



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kim Walesh

**SUBJECT:** SEE BELOW

**DATE:** June 25, 2020

Approved

Date

6/25/2020

## INFORMATION

**SUBJECT: MORATORIUM ON EVICTIONS FOR NONPAYMENT OF RENT FOR SMALL BUSINESS TENANTS FINANCIALLY IMPACTED BY THE NOVEL CORONAVIRUS (COVID-19)**

The Santa Clara County Board of Supervisors met on June 2, 2020 and approved an extension of the moratorium of evictions for both residential and commercial tenants impacted by COVID-19. The moratorium is now extended through to July 31, 2020.

## BACKGROUND

In response to the impact of COVID-19 the Santa Clara County Board of Supervisors first adopted an ordinance introducing an eviction moratorium for both commercial and residential tenants at its meeting on March 24, 2020. This memorandum covers how the eviction moratorium pertains to San José small businesses and other commercial tenants.

The County ordinance is comprehensive, and city staff has estimated that more than 27,000 commercial tenants physically located in the city of San José are covered by the terms of the ordinance. This is equivalent to 99% of the commercially rented property in the city. On April 7, 2020 City Council approved a recommendation to endorse the staff report to support the County ordinance.

### ***Scope of the Temporary Moratorium on Evictions Resulting from the Novel Coronavirus (COVID-19)***

The County moratorium on evictions applies to all jurisdictions in the county and any local ordinance can only take effect where there are stronger protections for the tenant than contained in the County ordinance.

The County ordinance provides:

- A moratorium on evictions of tenants from property used for business, income producing purposes or any purpose other than used for residential use, however organized. This includes all locations and sites across San José, as well as cities and unincorporated parts throughout the County.
- A business entity is defined as any person, partnership, corporate or fictitious entity, acting as a lessor or sublessor whether as a principal or through an agent. This includes the self-employed, sole proprietors, and gig workers operating from a variety of sites and locations. It also includes all nonprofit organizations.
- No penalties or late fees can be applied by the landlord during the period of the moratorium where the tenant evidences that the non-payment of rent is a direct consequence of COVID-19.
- An owner's failure to comply renders any notice of termination void.
- All unpaid rent must be paid within one year of the expiration of this ordinance with at least fifty percent due by January 28, 2021 and the outstanding balance by July 28, 2021. Landlords must inform tenants of the repayment terms and no additional charges can be applied.

The moratorium does not apply to otherwise lawful or at-fault evictions for reasons other than nonpayment of rent due to a substantial loss and/or out-of-pocket medical expense as a result of COVID-19.

The County has published a [web page](#) with translation into multiple languages and a detailed [FAQ](#) explaining the responsibilities of the landlord and tenant impacted by COVID-19. A copy of the updated ordinance is enclosed as an annex to this memo.

### ***Evidence of Impact by COVID-19 on Small Business***

Since the shelter-in-place order issued by the Santa Clara County Health Director took effect on March 16, 2020 new data published by Harvard University covering the San José MSA area from mid-March 2020 to mid-May 2020 identified the following:

- Total consumer spending in the San José MSA dropped by an estimated 33.4% within an eight-week period.
- The proportion of small business open declined by 46.1% in the San José MSA with overall revenues down by 38%.

HONORABLE MAYOR AND CITY COUNCIL

June 25, 2020

**Subject: Moratorium on Evictions for Nonpayment of Rent for Small Business Tenants Financially Impacted by the Novel Coronavirus (COVID-19)**

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- The unemployment rate in the San José MSA rose from 3.5% in March 2020 to 12.0% in April 2020, above the year-ago estimate of 2.3%.

The impact is also significant for commercial landlords as rent payments that were due in April 2020 can now be delayed by up to nine-months since the date the moratorium was first adopted by the County. However, the moratorium is justified as it reflects the declining condition of the local economy and the ability of small businesses to pay rent as demonstrated by the extraordinary demand for small business loans and time necessary to apply for and receive unemployment benefits.

### **CONCLUSION**

City staff will continue to provide ongoing communication to landlords and tenants as well as monitor and update Council on all County decisions relating to the eviction moratorium and any relevant issues for the duration that the ordinance remains in effect.

/s/

**KIM WALESH**

Deputy City Manager

Director of Economic Development

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

Attachment:

Santa Clara County ordinance NS-9.289 entitled: Residential and Commercial Tenants Eviction Moratorium



**ORDINANCE NO. NS-9.289**

**AN UNCODIFIED URGENCY ORDINANCE  
OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SANTA CLARA  
AMENDING ORDINANCE NO. NS-9.287 AS EXTENDED BY ORDINANCE NO.  
NS-9.288 RELATING TO EVICTIONS OF CERTAIN RESIDENTIAL AND  
SMALL BUSINESS TENANTS IN SANTA CLARA COUNTY DIRECTLY  
IMPACTED BY THE COVID-19 PANDEMIC, AND DECLARING THE  
URGENCY THEREOF**

Summary

This Urgency Ordinance amends Ordinance No. NS-9.287, as extended by Ordinance No. NS-9.288, by extending the time period during which past-due rent must be repaid to 12 months and specifying repayment intervals.

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

**SECTION 1. Findings and Purpose.**

In accordance with California Government Code section 25123, subdivision (d), the Board of Supervisors finds and declares that this Ordinance is deemed necessary for the following reasons:

1. On March 16, 2020, Governor Gavin Newsom issued Executive Order N-28-20 that suspends any provision of state law that would preempt or otherwise restrict a local government's exercise of police powers to impose substantive limits on residential or commercial evictions under certain conditions. The protections in that order would have expired on May 31, 2020.
2. On March 24, 2020, the Board of Supervisors of the County of Santa Clara adopted Ordinance No. NS-9.287, an urgency ordinance that temporarily banned the eviction of certain residential or commercial tenants in Santa Clara County who suffered a substantial loss of income, or substantial out-of-pocket medical expense, related to the 2020 COVID-19 pandemic. Ordinance No. NS-9.287 was enacted to protect these local tenants from homelessness or housing insecurity as a means of ensuring the efficacy of the County's shelter in place order (as described below) and combating community spread of COVID-19. Ordinance No. NS-9.287 provided that it shall expire on May 31, 2020 unless extended by the Board of Supervisors. Similarly, other jurisdictions within the County, such as the Cities of Mountain View, Palo Alto, San José, Santa Clara, and Sunnyvale, as well as the Town of Los Gatos, have enacted eviction moratoriums to protect tenants from eviction.

3. On March 27, 2020, Gavin Newsom, Governor of the State of California, issued Executive Order N-37-20 banning the enforcement of eviction orders for renters affected by COVID-19 through May 31, 2020. On April 6, 2020, the California Judicial Council promulgated emergency rules in response to the 2020 COVID-19 pandemic that temporarily suspended entry of default and trials in eviction proceedings in the Superior Courts.

4. On April 29, 2020, the County Public Health Officer issued an order extending and revising the prior shelter in place order issued on March 31, 2020. The April 29, 2020, order extends the shelter in place requirement for County residents to May 31, 2020, in order to stop community spread of COVID-19, subject to exceptions for the provision and receipt of essential services. On May 18, 2020, the County Public Health Officer issued an order extending and revising the previous shelter in place orders that became effective on May 22, 2020, and that will remain in effect until further action by the County Public Health Officer. Because of COVID-19, these orders have resulted in the closure of many local businesses, which in turn has potentially led to loss of income for many County residents.

5. On May 26, 2020, the Board of Supervisors enacted Ordinance No. NS-9.288 which extended Ordinance No. NS-9.287 through: (1) the date that the Governor's Executive Order N-28-20 suspending any provision of state law that would preempt or otherwise restrict a local government's exercise of police powers to impose substantive limits on residential or commercial evictions under certain conditions (or similar executive order) is extended, or (2) August 31, 2020, whichever is earlier.

6. On May 29, 2020, Governor Newsom issued Executive Order N-66-20, which extended the applicable provisions of Executive Order N-28-20. This extension expires on July 28, 2020, thereby extending the County's ordinance through July 28, 2020.

7. The humanitarian crises of homelessness, housing affordability, and housing insecurity in the County that existed at the time Ordinance No. NS-9.287 and Ordinance No. NS-9.288 were enacted persist today, as do the struggles of rent-burdened and severely rent-burdened County residents who pay over 30 percent and 50 percent of their income on rent, respectively. These crises, combined with substantial losses in income or substantial out of pocket medical expenses due to the COVID-19 pandemic, continue to leave renters in the County with less money to spend on other necessities, such as food, healthcare, transportation, and education. Thus, the protections in the prior ordinances and this Ordinance are necessary to protect the health, safety, and welfare of its residents, including, but not limited to, the need to keep residents in their homes during the time that they need to shelter in place.

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**SECTION 2. Amendments to Ordinance No. NS-9.287 As Extended by Ordinance No. NS-9.288.**

- a. Section 3(c)(7) of Ordinance No. NS-9.287, as extended by Ordinance No. NS-9.288, is hereby amended to read as follows:

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 Ordinance No. NS-9.287, as extended, shall pay all past-due Rent deferred pursuant to this Ordinance in full within 12 months of the date of expiration or termination of this Ordinance. Additionally, a Tenant who qualifies for protection under this Ordinance shall pay at least 50% of the past-due Rent deferred under this Ordinance within 6 months of the expiration or termination of this Ordinance as extended. Prior to initiating repayment plans with their Tenants protected under this Ordinance, Owners shall inform such Tenants of their repayment rights.

- b. Section 3(c)(10) of Ordinance No. NS-9.287, as extended by Ordinance No. NS-9.288, is hereby amended to read as follows:

Upon expiration or termination of this Ordinance, or any extension thereof, an Owner shall not charge or collect a late fee for Rent that was deferred pursuant to this Ordinance, as long as such Rent is paid in accordance with the timelines established in Section 3(c)(7).

**SECTION 3. Compliance with the California Environmental Quality Act.**

This Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) of the CEQA Guidelines (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 4. Effective Date.**

This Ordinance shall be in 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, subdivision (d), 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 and related negative public health impacts caused by increases in homelessness resulting from the evictions that this Ordinance and Ordinance No. NS-9.287 and Ordinance No. NS-9.288 are designed to prevent.

**SECTION 5. Severability.**

If any section, subsection, paragraph, sub-paragraph, 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 passed each section, subsection, paragraph, sub-paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, paragraphs, sub-paragraphs, sentences, clauses, or phrases will be held unconstitutional, invalid, or unenforceable.


**PASSED AND ADOPTED** by the Board of Supervisors of the County of Santa Clara, State of California, on JUN 02 2020, by the following vote:

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

NOES: NONE

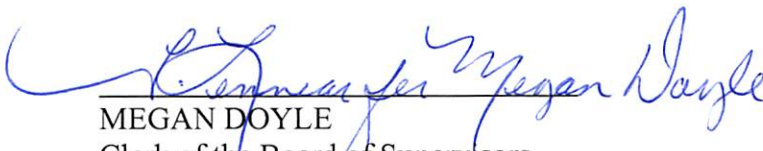
ABSENT: NONE

ABSTAIN: NONE


  
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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

2221877

**ORDINANCE NO. NS-9.288**

**AN UNCODIFIED URGENCY ORDINANCE  
OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SANTA CLARA  
EXTENDING A TEMPORARY MORATORIUM ON EVICTIONS  
FOR NON-PAYMENT OF RENT BY RESIDENTIAL AND SMALL BUSINESS  
TENANTS IN SANTA CLARA COUNTY DIRECTLY IMPACTED BY THE  
COVID-19 PANDEMIC, AND DECLARING THE URGENCY THEREOF**

Summary

This Urgency Ordinance extends the temporary moratorium on evictions in Santa Clara County for non-payment of rent due to COVID-19 originally enacted on March 24, 2020, through (1) the date that Governor Newsom's Executive Order N-28-20 suspending any provision of state law that would preempt or otherwise restrict a local government's exercise of police powers to impose substantive limits on residential or commercial evictions under certain conditions (or similar executive order) is extended, or (2) August 31, 2020, whichever is earlier.

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

**SECTION 1. Findings and Purpose.**

In accordance with California Government Code section 25123, subdivision (d), the Board of Supervisors finds and declares that this Ordinance is deemed necessary for the following reasons:

1. On March 16, 2020, Governor Gavin Newsom issued Executive Order N-28-20 that suspends any provision of state law that would preempt or otherwise restrict a local government's exercise of police powers to impose substantive limits on residential or commercial evictions under certain conditions. The protections in that order expire on May 31, 2020.
2. On March 24, 2020, the Board of Supervisors of the County of Santa Clara adopted Ordinance No. NS-9.287, an urgency ordinance which temporarily banned the eviction of residential or commercial tenants in Santa Clara County due to inability to pay rent because of a substantial loss of income, or substantial out-of-pocket medical expense, related to the 2020 COVID-19 pandemic. Ordinance No. NS-9.287 was enacted to protect these local tenants from homelessness or housing insecurity as a means of ensuring the efficacy of the County's shelter in place order and combating community spread of COVID-19. Ordinance No. NS-9.287 provides that it shall expire on May 31,



2020 unless extended by the Board of Supervisors. Similarly, other jurisdictions within the County, such as the Cities of Mountain View, Palo Alto, San José, Santa Clara, and Sunnyvale, as well as the Town of Los Gatos, have enacted eviction moratoriums to protect tenants from eviction.

3. On March 27, 2020, Gavin Newsom, Governor of the State of California, issued Executive Order N-37-20 banning the enforcement of eviction orders for renters affected by COVID-19 through May 31, 2020. On April 6, 2020, the California Judicial Council promulgated emergency rules in response to the 2020 COVID-19 pandemic that temporarily suspended entry of default and trials in eviction proceedings in the Superior Courts.

4. On April 29, 2020, the County Public Health Officer issued an order extending and revising the prior shelter in place order issued on March 31, 2020. The April 29, 2020 order extends the shelter in place requirement for County residents to May 31, 2020, in order to stop community spread of COVID-19, subject to exceptions for the provision and receipt of essential services. These orders have resulted in the closure of many local businesses, which in turn has potentially led to loss of income for many County residents.

5. The humanitarian crises of homelessness, housing affordability, and housing insecurity in the County that existed at the time Ordinance No. NS-9.287 was enacted persist today, as do the struggles of rent-burdened and severely rent-burdened County residents who pay over 30 percent and 50 percent of their income on rent, respectively. These crises, combined with substantial losses in income or substantial out of pocket medical expenses due to the shelter in place restrictions imposed during the COVID-19 pandemic, continue to leave renters in the County with less money to spend on other necessities, such as food, healthcare, transportation, and education. Thus, extending the protections in the Ordinance by the Board is necessary to protect the health, safety, and welfare of its residents, including, but not limited to, the need to keep residents in their homes during the time that they need to shelter-in-place.

## **SECTION 2. Extension of Ordinance No. NS-9.287.**

This Ordinance extends Ordinance No. NS-9.287 through (1) the date that the Governor's Executive Order N-28-20 suspending any provision of state law that would preempt or otherwise restrict a local government's exercise of police powers to impose substantive limits on residential or commercial evictions under certain conditions (or similar executive order) is extended, or (2) August 31, 2020, whichever is earlier.

## **SECTION 3. Compliance with the California Environmental Quality Act.**

This Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) of the CEQA Guidelines (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 4. Effective Date.**

This Ordinance is an extension of Ordinance No. NS-9.287 and shall be in 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, subdivision (d), 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 and Ordinance No. NS-9.287 are designed to prevent. This Ordinance shall expire and shall be repealed as of the earlier of (1) the date through which the Governor's Executive Order extending the suspension of any provision of state law that would preempt or otherwise restrict a local government's exercise of police powers to impose substantive limits on residential or commercial evictions under certain conditions (or similar executive order) is extended, or (2) August 31, 2020, unless shortened or extended by the Board of Supervisors based on the existence of a local emergency.

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**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 passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases will be held unconstitutional, invalid, or unenforceable.


**PASSED AND ADOPTED** by the Board of Supervisors of the County of Santa Clara, State of California, on MAY 26 2020, by the following vote:

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

NOES: **NONE**


ABSENT: **NONE**

ABSTAIN: **NONE**

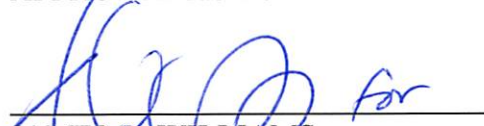
  
\_\_\_\_\_  
CINDY CHAVEZ, President  
Board of Supervisors

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

2216783

**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**

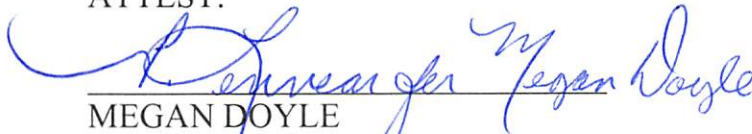
ABSENT: **NONE**

ABSTAIN: **NONE**

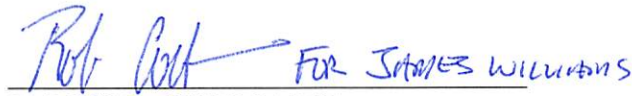
  
\_\_\_\_\_  
CINDY CHAVEZ, President  
Board of Supervisors

~~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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