic. The Governor's executive order expires on May 31, 2020. If the Governor does not renew or replace the executive order, then the principle of preemption returns and the scope for jurisdictions to introduce protective regulations for commercial tenants is restricted once again.

At the City Council meeting on March 17, 2020, the Council directed the City Attorney to return to City Council on April 7 with a proposed Urgency Ordinance, Companion Ordinance, and a Resolution for adoption in order to commence a moratorium on nonpayment of rent evictions of small business tenants who have suffered a substantial loss of income related to COVID-19. A number of specific issues were raised by Councilmembers at the March 17 meeting for consideration within a moratorium including the self-employed, and individuals who generate income from operating in a variety of business locations without a written contract or lease, and when the deferred rent would become payable at the expiry of the moratorium.

On March 24 the Santa Clara County Board of Supervisors approved an urgency ordinance establishing a moratorium on nonpayment of rent evictions through May 31, 2020 for both residential and commercial tenants where the failure to pay rent is directly connected to the COVID-19 pandemic. The ordinance took effect immediately and most importantly applies to all cities in the county of Santa Clara, even those cities with existing moratoria. The County ordinance provides that cities may enact their own ordinances, and whichever is the more protective of the two would apply.

ANALYSIS

I. ECONOMIC IMPACT OF THE COVID PANDEMIC ON SMALL BUSINESS IN SAN JOSE

Small business overview

As reported to Council at the Study Session on Displacement in October 1, 2019 San Jose is home to just over 50,000 small businesses. A small business is defined by the City as having a headcount up to 35 staff. The total number of small businesses is estimated to be close to 97% of all active business. Staff have estimated that there are over 27,000 small businesses who rent commercial space in the city. In the restaurant and nonfood retail sectors there are close to 7,000 small businesses, 68% of whom are estimated to be commercial tenants.

The latest estimates from Dun & Bradstreet, a leading business data analytics company, identified over 190,000 people employed in small businesses, equivalent to 43% of total employment in San Jose and the most exposed to unemployment and economic injury as a result of COVID-19.

The County Public Health Order issued on March 31, 2020 further expanded the number of businesses deemed nonessential and restricted more industry sectors including commercial construction projects.

II. COUNTY OF SANTA CLARA MORATORIUM ON EVICTIONS OF COMMERCIAL TENANTS

The County's ordinance approved on March 24, 2020 by the Board of Supervisors was adopted immediately and will be effective until May 31, 2020 unless extended further. The ordinance is included as Attachment A. The following are key terms:

No restriction to the business type or legal entity

The County ordinance broadly defines a commercial tenant as occupying any real property that is used for business, income producing purposes, or any purpose other than for residential use. It does not restrict the business type or organization occupying any property that is used for business income-producing purposes, or any purpose other than for residential use. By not setting any restriction within the ordinance this allows the self-employed, sole proprietors and non-profits to be included.

Broad Definition of Tenancy to Include Lawful Occupancy with a Lease or Sublease.

The tenancies covered by the moratorium are defined as "the lawful occupancy of a residential or commercial real property and includes a lease or sublease." This definition is broadly defined and would include both written and verbal written agreements that are lawful. Thus, self-employed individuals who operate their business from multiple locations could seek protection for each location they have a tenancy.

Businesses are included provided they meet the SBA standard

The County Ordinance defines a small business as any business that meets the size standard for small business in the industry which they operate as defined in the U.S. Small Business Administration's (SBA).

The SBA standard is a Federal government measure that every business by their industry sector and designates each a respective NAICS (North American Industry Classification) code. The comprehensive industry list and their respective code is included in a comprehensive table. An online portal allows a business to check if they meet the standard.¹

From an initial assessment undertaken by staff of tracking the NAICS code to the City's business tax database, it is estimated that close to 99% of all active businesses in San Jose are included within the scope of the County ordinance.

Tenant repayment plan

Under the County Ordinance, all past rent due must be payable within 120 days of the expiration of the ordinance. In effect, the current ordinance set to expire on May 31, 2020 and allows tenants up to four months after the expiration date or September 30, 2020 before payment is due in full. If the expiration date is extended, then the four months to pay back the

¹ <https://www.sba.gov/size-standards/>

balance may have a later deadline. Currently, the City's residential moratorium approved by Council on March 17, 2020 does not provide for a four-month repayment period (however the County's period would apply to San Jose residential tenants). This is a key difference between the County and City's moratorium that provides greater protection for both residential and commercial tenant under the County's ordinance.

Informing landlords and tenants

It is the County's responsibility to inform and enforce the ordinance. The scale of communication and range of information required to adequately notify both landlords and tenants and to respond to questions will be a significant undertaking. Businesses are generally not familiar with the use of the SBA standards for the purpose of defining eligibility under the ordinance. Under the County ordinance, the City would rely on the County to be the lead source of enforcement, information, and response to questions from landlords and tenants.

III. THE CITY OF SAN JOSE MORATORIUM

On March 17, 2020, the City Council directed the City Attorney to return to City Council on April 7 with a proposed Urgency Ordinance, Companion Ordinance, and a Resolution for adoption in order to commence a moratorium on nonpayment of rent evictions of small business tenants who has suffered a substantial loss of income related to COVID-19. This process requires the following legislative actions: 1) the urgency ordinance and companion ordinance that contain the provisions of the moratorium, including its purpose, scope, and framework on how it protects small business tenants. The resolution contains provisions activating the urgency ordinance.

A. Urgency Ordinance

The Urgency Ordinance provides the underlying authority for the City Council to immediately authorize an eviction moratorium. The City Attorney has prepared the urgency ordinance for immediate adoption by the City Council, setting forth the facts that constitute the urgent action by the City Council. As stated in Section D of the urgency ordinance, the ordinance becomes effective immediately upon its adoption pursuant to Section 605 of the Charter of the City of San José. It requires an eight affirmative votes for passage and will be in effect for 60 days. The 60-day timeframe is needed so that there is sufficient time for the companion Ordinance to take effect.

To enact the Moratorium, the City Attorney has also prepared a resolution as the mechanism activating a 30-day moratorium on nonpayment of rent evictions. The eviction moratorium will be effective immediately upon approval of the resolution. It will be effective for a 30-day period and may be extended for an additional 30 days by the City Council. To extend the term, the City Council will need to pass a new resolution.

B. Companion Ordinance

The City Attorney has prepared a companion Ordinance that mirrors the urgency ordinance's substantive provisions and will be effective for a period of six (6) months. The companion ordinance is intended to take effect at the time the urgency ordinance expires. It requires both a first and second reading as typical for non-emergency ordinances. If the proposed ordinance is adopted, it will become effective 30 days. It requires a simple majority for passage, and it will be repealed automatically after six months. The ordinance provides the authority for the

City Council to extend the moratorium past the original 60 days provided under the Urgency Ordinance. As previously mentioned, the moratorium is extended by The City Council by resolution.

Both Ordinances contain the same substantive provisions, including its purpose, the term of the moratorium, the scope of the Ordinance who it applies to, the type of protection provided, the defense to an eviction and civil remedies for violations of the Ordinance. The following section provides details on these components.

III. EVICTION MORATORIUM FOR SMALL BUSINESS COMMERCIAL TENANTS

The purpose of this legislation is to provide stability to the San José small business economy during the COVID-19 pandemic, preventing avoidable business closures due to evictions, causing further economic strain and potential homelessness for small business owners and their employees, and maintaining public peace, health or safety because the COVID-19 pandemic has the potential for destabilizing the small business community.

A. Commercial Tenants Covered by the Legislation

As described above, the legislation will apply to all small business tenants that fits the size standard in the industry in which they operate. For these tenants to be protected, they must demonstrate that the failure to pay rent directly resulted from a substantial loss of revenue or income to their business due to the COVID-19 pandemic, or any local, State, or federal government response to the pandemic.

Commercial tenants who owe back rent that is unrelated to a reduction of revenue or income COVID-19, are not entitled to protection under the Ordinance for that unpaid balance of rent.

B. Eviction Protections

Like the County, this Ordinance will allow commercial tenants to defend themselves against evictions for nonpayment of rent if they can demonstrate that they have experienced a substantial loss of revenue or income to their business due to the COVID-19 pandemic.

San Jose's eviction moratorium will not apply to those properties where the small business tenant has abandoned the property and the landlord has followed the abandonment procedures set forth under State law. The County's Ordinance, by contrast, does not include this exception.

Tenant Responsibility

Affected tenants must prove that they have suffered a substantial loss of income due to COVID-19 in order to receive eviction protections under the moratorium. Substantial loss of revenue or income shall be demonstrated by documentation or other objectively verifiable proof that, as a result of the COVID-19 pandemic, the Small Business Tenant has experienced any of the following: 1) a reduction in opening hours or consumer demand; 2) a store, restaurant, office, or business closure; 3) the need to care for a minor child who is home due to school closure; or 4) other similarly-caused loss of income resulting from the COVID-19 pandemic.

It is critical to note that landlords are not precluded from negotiating with their tenants to resolve challenges related to a lack of income to pay rent. While the ordinance will protect tenants from eviction, rent will continue to be due under the rental contract.

C. Tenant Responsibility to Pay their Rent

The eviction moratorium is a moratorium on evicting small business tenants affected by COVID-19. It does not relieve the tenant of their contractual duty to pay their rent and is not a moratorium on that obligation to pay their rent.

The County's Ordinance, by comparison, includes a provision providing for a 120-day repayment period after the moratorium ends. The County's Ordinance also indicates that a tenant is not absolved of their contractual obligation to pay their rent but provides a period for repayment of such rent that accrues as a result of loss of income to their business.

While there is a repayment period, during the moratorium, landlords and tenants are encouraged to discuss with each other the impacts of COVID-19 on their business revenue and income and negotiate a reasonable plan to pay the rent. These efforts will save time, expense, anxiety and uncertainty for both parties. This is an opportunity for both sides to work together during this difficult time where no one is at fault for these circumstances resulting from COVID-19.

D. Summary

The County ordinance provides a comprehensive approach to a temporary banning of evictions due to nonpayment of rent. The City estimates that 99% of business will be covered by the County ordinance. The 120-day repayment period once the moratorium has been lifted is more protective than the existing City ordinance. The County ordinance has already come into effect and the County is responsible for informing both landlords and tenants, in addition to enforcing the ordinance.

IV. BUSINESSES RESOURCES

All businesses who have suffered economic injury arising from COVID-19 pandemic including commercial landlords and business tenants can apply to the SBA Economic Injury Loan Fund. The fund is directly administered by the Federal Small Business Administration. Loans are available up to \$2M. and are designed to cover working capital needs for impacted business able to quantify the losses experienced since January 30, 2020 with a realistic capacity to make repayments. The details can be accessed from this link:

<https://www.sba.gov/funding-programs/disaster-assistance>

There are technical assistance providers in San Jose that offer free assistance to businesses to complete the application process. Details can be accessed by the Business Owners Space website: <http://www.businessownersspace.com>

The CARES Act was passed into law on March 27, 2020. An additional \$350 billion of federal loans and grants are available to small businesses, and the legislation contained new programs including:

- A Paycheck Protection Program (PPP) to provide cash flow assistance through a 100 percent federally guaranteed loan to employers who maintain their payroll during the COVID-19 emergency. The PPP Program provides for up to 8 weeks of loan forgiveness based on employee retention and salary levels. Sole proprietors and nonprofits are also eligible to apply for this program. Loan amounts are available up to \$10 million per business. The program will be available to June 30, 2020.
- Of particular note is the planned increase in the value of an EIDL loan from \$25,000 to up to \$200,000 that may not require any collateral by the applicant. In addition, an Emergency Economic Injury grant or forgivable loan that provides \$10,000 of immediate assistance to any eligible small business, sole proprietor or nonprofit will be available three days after submitting an Economic Injury Disaster Loan application to SBA. The details are still being defined, but the intent is to provide the funding to any eligible applicant shortly after their submission of a loan request to SBA.

A full update on the support for small business contained in the CARES Act will be provided to Council on April 7, 2020.

In addition, within the next week, the Silicon Valley Strong small business grant program will be launched. The fund administrator will be the San Jose-based Opportunity Fund, the largest U.S. Treasury certified Community Development Finance Institution in the country.

A number of banks and large corporations are planning to support small business. Verizon has established a grant fund for small businesses to be managed by LISC. The first round of grant applications closed on April 4, 2020. Facebook has recently announced the launch of a \$100 million grant program aimed at supporting small businesses around the world affected by the coronavirus pandemic.

The Office of Economic Development will be updating information on all opportunities for business to access capital and has already responding by providing regular information and updates on the COVID emergency at: <https://www.sjeconomy.com/why-san-jose/covid-19-guidance>

CONCLUSION

The City recognizes urgent action is required to stabilize active businesses and mitigate preventable closures and bankruptcy. The County ordinance is more protective than the City ordinance and estimated to cover 99% of all active businesses in the City.

EVALUATION AND FOLLOW-UP

The City will track the effectiveness of the response to the continued impact of COVID-19 on the San José business community over the next 60-day period. Staff will report back to Council with recommendations to introduce a commercial tenant moratorium if the County ordinance were to be rescinded prior to May 31, 2020 and any subsequent actions and executive orders signed by the Governor.

CLIMATE SMART SAN JOSÉ

The recommendation in this memo aligns with one or more of Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

A Zoom conference meeting was hosted on April 2, 2020 by the Silicon Valley Organization (SVO) for commercial landlords and business tenants. The Santa Clara County were invited, and the Office of Economic Development will be responding to questions and issues raised on the subject. Feedback of the event will be provided at the Council meeting on April 7. In addition, a recording of the Zoom events will be made for wider public dissemination. Public information will also be made available through sjeconomy.

COORDINATION

Preparation of this report has been coordinated with the City Attorney's Office, Budget Office and the City Manager's Office.

COMMISSION RECOMMENDATION

No Commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

Under normal circumstances, if the City adopted the ordinance, the cost of implementing an effective program of outreach and communication would consist of the equivalent of two full time analysts over a three-month period commencing April 7 through to June 7, and direct marketing and other materials to ensure over 27,000 commercial tenants and landlords were aware of the ordinance and how it differed from the County ordinance – a total cost of approximately \$70,000, not including potential enforcement. However, given the time constraints, the City would instead need to reallocate existing staff and non-personal/equipment resources from other Emergency and Essential Services activities.

HONORABLE MAYOR AND CITY COUNCIL

April 1, 2020

Subject: Actions related to a Moratorium on Evictions of Commercial Tenants due to COVID-19

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CEQA

Not a Project, File No. PP17- 004, Government Funding Mechanism or Fiscal Activity with no commitment to a specific project which may result in a potentially significant impact on the environment, and File No. PP17- 007, Preliminary direction to staff and eventual action requires approval from decision- making body.

/s/

KIM WALESH

Deputy City Manager

Director of Economic Development

For questions, please contact Victor Farlie, Senior Economic Analyst, at (408) 535-8230.

Attachments: ADOPTED COUNTY ORDINANCE NS-9.287 - Temporarily Banning Evictions for Nonpayment of Rent by Residential and Commercial Property Tenants in Santa Clara County.

ORDINANCE NO. NS-9.287

**AN UNCODIFIED URGENCY ORDINANCE
OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
TEMPORARILY BANNING EVICTIONS FOR NON-PAYMENT OF RENT BY
RESIDENTIAL AND COMMERCIAL REAL PROPERTY TENANTS IN SANTA
CLARA COUNTY DIRECTLY IMPACTED BY THE COVID-19 PANDEMIC,
AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY**

Summary

This Urgency Ordinance imposes a temporary moratorium on evictions in Santa Clara County for non-payment of rent by residential and commercial real property tenants directly impacted by the COVID-19 pandemic and sets forth the facts constituting such urgency.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
FINDS AND DECLARES AS FOLLOWS:**

WHEREAS, in late December 2019, several cases of a novel coronavirus known as COVID-19 emerged in the Hubei province of China;

WHEREAS, on January 30, 2020, the World Health Organization (“WHO”) declared COVID-19 a Public Health Emergency of International Concern;

WHEREAS, on January 31, 2020, in the wake of the spread of COVID-19, the United States Secretary of Health and Human Services declared a Public Health Emergency;

WHEREAS, on February 3, 2020, the County of Santa Clara (“County”) Health Officer declared a local health emergency, and the County’s Director of Emergency Services proclaimed a local emergency, to respond to the COVID-19 pandemic and manage its spread throughout the County;

WHEREAS, on February 10, 2020, the Board of Supervisors ratified the local health emergency and local emergency;

WHEREAS, on March 4, 2020, Governor Gavin Newsom (“the Governor”) issued a Proclamation of a State of Emergency in the State of California related to the COVID-19 pandemic;

WHEREAS, Government Code section 8634 authorizes the County Board of Supervisors to promulgate orders and regulations necessary to provide for the protection of life and property during a local emergency;

WHEREAS, on March 16, 2020, the County Public Health Officer issued an order requiring County residents to shelter in place through April 7, 2020, in order to stop community spread of COVID-19, subject to exceptions for the provision and receipt of essential services, and this order may be continued as necessary to address the pandemic;

WHEREAS, as of 5:00 p.m. on March 21, 2020, the County confirmed 302 cases of infection and 10 deaths from COVID-19;

WHEREAS, the COVID-19 pandemic and associated public health orders from the County Health Officer and from the State Health Officer are expected to result in the closure of many local businesses until at least April 7, 2020, and result in extreme restrictions on other local businesses until then, and likely thereafter;

WHEREAS, the COVID-19 pandemic and associated public health orders are expected to result in a significant loss of income to a widespread portion of the local population that depend on wages or business income to pay rent and may also result in substantial medical expenses for certain County residents;

WHEREAS, the County is already experiencing a humanitarian crisis of homelessness and is one of the least affordable communities in the world;

WHEREAS, the County is also experiencing a housing affordability crisis, which is driving homelessness and displacement of residents;

WHEREAS, many of the County's renters are rent-burdened, paying over 30 percent of their income on rent, and some renters are severely rent-burdened, paying over 50 percent of their income on rent, which leaves less money for families to spend on other necessities like food, healthcare, transportation, and education;

WHEREAS, in light of the COVID-19 pandemic and his state of emergency Proclamation, on March 16, 2020, the Governor issued an executive order suspending any provision of state law prohibiting a local government from exercising its police power to impose substantive limitations on residential or commercial evictions;

WHEREAS, without local protection, eviction notices for failure to pay rent are likely to surge as residents and businesses are unable to earn income due to the pandemic, or are forced to pay substantial medical expenses associated with the pandemic;

WHEREAS, the Board has determined that it is appropriate to temporarily prohibit evictions, through May 31, 2020, for any tenant (residential or commercial) who can demonstrate that they are being evicted for the failure to pay rent, and that such failure is a direct impact of the COVID-19 pandemic;

WHEREAS, the Board has determined that adoption of such a temporary moratorium prohibiting evictions is necessary for the protection of life and property as described herein;

WHEREAS, this Order shall serve as an order and regulation also applicable within the cities in Santa Clara County pursuant to Government Code section 8634 and the regulations contained herein shall apply to all cities within Santa Clara County and within unincorporated Santa Clara County; and

WHEREAS, there is an urgent need for the County to enact such substantive limitations to protect the health, safety, and welfare of its residents in light of the emergency declared regarding the COVID-19 pandemic, including but not limited to the need to keep residents in their homes during the time that they need to shelter-in-place.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:**

**PROHIBITION ON EVICTIONS ARISING FROM SUBSTANTIAL INCOME
LOSS OR MEDICAL EXPENSES RELATED TO THE CORONAVIRUS
PANDEMIC**

SECTION 1. Scope.

This Ordinance is adopted to prohibit evictions through May 31, 2020, unless extended by action of the Board of Supervisors, which action shall not require amendment of this Ordinance, for any tenant in Santa Clara County who can demonstrate that they have received a notice of eviction or similar action for failure to pay rent, and that such a failure is related to a substantial loss of income or substantial out-of-pocket medical expenses resulting from the 2020 COVID-19 pandemic or any local, State, or federal government response to the pandemic. The regulations in this ordinance shall apply to cities within Santa Clara County and unincorporated Santa Clara County. To the extent that the governing body of a city enacts an ordinance or adopts a regulation that is more protective of residential and commercial tenants, such city ordinance or regulation shall apply in place of this Ordinance.

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SECTION 2. Definitions.

For purposes of this Ordinance, the following definitions shall apply:

- (a) *Commercial Real Property* means any real property that is used for business, income-producing purposes, or any purpose other than for residential use, however organized, that meets the size standard for a small business in the industry in which that entity operates as defined in the U.S. Small Business Administration's table of size standards by industry, codified at 13 C.F.R. section 121.201;
- (b) *Owner* means any natural person, partnership, corporate or fictitious entity, acting as a lessor or sublessor, whether as a principal or through an agent, who receives or is entitled to receive rent in exchange for the use or occupancy of any residential or commercial real property for rent, and includes a predecessor in interest;
- (c) *Rent* means the financial obligation or monetary payment a tenant owes an owner for the occupancy or use of commercial or residential real property whether by written or oral agreement;
- (d) *Residential Real Property* means any dwelling unit that is intended or used for human habitation;
- (e) *Tenancy* means the lawful occupancy of residential or commercial real property and includes a lease or sublease;
- (f) *Tenant* means the lawful occupant of residential or commercial real property whether by lease or sublease.

SECTION 3. Prohibition on evictions stemming from coronavirus pandemic losses.

- (a) Through May 31, 2020 and any subsequent extensions approved by the Board of Supervisors, the Owner of Residential Real Property or Commercial Real Property shall not terminate a Tenancy for failure to pay rent if the Tenant demonstrates that the failure to pay rent is directly related to a substantial loss of income or substantial out-of-pocket medical expenses associated with the 2020 COVID-19 pandemic or any local, State, or federal government response to the pandemic.

- (b) Through May 31, 2020 and any subsequent extensions approved by the Board of Supervisors, the Owner of Residential Real Property or Commercial Real Property shall not terminate a Tenancy for any no-fault cause for eviction, as those causes are defined in Civil Code Section 1946.2(b)(2), if the Tenant demonstrates that the Tenant has suffered a substantial loss of income or substantial out-of-pocket medical expenses associated with the 2020 COVID-19 pandemic or any local, State, or federal government response to the pandemic.
- (c) For this Section to apply, a Tenant must demonstrate through documentation or other objectively verifiable means:
 - (1) Substantial loss of income from: (i) job loss; (ii) layoffs; (iii) a reduction in the number of compensable hours of work; (iv) a store, restaurant, office, or business closure; (v) a substantial decrease in business income caused by a reduction in opening hours or consumer demand; (vi) the need to miss work to care for a home-bound school-age child or a family member infected with coronavirus; or (vii) other similarly-caused loss of income, where the conditions listed in (i) through (vii) resulted from the 2020 COVID-19 pandemic or related guidance or public health orders from local, State, or federal authorities; or
 - (2) Substantial out-of-pocket medical expenses for themselves or their immediate family members related to the 2020 COVID-19 pandemic.
 - (3) This prohibition shall also apply to an Owner's action that constitutes constructive eviction under California law. The Owner shall immediately correct any conditions of the property that could be considered to constitute cause for a constructive eviction under California law.
 - (4) An Owner's failure to comply with this Ordinance shall render any notice of termination of Tenancy, where the termination would be in violation of this Section, void. Any notice of termination served on a Tenant during the 2020 COVID-19 pandemic must contain the reason for the termination of Tenancy. Any notice of termination served on a Tenant during the 2020 COVID-19 pandemic must also include a notice of Tenant's rights under this Ordinance as well as a notice of emergency rental assistance programs. These notices shall be provided on a form approved by the Santa Clara County Office of

Supportive Housing. An Owner's failure to comply with this Ordinance shall render any notice of termination of Tenancy, where the termination would be in violation of this Section, void.

- (5) This Section may be asserted as an affirmative defense in an unlawful detainer action.
- (6) Nothing in this Ordinance shall relieve a Tenant of the obligation to pay Rent, nor restrict an Owner's ability to recover Rent due.
- (7) Upon expiration or termination of this Ordinance, a Tenant who demonstrated substantial loss of income or substantial out-of-pocket medical expenses as required under this Ordinance shall pay all past-due Rent within 120 days from the date of expiration of this Ordinance.
- (8) An Owner's failure to comply with this Ordinance does not constitute a criminal offense, but will subject an Owner to civil fines and penalties as set forth in Division A1 of the County Ordinance Code.
- (9) Whenever an Owner endeavors to recover possession or recovers possession of Residential Real Property or Commercial Real Property in violation of this Ordinance, retaliates against a Tenant for the exercise of any rights under this Ordinance, or attempts to prevent a Tenant from acquiring any rights herein, the Tenant may institute a civil proceeding for injunctive relief, money damages of not more than three times actual damages (including damages for mental or emotional distress), and whatever other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the Owner acted in knowing violation of or in reckless disregard of the limitations of this Ordinance. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.
- (10) An Owner may not charge or collect a late fee for Rent that is delayed during this Ordinance and for a period of 120 days thereafter.
- (11) For the purposes of this Ordinance, adequate documentation of lost income or out-of-pocket medical expenses from the 2020 COVID-19

pandemic shall include, but not be limited to: letters from employers citing the 2020 COVID-19 pandemic or related government action as the basis for termination of employment or reduced work, employer paycheck stubs, bank statements, or letters or notifications from schools in which the Tenant has a dependent enrolled regarding COVID-19-related closures that substantially affected the Tenant's income. Any Tenant eligible for protection under this Ordinance can provide documentation of lost income or out-of-pocket medical expenses at any time prior to execution of a judgment for possession of their rental unit to stop such eviction from going forward.

SECTION 4. CEQA not applicable.

This Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly).

SECTION 5. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be held invalid.

SECTION 6. Effective date.

This Ordinance shall take effect immediately upon adoption by a four-fifths vote of the Board of Supervisors as an Urgency Ordinance. This is based on the Board of Supervisors finding that this Ordinance is adopted in compliance with Government Code section 25123, that it is necessary for the protection of the public peace, health, or safety for the reasons contained in the findings set forth at the beginning of this Ordinance, which are incorporated by reference herein, and that it is necessary to prevent Santa Clara County from suffering potentially irreversible displacement of tenants resulting from the evictions that this Ordinance is designed to prevent.

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SECTION 7. Expiration, Repeal.

This Ordinance shall expire and shall be repealed as of May 31, 2020, unless shortened or extended by the Board of Supervisors based on the existence of a local emergency.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on MAR 24 2020 by the following vote:

AYES: **CHAVEZ, CORTESE, ELLENBERG
SIMITIAN, WASSERMAN**

NOES: ~~NONE~~

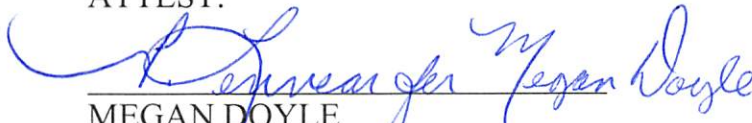
ABSENT: ~~NONE~~

ABSTAIN: ~~NONE~~



CINDY CHAVEZ, President
Board of Supervisors

~~Signed and certified that a copy of this document
has been delivered by electronic or other means to
the President, Board of Supervisors.~~

ATTEST:


MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:


JAMES R. WILLIAMS
County Counsel

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