

RESOLUTION NO. .

EMERGENCY REGULATION NO. 2020-001

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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RESOLUTION ADOPTING AN EMERGENCY REGULATION OF THE COUNTY OF SAN MATEO ESTABLISHING A TEMPORARY, COUNTYWIDE MORATORIUM ON EVICTION FOR NON-PAYMENT OF RENT BY RESIDENTIAL TENANTS DIRECTLY IMPACTED BY THE COVID-19 PANDEMIC

SECTION 1. FINDINGS.

The Board of Supervisors of the County of San Mateo (the “Board”) hereby makes the following findings in support of the immediate adoption and application of this Emergency Regulation (the “Emergency Regulation”):

WHEREAS, on March 3, 2020, and pursuant to Section 101080 of the California Health and Safety Code, the San Mateo County Health Officer (the “Health Officer”) declared a local health emergency throughout San Mateo County related to the novel coronavirus (“COVID-19”); and

WHEREAS, on March 10, 2020, the San Mateo County Board of Supervisors ratified and extended this declaration of local health emergency; and

WHEREAS, on March 3, 2020, and pursuant to Section 8630 of the California Government Code and Chapter 2.46 of the San Mateo County Ordinance Code, the San Mateo County Director of Emergency Services proclaimed a local emergency throughout San Mateo County related to COVID-19; and

WHEREAS, on March 10, 2020, the Board ratified and extended the proclamation of a state of emergency, and this state of emergency (“State of Emergency”) remains in effect; and

WHEREAS, Governor Newsom’s March 4, 2020 Proclamation of State

Emergency waived the requirement in Section 8630 of the California Government Code that the County's declared State of Emergency be reviewed at least once every 60 days until terminated by the San Mateo County Director of Emergency Services; and

WHEREAS, on March 14, 2020, the Health Officer prohibited all public or private gatherings of 50 or more people and urged the cancelation of all gatherings of 10 or more people in a single confined space; and

WHEREAS, on March 16, 2020, the Health Officer issued an order that, among other things, directs all individuals currently living within San Mateo County to shelter in their place of residence ("Shelter-in-Place Order"), and authorizes individuals to leave their residences only for certain "Essential Activities," Essential Governmental Functions," or to operate "Essential Businesses," all as defined in the Shelter-in Place-Order (and a copy of the Shelter in Place Order is Exhibit A to this Emergency Regulation); and

WHEREAS, also on March 16, 2020, Governor Newsom issued Executive Order N-28-20, which grants cities, counties and cities and counties broad authority to enact temporary moratoria on residential and commercial evictions based on a non-payment of rent caused by the COVID-19 pandemic or the federal, state and/or local response to the COVID-19 pandemic; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, which, among other things, directs all California residents to immediately heed current State public health directives, including the March 19, 2020 directive of the State Public Health Officer to all State residents to stay home or at their place of residence, subject to certain exceptions; and

WHEREAS, Section 8634 of the Government Code provides that during a local emergency, the governing body of a political subdivision of the State "may promulgate orders and regulations necessary to provide for the protection of life and property," and that section requires that such orders "shall be in writing and shall be given widespread

publicity and notice;" and

WHEREAS, the California Attorney General has opined that when a county has declared a local emergency within its jurisdictional boundaries in an area that includes both unincorporated and incorporated territory, the county may adopt emergency rules and regulations pursuant to Section 8634 of the Government Code that will be effective in both unincorporated and incorporated areas. 62 Ops. Cal. Atty. Gen. 701 (1979).

WHEREAS, the County of San Mateo, pursuant to its police powers, has broad authority to maintain public peace, health, and safety of its community and preserve quality of life for residents throughout the County; and

WHEREAS, as a result of the State of Emergency and the subsequent prohibitions on large gatherings and the issuance of a Shelter-in-Place Order, locally and now state-wide, many County residential tenants have experienced sudden and substantial income loss due to business and school closures, layoffs or reductions in work hours and extraordinary out-of-pocket medical expenses, making it challenging for them to pay rent on time and thus, more likely to face the prospect of eviction; and

WHEREAS, housing instability threatens the public peace, health and safety as eviction from one's home can lead to homelessness; loss of community; stress and anxiety caused by the experience of displacement; interruption of the education of any children in the home; increased incidence of families moving into overcrowded conditions creating greater risk for the spread of COVID-19; as well as increased difficulty in complying with the Health Officer's Shelter-in-Place Order and a corresponding increased risk to public health and safety; and

WHEREAS, given the severe consequences to public health and safety throughout the County – in both unincorporated and incorporated areas - that would result from evictions of residential tenants during the State of Emergency, the County finds and determines that a temporary moratorium on evictions based on non-payment of rent due to COVID-19 or the government response to COVID-19 and no-fault

terminations of tenancy (unless required for the health and safety of the tenant or the landlord) is necessary to curb the spread of COVID-19 across all areas of the County and contain the virus to the greatest extent possible and thereby serve the public peace, health and safety; and

WHEREAS, the Board finds that this Emergency Regulation is reasonably related to the protection of life throughout the entire jurisdictional boundaries of the County, given the County-wide nature of the proclaimed State of Emergency; and

WHEREAS, in adopting this Emergency Regulation, the County is taking action pursuant to Executive Order N-28-20 consistent with its authority under Government Code Sections 8630 and 8634 and Chapter 2.46 of the County Ordinance Code; and

NOW, THEREFORE, the Board of Supervisors of the County of San Mateo, State of California, orders as follows:

SECTION 2. JURISDICTION

Pursuant to the County's police powers during a local emergency as set forth in Government Code Sections 8430 and 8634, and Chapter 2.46 of the County Ordinance Code, this Emergency Regulation shall apply throughout the entire geographic boundary of the County, including all incorporated cities and unincorporated areas.

SECTION 3. PROHIBITED CONDUCT.

- (a) During the State of Emergency, no Landlord shall endeavor to evict a Tenant in either of the following situations: (1) for non-payment of rent if the Tenant demonstrates that inability to pay rent is due to the COVID-19 pandemic or the federal, state or local government response to the COVID-19 pandemic, or (2) for a no-fault termination of tenancy as defined herein unless necessary for the health and safety of the Tenant, other residents of the building at which the Tenant resides, or the Landlord. Endeavors to evict that are prohibited by this Emergency Regulation include issuance of a three-day notice to pay rent or quit or a notice of no-fault termination of

tenancy after the effective date of this Emergency Regulation, or attempting to enforce a termination of tenancy through an unlawful detainer filing based on any notice issued but not yet expired prior to the effective date of this Emergency Regulation. Prior to taking any action, during the term of this Emergency Regulation, to endeavor to evict a Tenant for non-payment of rent or under any circumstance that constitutes a no-fault termination of tenancy, the Landlord must first provide the affected Tenant or Tenants with written notice of this Emergency Regulation using a form developed and approved by the San Mateo County Director of Housing, which form shall include, at a minimum (i) the amount of rent to which the Landlord is legally entitled pursuant to any written or oral agreement and under the provisions of State or local law; (ii) that this rent is due unless the Tenant promptly establishes in writing to the Landlord that the amount of rent due qualifies as a Delayed Payment, as defined in this Emergency Regulation; and (iii) that the notice from Tenant to the Landlord referenced in Section (4)(a)(1) regarding Delayed Payment must be provided to the Landlord as soon as reasonably practicable thereafter. For purposes of this Emergency Regulation, notice provided by a Tenant to the Tenant's Landlord within fourteen (14) days of receipt from the Landlord of the written notice required pursuant to this Section 3(a) shall be presumed to have been provided within a reasonable timeframe, provided that notices provided on a timeframe greater than fourteen (14) days may be deemed reasonable, depending on the totality of the circumstances.

- (b) Nothing in this Emergency Regulation shall relieve the Tenant of the obligation to pay rent as it comes due after the termination of the State of Emergency or of the liability for the unpaid rent that is a Delayed Payment, payment of which the Landlord may seek after the termination of the State

of Emergency. However, with respect to any Delayed Payment covered by this Emergency Regulation, a Tenant shall not be deemed to be in default of rent payment obligations unless the Tenant fails to tender the full amount of the Delayed Payment within 180 days of termination of the State of Emergency, or within 180 days of the date upon which an extension of this Emergency Regulation expires, whichever is later. Further, a Landlord may not charge or collect a late fee for a Delayed Payment as defined in this Emergency Regulation. Any three-day notices to pay or quit or no-fault eviction notices served prior the effective date of this Emergency Regulation but not yet expired are automatically deemed served the day following the expiration of this Emergency Regulation.

SECTION 4. DEFINITIONS.

- (a) For purposes of this Emergency Regulation, the following definitions shall apply:
- (1) “Delayed Payment” includes a payment made after the time set forth in the rental agreement between a Landlord and a Tenant or Tenants or as otherwise agreed between the parties (“Due Date”) as a result of the following: (i) a Tenant lost household income as a result of being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (ii) a Tenant lost household income as a result of a lay-off, loss of hours, loss of business, or other income reduction resulting from COVID-19 or the federal, state or local government response to COVID-19; (iii) a Tenant lost household income due to compliance with the Shelter in Place Order or a recommendation from a government agency to stay home, self-quarantine, or avoid congregating with others during the State of Emergency; (iv) a Tenant lost household income

as a result of caring for minor children affected by school, pre-school and/or childcare closures due to the State of Emergency; (v) a Tenant or a member of Tenant's household incurred substantial medical costs related to COVID-19; and (vi) a Tenant suffered any other substantial financial hardship caused directly by COVID-19 or the governmental response to the COVID-19 pandemic. To qualify as a "Delayed Payment" under this Emergency Regulation, a Tenant must notify the Landlord in writing of the Tenant's lost income and inability to pay full rent on the Due Date and provide documentation to support the claim on or before termination of the State of Emergency, or prior to the date of actual displacement of the Tenant by execution of an unlawful detainer judgment, whichever is later. For purposes of this section, "in writing" may include e-mail 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.

- (2) "No-fault termination of tenancy" as used in this Emergency Regulation shall refer to any eviction for which the notice to terminate tenancy is not based on alleged fault by the Tenant, including but not limited to eviction notices served pursuant to California Civil Code Section 1946.2(b)(2) and Code of Civil Procedure Sections 1161(1) and 1161(5).
- (3) "Tenant" shall mean 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 Residential

Rental Unit, Mobilehome or Mobilehome Space.

- (4) "Landlord" shall mean an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Residential Rental Unit, Mobilehome or Mobilehome Space, and the agent, representative, or successor of any of the foregoing.
- (5) "Mobilehome" shall mean those structures defined in California Civil Code Section 798, *et seq.*, and other forms of vehicles designed or used for human habitation, including camping trailers, recreational vehicles, motorhomes, slide-in campers, or travel trailers, that occupy a site in a Mobilehome Park.
- (6) "Mobilehome Park" shall mean any mobilehome or manufactured home park, as defined in Civil Code Sections 798.4 and 798.6.
- (7) "Mobilehome Space" shall mean the site within a Mobilehome Park intended, designed, or used for the location or accommodation of a Mobilehome and any accessory structures or appurtenances attached thereto or used therewith.
- (8) "Mobilehome Tenant" shall mean any person entitled to occupy a Mobilehome pursuant to ownership thereof or a lease or rental arrangement with the owner thereof.
- (9) "Residential Rental Unit" shall mean 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 regardless of whether the actual residential use is legally permitted or conforming under any applicable laws or regulations.

SECTION 5. APPLICATION.

This Emergency Regulation applies to eviction notices based on non-payment of rent and no-fault termination of tenancy and unlawful detainer actions based on such notices, served or filed on or after the date of adoption of this Emergency Regulation through termination of the State of Emergency.

SECTION 6. REMEDIES.

Violation of this Emergency Regulation, which is adopted pursuant to Chapter 2.46 of this Ordinance Code, among other authorities, shall be a misdemeanor. Moreover, in the event of a violation of this Emergency Regulation, an aggrieved Tenant may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages (including damages for mental or emotional distress as specified below), and any 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 in the trier of fact finds that the Landlord acted in knowing violation of or in reckless disregard of this Emergency Regulation. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to court order. The remedies available under this section shall be in addition to any existing remedies which may be available to the Tenant under local, state or federal law. In addition, this Emergency Regulation provides an affirmative defense to eviction in the event that an unlawful detainer action is commenced in violation of this Emergency Regulation.

SECTION 7. SEVERABILITY.

If any provision of this Emergency Regulation is declared invalid or unconstitutional by a court of competent jurisdiction, it is the intent of the Board that such invalid provisions(s) be severed from the remaining provisions of this Emergency Regulation.

SECTION 8. NO MANDATORY DUTY

Nothing in this Emergency Regulation is intended to create a mandatory duty on the part of the County, County employees, any Cities or City employees, to protect persons or property from a violation of the provisions of this Emergency Regulation.

SECTION 9. EFFECTIVE DATE.

This Emergency Regulation is effective immediately and shall remain in effect until termination of the State of Emergency.

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