



CITY OF PALO ALTO OFFICE OF THE CITY ATTORNEY

March 23, 2020

The Honorable City Council
Palo Alto, California

Adoption of an Urgency Ordinance and Regular Ordinance Establishing a Temporary Moratorium on Residential Tenant Evictions for Nonpayment of Rent Related to the COVID-19 State of Emergency; and Discussion and Direction on Extending the Evictions Moratorium to Businesses, Nonprofit Organizations, and Other Commercial Tenants

Recommendation

Staff recommends that the Council:

- A. Adopt the Urgency Ordinance (Attachment A) Relating to a Temporary Moratorium on Residential Evictions for Nonpayment of Rent Due to the COVID-19 State of Emergency. A supermajority vote of 4/5 of Council Members present is required to adopt an urgency ordinance which takes effect immediately upon adoption.
- B. Adopt the Ordinance (Attachment B) Relating to a Temporary Moratorium on Residential Evictions for Nonpayment of Rent Due to the COVID-19 State of Emergency. A regular majority vote is required to approve this ordinance which becomes effective 30 days after the second reading and final adoption.
- C. Discuss and provide direction to staff on potentially extending the temporary moratorium to protect businesses, nonprofit organizations, and other commercial tenants from eviction for nonpayment of rent due to the COVID-19 state of emergency.

Background

The rapid escalation in community transmission of the novel coronavirus referred to as COVID-19 in Santa Clara County and the Greater San Francisco Bay Area has resulted in increasingly more severe public health restrictions on residents and workers in an effort to enforce social distancing and stem the spread of the virus. On March 16, 2020, the county public health officers for the six Bay Area counties took the unprecedented and dramatic step of issuing “shelter-in-place” orders directing residents to shelter at home for three weeks beginning the following day. The order limits activity, travel, and business functions to only the most essential needs.

The economic damage to the city, region, and individuals will be substantial. As businesses must close or reduce their hours to comply with public health directives and guidance, workers will suffer significant wage loss due to lay-offs or reduced work hours. Others will lose income while unable to work as a result of becoming sick with COVID-19, caring for a sick family member, self-quarantining, or caring for minor children whose schools are closed. Many tenants have experienced sudden income loss, and more severe income impacts are anticipated in the coming weeks. The loss of wages caused by the effects of COVID-19 may impact tenants' ability to pay rent, leaving them vulnerable to eviction.

Recognizing the threat of homelessness as an immediate critical life and health concern, cities in California and around the country have started to adopt temporary moratoria on residential evictions for nonpayment of rent due to substantial income loss related to COVID-19. California Governor Gavin Newsom issued an Executive Order on March 16 stating that local ordinances to prohibit residential and commercial tenant evictions under these circumstances would not be preempted by state law during the state of emergency. Following the Executive Order, cities have very recently begun to consider eviction protections for businesses as well. On March 17, the San Jose City Council adopted a moratorium on residential evictions and gave direction to staff to develop an ordinance for commercial evictions; and San Francisco Mayor London Breed announced a commercial tenant eviction moratorium, supplementing the moratorium on residential evictions enacted the prior week.

Discussion

Two ordinances are presented for the Council's consideration and adoption. They are substantively the same, but the first is an urgency ordinance that would go into effect immediately upon adoption and thus requires approval by a supermajority vote of 4/5 of Council Members present. The second ordinance would be a regularly adopted ordinance that will return to the Council for a second reading and would become effective on the 31st day after final adoption; it only requires a simple majority vote for approval. If the urgency ordinance is adopted, the temporary moratorium on residential evictions related to COVID-19 would become effective on March 23, 2020.

Residential Tenant Evictions Prohibited

The proposed ordinances would prohibit evictions of residential tenants for nonpayment of full rent due to substantial income loss related to COVID-19. This moratorium would remain in effect for the duration of the local public health emergency proclaimed by the County. Tenants would be required to document the COVID-19 related income loss to their landlord to avail themselves of the ordinances' protections. Tenants would remain responsible for payment of the rent once they are able to pay or after the end of the local public health emergency. They would have 120 days from the end of the state of emergency to make full payment of the back rent.

Commercial Tenant Protections

The proposed ordinances do not apply to commercial tenants who also may be suffering substantial financial loss due to COVID-19. Governor Newsom’s Executive Order signed on March 16, 2020 allows cities to regulate commercial evictions to protect commercial tenants from eviction for nonpayment of rent if they are unable to pay as a result of substantial income loss related to COVID-19. On March 17, 2020, San Francisco Mayor London Breed announced a moratorium that will prevent any small to medium-sized business from being evicted due to a loss of income related to loss of revenue or other economic impacts caused by the COVID-19 pandemic. This moratorium would apply to businesses with a license to operate in San Francisco that have less than \$25 million in annual gross receipts.

Staff seeks the Council’s input on whether it is interested in exploring a moratorium on commercial evictions due to income loss related to COVID-19, including discussion or direction regarding what types or sizes of business the moratorium should address. If the Council is interested, it may direct the City Attorney to prepare an ordinance. Alternatively, or in addition, the Council may also want to direct staff to do additional research and analysis or conduct outreach to the business community prior to considering a moratorium ordinance on commercial evictions. Because the Governor’s Executive Order was issued very recently — Monday, March 16 — and the City organization is making substantial adjustments with the County’s “shelter-in-place” directive taking effect this past Tuesday, March 17, there has not been an opportunity to do any outreach or significant analysis.

Stakeholder Engagement

The staff report was posted to the City’s website on March 19, 2020. Staff has brought this item to Council for its consideration on an accelerated schedule in an effort to be responsive to the Council’s request at the immediately preceding Council meeting on March 16, 2020 and in recognition of the urgent public health and safety consequences of residential tenant evictions at the same time that Bay Area-wide “shelter-in-place” orders are in effect.

Environmental Review

The proposed ordinances are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15601 of the CEQA Guidelines because it can be seen with certainty that there is no possibility that the ordinances will have a significant effect on the environment.

ATTACHMENTS:

- ATT A - ORD Urgency Ordinance Prohibiting Residential Evictions Related to Coronavirus (PDF)
- ATT B - ORD Ordinance Prohibiting Residential Evictions Related to Coronavirus (PDF)

Department Head: Molly Stump, City Attorney

Ordinance No. _____

Urgency Ordinance of the Council of the City of Palo Alto Relating to a
Temporary Moratorium on Residential Evictions for Nonpayment of Rent During
the COVID-19 State of Emergency and Declaring the Ordinance to be an
Emergency Measure to Take Effect Immediately Upon Adoption

The Council of the City of Palo Alto ORDAINS as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

A. On March 4, 2020, California Governor Gavin Newsom declared a State of Emergency due to the threat of Coronavirus Disease 2019 (“COVID-19”).

B. On March 9, 2020, Santa Clara County reported there were 43 cases of persons testing positive for COVID-19, an increase of 23 confirmed cases in 5 days. The County also experienced its first death due to the virus. Due to the increased threat and evidence of community transmission of the virus, the County Public Health Officer issued an order prohibiting mass gatherings attended by 1,000 persons until March 31, 2020.

C. On March 12, 2020, due to the escalating increase in cases and community spread of COVID-19 in Santa Clara County, City Manager Ed Shikada, acting as the Director of Emergency Services, issued a Proclamation of Local Emergency. The City Council ratified the issuance of the proclamation on March 16, 2020.

D. On March 13, 2020, the County Public Health Officer issued a new order mandating a countywide moratorium on gatherings of more than 100 persons and a conditional countywide moratorium on gatherings between 35-100 persons. Most school districts throughout the San Francisco Bay Area also announced closures for three weeks commencing the following week on March 16, 2020.

E. On March 15, 2020, Governor Newsom directed the closing of all bars, nightclubs, brewpubs, and wineries in the state, and called for residents age 65 and older to self-isolate, to increase social distancing and protect persons most vulnerable to COVID-19. At the same time, he emphasized the plight of the thousands of unsheltered persons in the state as a top public health concern.

F. On March 16, 2020, the public health officers for the six Bay Area counties, including Santa Clara County, took the unprecedented and dramatic step of issuing “shelter-in-place” orders directing county residents to shelter at home for three weeks beginning March 17 (the “Shelter-in-Place Order” or “Order”). The Order limits activity, travel, and business functions to only the most essential needs. The Order requires all businesses other than “essential businesses”, as defined, to cease activities at facilities located in the county.

G. Following prior guidance and recommendations of public health officials and experts over the past month, Californians in particularly impacted areas like Santa Clara County

had already begun observing enhanced social distancing practices, including increased telework on a voluntary basis. Under the more recent county health orders that became effective on March 16, 2020, the vast majority of city residents and workers are not able to report to work and many businesses have closed. As a result, restaurant, retail, tourism, and hospitality business has significantly declined and will continue to decline with mandatory closures now in effect for many businesses and most workers required to work remotely at home if they are able to work at all. Workers have been impacted by lost wages and layoffs. Parents have had to miss work to care for home-bound school-age children.

H. Many tenants have experienced sudden income loss, and further, more severe income impacts are anticipated. The loss of wages caused by the effects of COVID-19 may impact tenants' ability to pay rent when due, leaving tenants vulnerable to eviction.

I. Providing tenants with short-term protection from eviction due to the inability to pay rent will help avoid increasing the homeless population and stabilize the rental housing market by reducing displacement. This need is even more acute while in the middle of a growing pandemic with in-home sheltering mandated to reduce the community spread of COVID-19, the threat of overburdening of the health care system and resulting fatalities.

J. During this state of emergency, and in the interests of protecting the public health and preventing the transmission of the coronavirus, it is essential to avoid unnecessary displacement of tenants. Prohibiting evictions on a temporary basis is needed until the spread of the virus can be minimized and the emergency restrictions lifted.

K. An urgency ordinance that is effective immediately is necessary to avoid the immediate threat to public peace, health, and safety as a failure to adopt this urgency ordinance would result in the displacement of City residents and community members. The directives from the State and the County to contain the spread of COVID-19 have resulted in loss of business, furloughs, loss of wages, and lack of work for employees. To protect the public health, safety, and welfare, the City must act to prevent the eviction of tenants who are unable to pay rent due to wage losses caused by the effects of COVID-19. An emergency measure is necessary to protect tenants from eviction for a temporary period.

SECTION 2. Title

This Ordinance shall be known as the "COVID-19 Eviction Moratorium Ordinance".

SECTION 3. Definitions

A. "Affected Tenant" shall mean a Tenant who has, as a result of the COVID-19 pandemic, or declaration of the County Public Health Officer, or other local, State or Federal Authority, suffered a substantial loss in income through their employment as a result of any of the following: (1) job loss; (2) a reduction of compensated hours of work; (3) employer's business closure; (4) missing work due to a minor child's school closure; or (5) other similarly-caused reason resulting in a loss of income due to COVID-19.

- B. “Covered Reason for Delayed Payment” includes, but is not limited to, any of the following: (1) Tenant lost household income as a result of being sick with Coronavirus, or caring for a household or family member who is sick with Coronavirus; (2) Tenant lost household income as a result of a lay-off, loss of hours, or other income reduction resulting from Coronavirus or the state of emergency; (3) Tenant lost household income due to compliance with a recommendation from a government agency to stay home, self-quarantine, or avoid congregating with others during the state of emergency.
- D. “Landlord” means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Rental Unit, and the agent, representative, or successor of any of the foregoing.
- F. “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 Palo Alto Municipal Code.
- G. “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.

SECTION 4. Applicability

This Ordinance applies to Affected Tenants in any Rental Unit and Landlords of Affected Tenants. This Ordinance applies to nonpayment eviction notices and unlawful detainer actions based on such notices, served or filed on or after the date of introduction of this Ordinance.

SECTION 5. Prohibited Conduct

- A. During the term of this Ordinance, no Landlord shall take actions to evict a Tenant for nonpayment of rent if the Tenant demonstrates that as a result of the COVID-19 pandemic, or declaration of the County Public Health Officer, or other local, State or Federal Authority, including government-recommended precautions related to the COVID-19 pandemic, the Tenant has suffered a substantial loss in income through their employment as a result of any of the following: (1) job loss; (2) a reduction of compensated hours of work; (3) employer’s business closure; (4) missing work due to a minor child’s school closure; or (5) other similarly-caused reason resulting in a loss of income due to COVID-19 (collectively referred to as “Covered Reasons for Delayed Payment”).
- B. A Landlord who knows that a Tenant cannot pay some or all of the rent temporarily for the reasons set forth above, shall not serve a notice pursuant to Code of Civil Procedure Section 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for nonpayment of rent.

- C. A Landlord knows of the Tenant’s inability to pay rent within the meaning of this Ordinance if the Tenant notifies the Landlord in writing of lost income and inability to pay full rent, and provides documentation to support the claim. For purposes of this section, “in writing” includes email or text communications to a Landlord or the Landlord’s representative with whom the Tenant has previously corresponded by email or text. Any medical or financial information provided to the Landlord shall be held in confidence, and only used for evaluating the Tenant’s claim or enforcing this provision.

SECTION 6. Continuing Obligation to Pay Rent; 120-Day Payback Period

- A. Nothing in this Ordinance shall relieve the Tenant of liability for the unpaid rent, which the Landlord may seek after expiration of the local public health emergency declared by the Santa Clara County Board of Supervisors on February 10, 2020 (the “state of emergency”). A Landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance.
- B. Tenants who were afforded eviction protection under this Ordinance shall have up to 120 days after the County of Santa Clara proclaims the termination of the state of emergency, to pay their Landlord all unpaid rent. During that 120-day period, the protections against eviction in this Ordinance apply for such Tenants.

SECTION 7. 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 provision 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, as amended.

To assert this affirmative defense, an Affected Tenant shall have notified their Landlord prior to the Notice of Termination expiring that they are an Affected Tenant and establish that, as a as a result of the COVID-19 pandemic or declaration of County Public Health Officer, or other State or Federal Authority, suffered substantial loss of income caused by any of the following: (1) job loss; (2) a reduction of compensated hours of work; (3) work closure; (4) missing work due to a minor child’s school closure; or (5) other similarly-caused reason resulting in a loss of income due to COVID-19, and has provided written documentation or other objectively verifiable proof of the same. The following documents shall create a rebuttable presumption that the Affected Tenant has met the documentation requirement set forth above, however, they are not the exclusive form of documentation demonstrating impacts to income due to COVID-19:

1. Letter from employer citing COVID-19 as a reason for reduced work hours or termination;
2. Employer paycheck stubs;
3. Bank statements.

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 8. Severability

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 9. Environmental Review

The Council finds that the Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15601 of the CEQA Guidelines because it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment.

SECTION 10. Effective Date

This Urgency Ordinance shall be effective immediately upon adoption and shall remain in effect until the regular non-urgency Ordinance No. [REDACTED] considered at the same time and first approved by the Council on March 23, 2020 becomes effective.

SECTION 11. Avoidance of Inconsistencies

To avoid inconsistencies, the City Manager may suspend any part of this Ordinance in the event that the President of the United States, United States Congress, Governor of the State of California, or California State Legislature adopts any order or legislation that is inconsistent with the actions directed in the Ordinance.

SECTION 12. Emergency Declaration

The Council declares this Ordinance to be an emergency measure, to take effect immediately upon adoption pursuant to Palo Alto Municipal Code Section 2.04.270(d). The facts constituting the emergency are stated in Section 1 of this Ordinance.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

NOT PARTICIPATING:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Director of Planning & Development
Services

Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Relating to a Temporary
Moratorium on Residential Evictions for Nonpayment of Rent During
the COVID-19 State of Emergency

The Council of the City of Palo Alto ORDAINS as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

A. On March 4, 2020, California Governor Gavin Newsom declared a State of Emergency due to the threat of Coronavirus Disease 2019 (“COVID-19”).

B. On March 9, 2020, Santa Clara County reported there were 43 cases of persons testing positive for COVID-19, an increase of 23 confirmed cases in 5 days. The County also experienced its first death due to the virus. Due to the increased threat and evidence of community transmission of the virus, the County Public Health Officer issued an order prohibiting mass gatherings attended by 1,000 persons until March 31, 2020.

C. On March 12, 2020, due to the escalating increase in cases and community spread of COVID-19 in Santa Clara County, City Manager Ed Shikada, acting as the Director of Emergency Services, issued a Proclamation of Local Emergency. The City Council ratified the issuance of the proclamation on March 16, 2020.

D. On March 13, 2020, the County Public Health Officer issued a new order mandating a countywide moratorium on gatherings of more than 100 persons and a conditional countywide moratorium on gatherings between 35-100 persons. Most school districts throughout the San Francisco Bay Area also announced closures for three weeks commencing the following week on March 16, 2020.

E. On March 15, 2020, Governor Newsom directed the closing of all bars, nightclubs, brewpubs, and wineries in the state, and called for residents age 65 and older to self-isolate, to increase social distancing and protect persons most vulnerable to COVID-19. At the same time, he emphasized the plight of the thousands of unsheltered persons in the state as a top public health concern.

F. On March 16, 2020, the public health officers for the six Bay Area counties, including Santa Clara County, took the unprecedented and dramatic step of issuing “shelter-in-place” orders directing county residents to shelter at home for three weeks beginning March 17 (the “Shelter-in-Place Order” or “Order”). The Order limits activity, travel, and business functions to only the most essential needs. The Order requires all businesses other than “essential businesses”, as defined, to cease activities at facilities located in the county.

G. Following prior guidance and recommendations of public health officials and experts over the past month, Californians in particularly impacted areas like Santa Clara County had already begun observing enhanced social distancing practices, including increased telework

on a voluntary basis. Under the more recent county health orders that became effective on March 16, 2020, the vast majority of city residents and workers are not able to report to work and many businesses have closed. As a result, restaurant, retail, tourism, and hospitality business has significantly declined and will continue to decline with mandatory closures now in effect for many businesses and most workers required to work remotely at home if they are able to work at all. Workers have been impacted by lost wages and layoffs. Parents have had to miss work to care for home-bound school-age children.

H. Many tenants have experienced sudden income loss, and further, more severe income impacts are anticipated. The loss of wages caused by the effects of COVID-19 may impact tenants' ability to pay rent when due, leaving tenants vulnerable to eviction.

I. Providing tenants with short-term protection from eviction due to the inability to pay rent will help avoid increasing the homeless population and stabilize the rental housing market by reducing displacement. This need is even more acute while in the middle of a growing pandemic with in-home sheltering mandated to reduce the community spread of COVID-19, the threat of overburdening of the health care system and resulting fatalities.

J. During this state of emergency, and in the interests of protecting the public health and preventing the transmission of the coronavirus, it is essential to avoid unnecessary displacement of tenants. Prohibiting evictions on a temporary basis is needed until the spread of the virus can be minimized and the emergency restrictions lifted.

SECTION 2. Title

This Ordinance shall be known as the "COVID-19 Eviction Moratorium Ordinance".

SECTION 3. Definitions

- A. "Affected Tenant" shall mean a Tenant who has, as a result of the COVID-19 pandemic, or declaration of the County Public Health Officer, or other local, State or Federal Authority, suffered a substantial loss in income through their employment as a result of any of the following: (1) job loss; (2) a reduction of compensated hours of work; (3) employer's business closure; (4) missing work due to a minor child's school closure; or (5) other similarly-caused reason resulting in a loss of income due to COVID-19.
- B. "Covered Reason for Delayed Payment" includes, but is not limited to, any of the following: (1) Tenant lost household income as a result of being sick with Coronavirus, or caring for a household or family member who is sick with Coronavirus; (2) Tenant lost household income as a result of a lay-off, loss of hours, or other income reduction resulting from Coronavirus or the state of emergency; (3) Tenant lost household income due to compliance with a recommendation from a government agency to stay home, self-quarantine, or avoid congregating with others during the state of emergency.
- D. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Rental Unit, and the agent, representative, or successor of any of the foregoing.

- F. “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 Palo Alto Municipal Code.
- G. “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.

SECTION 4. Applicability

This Ordinance applies to Affected Tenants in any Rental Unit and Landlords of Affected Tenants. This Ordinance applies to nonpayment eviction notices and unlawful detainer actions based on such notices, served or filed on or after the date of introduction of this Ordinance.

SECTION 5. Prohibited Conduct

- A. During the term of this Ordinance, no Landlord shall take actions to evict a Tenant for nonpayment of rent if the Tenant demonstrates that as a result of the COVID-19 pandemic, or declaration of the County Public Health Officer, or other local, State or Federal Authority, including government-recommended precautions related to the COVID-19 pandemic, the Tenant has suffered a substantial loss in income through their employment as a result of any of the following: (1) job loss; (2) a reduction of compensated hours of work; (3) employer’s business closure; (4) missing work due to a minor child’s school closure; or (5) other similarly-caused reason resulting in a loss of income due to COVID-19 (collectively referred to as “Covered Reasons for Delayed Payment”).
- B. A Landlord who knows that a Tenant cannot pay some or all of the rent temporarily for the reasons set forth above, shall not serve a notice pursuant to Code of Civil Procedure Section 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for nonpayment of rent.
- C. A Landlord knows of the Tenant’s inability to pay rent within the meaning of this Ordinance if the Tenant notifies the Landlord in writing of lost income and inability to pay full rent, and provides documentation to support the claim. For purposes of this section, “in writing” includes email or text communications to a Landlord or the Landlord’s representative with whom the Tenant has previously corresponded by email or text. Any medical or financial information provided to the Landlord shall be held in confidence, and only used for evaluating the Tenant’s claim or enforcing this provision.

SECTION 6. Continuing Obligation to Pay Rent; 120-Day Payback Period

- A. Nothing in this Ordinance shall relieve the Tenant of liability for the unpaid rent, which the Landlord may seek after expiration of the local public health emergency declared by

the Santa Clara County Board of Supervisors on February 10, 2020 (the “state of emergency”). A Landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance.

- B. Tenants who were afforded eviction protection under this Ordinance shall have up to 120 days after the County of Santa Clara proclaims the termination of the state of emergency, to pay their Landlord all unpaid rent. During that 120-day period, the protections against eviction in this Ordinance apply for such Tenants.

SECTION 7. 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 provision 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, as amended.

To assert this affirmative defense, an Affected Tenant shall have notified their Landlord prior to the Notice of Termination expiring that they are an Affected Tenant and establish that, as a result of the COVID-19 pandemic or declaration of County Public Health Officer, or other State or Federal Authority, suffered substantial loss of income caused by any of the following: (1) job loss; (2) a reduction of compensated hours of work; (3) work closure; (4) missing work due to a minor child’s school closure; or (5) other similarly-caused reason resulting in a loss of income due to COVID-19, and has provided written documentation or other objectively verifiable proof of the same. The following documents shall create a rebuttable presumption that the Affected Tenant has met the documentation requirement set forth above, however, they are not the exclusive form of documentation demonstrating impacts to income due to COVID-19:

1. Letter from employer citing COVID-19 as a reason for reduced work hours or termination;
2. Employer paycheck stubs;
3. Bank statements.

- 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 8. Severability

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 9. Environmental Review

The Council finds that the Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15601 of the CEQA Guidelines because it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment.

SECTION 10. Effective Date

This Ordinance shall be effective on the thirty-first day after the date of its adoption and shall remain in effect until the 121st day after the County of Santa Clara proclaims the termination of the local public health emergency declared on February 10, 2020, as extended.

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SECTION 11. Avoidance of Inconsistencies

To avoid inconsistencies, the City Manager may suspend any part of this Ordinance in the event that the President of the United States, United States Congress, Governor of the State of California, or California State Legislature adopts any order or legislation that is inconsistent with the actions directed in the Ordinance.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

NOT PARTICIPATING:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Director of Planning & Development
Services