

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DECLARING THE COMMENCEMENT OF A MORATORIUM ON EVICTIONS OF SMALL BUSINESS TENANTS DUE TO NONPAYMENT OF RENT WHERE THE FAILURE TO PAY RENT RESULTS FROM REVENUE AND INCOME LOSS RESULTING FROM THE NOVEL CORONAVIRUS (COVID-19), AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

WHEREAS, in late December 2019, several cases of unusual pneumonia began to emerge in the Hubei province of China. On January 7, 2020, a novel coronavirus now known as COVID-19 was identified as the likely source of the illness; and

WHEREAS, as infections began to rapidly increase in China and other countries throughout the world, on January 24, 2020 the City of San José (“City”) initiated planning for a possible outbreak of COVID-19 in San José. A Pandemic Management Team was formed to lead the effort. This action put the City at level 1, monitoring, the lowest level of the 5-point City response matrix; and

WHEREAS, on January 30, 2020, the World Health Organization (“WHO”) declared COVID-19 a Public Health Emergency of International Concern. On January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency; and

WHEREAS, the County of Santa Clara County (“County”) Public Health Department received confirmation from the Centers for Disease Control and Prevention of two cases of novel coronavirus in the County, one on Friday, January 31, 2020 and the second on Sunday, February 2, 2020. Both cases had traveled to Wuhan, China in the 14 days before they became ill. As a result, the City increased its response level to 2-low risk; and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom (“Governor”) 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 comes as the number of positive California cases rises and following one official COVID-19 death; and

WHEREAS, on March 4, 2020, the County issued updated guidance for workplaces and businesses, stating that employers should take steps to make it more feasible for their employees to work in ways that minimize close contact with large numbers of people, including: 1) suspend nonessential employee travel; and 2) minimize the number of employees working within arm’s length of one another, including minimizing or canceling large in-person meetings and conferences. The County also recommended that persons at higher risk of severe illness should stay home and away from crowded social gatherings of people as much as possible such as parades, conferences, sporting events, and concerts where large numbers of people are within arm’s length of one another; 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 to respond to the COVID-19 public health emergency; and

WHEREAS, as of March 9, 2020, the County reported that there are forty-three (43) cases of persons testing positive for COVID-19, an increase of twenty-three (23) in five days. The County also experienced its first death due to the virus. In response, the County, pursuant to their 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”). This Order was

based upon evidence of increasing transmission of COVID-19 within the County, scientific evidence regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect vulnerable members of the public from avoidable risk of serious illness or death resulting from exposure to COVID-19; and

WHEREAS, both large and smaller events across the Bay Area and in San José are cancelling or being postponed due to the County's Order and recommendations at all levels of government to cancel large gatherings amid concerns over spread of the virus. These cancellations and postponements cause loss in revenue for the event, as well as surrounding local businesses who rely on such events to bring in patrons to their businesses; and

WHEREAS, since the COVID-19 outbreak, at least thirteen conferences and twenty-eight theater performances have been cancelled in Team San Jose ("TSJ") managed facilities. To date, the accumulated revenue lost due to San Jose Convention Center cancellations is approximately \$14.6 million. This loss of business supported 79,000 projected employee work hours throughout TSJ managed buildings; and

WHEREAS, due to the cancellation of local conferences and other large-attendance events, there has been a significant loss of business opportunity locally. To date, since the COVID-19 outbreak, an estimated \$18 million has been lost in projected direct spending – that is spending in the business community around San José and not inclusive of revenues within the TSJ facilities. Also, there is also a projected loss of an estimated additional \$8.6 million in indirect spending – the ripple effect of incremental spending within the community that would have occurred from the direct spending in local businesses; and

WHEREAS, the effects of COVID-19 on the global economy and supply chains are impacting many Bay Area companies in both technology and non-technology sectors.

Companies such as Apple and HP Inc. have indicated that quarterly earnings will take a hit due to overseas factories operating at two-thirds their capacity, thus leading to missing their growth targets, potentially leading to personnel and other expense cuts. Some companies are having their employees work remotely or from home in order to prevent exposure in the workplace. With more businesses moving towards working from home, less of the workforce will be patronizing restaurants and other retail establishments that employ hourly workers, which is expected to lead to hourly cutbacks and potentially termination; and

WHEREAS, on March 13, 2020, the County issued a new 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. These restrictions will impact how businesses operate that rely on customer patronage and will result in loss revenue for those that cannot continue to operate their businesses during this time; and

WHEREAS, the County Superintendent of Schools and all district superintendents in the County have decided to close schools to students for three weeks beginning Monday, March 16, 2020. These school closures will cause parents with school-age children to attend to their child and be hindered to dedicate as much time and effort to earning income; and

WHEREAS, on March 16, 2020, the County issued an Order instituting a requirement to shelter in place of an individual’s residence, permitting leave for essential activities, essential government functions, or to operate essential businesses, as defined in the Order. All businesses, except those essential businesses, are required to cease all

activities at facilities located within the County. Further, all public or private gatherings of any number of people occurring outside a household or living unit is prohibited, except in very limited circumstances. As a result of these unprecedented measures, many businesses are having to close or significantly scale back and modify their business operations to comply with the County's Order. These actions in response are having immediate consequences on businesses generating revenue to sustain their business and pay their employees and overhead costs, including rent; and

WHEREAS, on March 16, 2020, the Governor issued Executive Order N-28-20, providing for local government's exercise of their police power to impose substantive limitations on commercial evictions and that state law would not preempt or otherwise restrict a local government from limiting commercial evictions; and

WHEREAS, the Governor reported on March 25, 2020 that California has received nearly 1 million unemployment claims since March 13th. A spokesperson for California's Employment Development Department stated that they have received "An avalanche of filings" by companies issuing required warnings of upcoming layoffs and job cuts. Statewide, filings showed 18,998 planned job cuts filed so far in March; and

WHEREAS, on April 4, 2020, the number of COVID-19 cases in Santa Clara County had increased to 1,207 and 39 deaths. Statewide, there were 13,897 reported cases and 322 people have died; and

WHEREAS, displacement of small businesses through eviction risks destabilizing the living situation of both business owners and their employees 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 small business tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the loss of income to pay for life's basic necessities; and

WHEREAS, during the COVID-19 pandemic outbreak, small business owners whose business has closed and is their family's and employee's sole or main source of income may be at risk of homelessness if their business is evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted; and

WHEREAS, on April 4, 2020, the City Council adopted a COVID-19 Small Business Urgency Ordinance ("Urgency Ordinance") and approved a companion ordinance (together, the "Ordinances"), providing for a temporary moratorium on evictions in the City of San José for small business renters on the basis of nonpayment of rent where the failure to pay rent results from revenue and income loss due to the novel coronavirus (COVID-19) pandemic, or governmental response to COVID-19. Under the provisions of the Ordinances, the temporary moratorium will not commence until the City Council adopts a resolution setting forth the facts and circumstances for commencement. Upon commencement, the Urgency Ordinance shall expire sixty (60) days after its adoption, unless otherwise extended by approval of the City Council; and

WHEREAS, the Ordinances are temporary and not a general ordinance in force required to be codified pursuant to Section 606 of the City Charter; and

WHEREAS, pursuant to Section 605 of the City Charter, the Urgency Ordinance must be "adopted as and declared by the Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety, containing a statement of the facts constituting such urgency"; and

WHEREAS, the Ordinances are 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 small business tenants in the City whose revenue and income and ability to work is affected due to COVID-19 to keep their businesses and remain in their homes;

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

The moratorium on nonpayment of rent commercial evictions of small businesses, as set forth in the provisions under the COVID-19 Small Business Urgency Ordinance passed by San José City Council on April 7, 2020 in accordance with Charter Section 605(d), shall hereby commence.

ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk