

ORDINANCE NO. 4826
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

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**AN UNCODIFIED URGENCY ORDINANCE OF THE COUNTY OF SAN MATEO
ESTABLISHING A TEMPORARY MORATORIUM IN THE UNINCORPORATED AREA
ON EVICTION FOR NON-PAYMENT OF RENT BY SMALL BUSINESS
COMMERCIAL 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 urgency ordinance (the “Ordinance”):

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, this Board ratified and extended this declaration of local health emergency and this local health emergency remains in effect; 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 local emergency and this local emergency (“Local Emergency”) remains in effect; and

WHEREAS, on March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency related to COVID-19 effective throughout the State of California; 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 (“Original Shelter-in-Place Order”) that, among other things, directs all individuals currently living within San Mateo County to shelter in their place of residence, 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 Original Shelter-in Place-Order; and

WHEREAS, on March 31, 2020, the Health Officer issued a revised Shelter-in-Place Order (“Revised Shelter-in-Place Order”), a copy of which is attached as **Exhibit A** to this Ordinance, that extends the expiration date of the March 16, 2020 Shelter-in-Place Order to May 3, 2020 due to the significant increase in the number of positive cases, hospitalization and deaths from COVID-19, which is beginning to strain local healthcare resources; and

WHEREAS, the Revised Shelter-in-Place Order, among other things, requires that essential businesses that continue to operate scale down operations to their essential components; and

WHEREAS, also on March 16, 2020, Governor Newsom issued Executive Order N-28-20, which grants 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 imposed a statewide shelter-in-place order requiring individuals to remain in their places of residence except as needed to maintain continuity of operations of critical infrastructure, access necessities such as food, prescriptions, and healthcare, or engage in other authorized activities; and

WHEREAS, on March 23, 2020, this Board adopted an Emergency Regulation establishing a temporary, countywide moratorium on eviction for non-payment of rent by residential tenants directly impacted by the COVID-19 pandemic; and

WHEREAS, even with these actions, the number of identified COVID-19 cases continues to grow, and there are 486 confirmed cases of COVID-19, and 13 COVID-19 related deaths within the County, as of April 3, 2020, and more than 12,000 confirmed COVID-19 cases, and 267 COVID-19 related deaths in California, as of that date; and

WHEREAS, the County, pursuant to its police powers, has broad authority to maintain the public peace, health, safety, comfort, convenience, prosperity, and welfare of its community and preserve quality of life for residents throughout the unincorporated area of the County; and

WHEREAS, as a result of the Local Emergency and the prohibitions on large gatherings resulting from the Health Officer's orders, as well as the issuance of County- and statewide Shelter-in-Place Orders, there have been abrupt and severe negative impacts on the local economy and abrupt and severe negative financial impacts to local small businesses, including, but not limited to, reductions in income due to lower customer demand, forced closures, reductions in available workforce, and increased expenses; and

WHEREAS, these abrupt and severe negative impacts have directly affected, and will continue to affect, many small businesses' ability to make rent payments; and

WHEREAS, these abrupt and severe negative impacts, left unaddressed, will irreparably harm many local small businesses, the communities that they serve, and the residents they employ, and will jeopardize the public peace, health, safety, comfort, convenience, prosperity, and welfare; and

WHEREAS, a number of local small businesses that provide essential items (such as, for example, food and medical supplies) and services to County residents are deemed "essential businesses" under the County and statewide Shelter-in-Place Orders, and it is in the public interest to have them continue to operate during the Local Emergency and after the restrictions in the Shelter-in-Place Orders are lifted; and

WHEREAS, to the extent that local small businesses are not currently operating due to the Shelter-in-Place Orders, it is in the public interest to have them resume operations as soon as the local and statewide Shelter-in-Place Orders are lifted because the ongoing existence of such small businesses are essential to the protection of the public peace and the health, safety, life, property, and general welfare of County residents; and

WHEREAS, it is in the public interest to take immediate steps to mitigate the economic impacts of COVID-19 by ensuring that local small businesses, which are essential to the health and vibrancy of our local communities, survive this current pandemic; and

WHEREAS, Section 25123 of the Government Code authorizes the Board to adopt an urgency ordinance to protect the public peace, health, or safety, where there is a declaration of the facts constituting the urgency and the ordinance is adopted by a four-fifths vote of the Board; 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, where such orders are in writing and given widespread publicity and notice; and

WHEREAS, Section 101025 of the Health and Safety Code provides that the Board shall take measures as may be necessary to preserve and protect the public health in the unincorporated territory of the County, including the adoption of ordinances, regulations, and orders; and

WHEREAS, this Ordinance would establish a temporary moratorium on eviction of small business commercial tenants directly impacted by the COVID-19 pandemic; and

WHEREAS, after the temporary moratorium on eviction ends, many small business commercial tenants will continue to experience severe financial hardship as they recover from the COVID-19 pandemic and, therefore, this Ordinance also allows those small business commercial tenants who, as a direct result of COVID-19, remain unable to repay rent due while the moratorium remained in place up to 180 days after the moratorium ends to repay that rent; and

WHEREAS, this Ordinance, effective immediately, is necessary to avoid the immediate threat to the public peace, health, safety, life, property, and general welfare, as failure to adopt this Ordinance could worsen the present crisis by displacing small business commercial tenants who are unable to pay rent due to the severe COVID-19-related financial impacts described above and by making it more difficult for them to follow the health guidance of social distancing and isolation, which will put many others at risk; and

WHEREAS, in adopting this Ordinance, the County acts pursuant to Article XI, Section 7, of the California Constitution, Sections 8634 and 25123 of the Government Code, Section 101025 of the Health and Safety Code, and Executive Order N-28-20; and

WHEREAS, based upon the facts and circumstances described above, the County finds that this Ordinance is necessary as an emergency measure for preserving the public peace, health, safety, life, property, and general welfare and, therefore, it may be introduced and adopted at one and the same meeting, and shall take effect immediately upon its adoption.

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

SECTION 2. JURISDICTION.

This Ordinance shall apply in the unincorporated area of the County of San Mateo.

SECTION 3. DEFINITIONS.

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

- (a) "Commercial Real Property" shall mean any real property that is used for business, income-producing purposes, or any purpose other than for residential use;
- (b) "Owner" shall mean 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 Commercial Real Property, and includes a predecessor in interest;
- (c) "Rent" shall mean the financial obligation or monetary payment a Commercial Tenant owes an Owner for the occupancy or use of Commercial Real Property, whether by written or oral agreement;
- (d) "Tenancy" shall mean the lawful occupancy of Commercial Real Property by a Commercial Tenant and includes a lease or sublease;
- (e) "Commercial Tenant" shall mean the lawful occupant of Commercial Real Property, whether by lease or sublease, that operates a business with annual Gross Receipts of not more than Two Million Five Hundred

Thousand Dollars (\$2,500,000) for the 2019 calendar year. This \$2,500,000 figure shall be prorated in the case of a Commercial Tenant that was not operating for the entire 2019 calendar year. (Solely by way of example, a business that operated for only six months of 2019 with Gross Receipts that exceeded \$1,250,000 does not qualify as a Commercial Tenant.) For a Commercial Tenant that began operating after the 2019 calendar year but before the adoption of this Ordinance, this \$2,500,000 annual Gross Receipt figure shall be prorated for the period of time that the Commercial Tenant had been operating prior to the adoption of this Ordinance. (Again, solely by way of example, in order to qualify as a Commercial Tenant, a business that began operating in January 2020 and operated for only three months before adoption of this Ordinance cannot have Gross Receipts that exceed \$625,000 in those three months);

- (f) “Gross Receipts” shall have the same meaning as set forth in Section 6012 of the Revenue & Taxation Code.

SECTION 4. TEMPORARY MORATORIUM IMPOSED.

From and after the date of adoption of this Ordinance, a temporary moratorium on evictions of Commercial Tenants for non-payment of Rent directly caused by COVID-19, as set forth below in Section 5, is hereby established and imposed. The term of this temporary moratorium shall be from the date of adoption until May 31, 2020 (“Term”), unless extended or replaced by an affirmative vote of the Board.

SECTION 5. PROHIBITED CONDUCT DURING MORATORIUM.

- (a) During the Term of this Ordinance and any subsequent extensions of the Term adopted by the Board, an Owner of Commercial Real Property shall not recover possession of the Commercial Real Property from a Commercial Tenant for failure to pay Rent if the Commercial Tenant demonstrates that the failure to pay full Rent when due is directly related to a decrease in net business income that results from the COVID-19 pandemic or any federal, state or local government response to the COVID-19 pandemic.

- (b) This Section 5 shall apply only if a Commercial Tenant demonstrates through documentation that the Commercial Tenant (1) qualifies as a Commercial Tenant under this Ordinance and (2) is unable to pay the full Rent when due because of a decrease in net business income directly resulting from the COVID-19 pandemic or from compliance with related public health orders or guidance from federal, state, or local authorities, including, without limitation: a decrease in net business income caused by illness or an inability to work; a reduction in, or elimination of operating hours, available workforce, or consumer demand; increases in the Commercial Tenant's health care expenses, including employee health care expenses for which the Commercial Tenant is responsible, the Commercial Tenant's own health care expenses, or the health care expenses of the Commercial Tenant's family members; increases in the cost of supplies, services, or other overhead expenses necessary to carry out the Commercial Tenant's business; or temporary closure of the Commercial Tenant's business. Any medical or financial information provided to the Owner shall be held in confidence, and only used for evaluating the Tenant's claim.
- (c) Prior to taking any action, during the Term of this Ordinance, to recover possession of Commercial Real Property from a Commercial Tenant for non-payment of Rent, the Owner must first provide the affected Commercial Tenant(s) with written notice of this Ordinance using a form developed and approved by the County Manager or designee, which shall include, at a minimum (i) the amount of Rent to which the Owner 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 Commercial Tenant promptly establishes in writing to the Owner that the Commercial Tenant qualifies as a Commercial Tenant under this Ordinance and that the Commercial Tenant's inability to pay Rent is due to a reason set forth in Subsection 5(b) of this Ordinance; and (iii) that the notice and documentation from the Commercial Tenant to the Owner called for under Subsection 5(c) of this Ordinance

must be provided to the Owner as soon as reasonably practicable thereafter. For purposes of this Section, "in writing" may include e-mail or text communications to an Owner or the Owner's representative with whom the Commercial Tenant has previously corresponded by e-mail or text or who has otherwise authorized such e-mail or text communications.

- (d) For purposes of this Ordinance, notice provided by a Commercial Tenant to the Commercial Real Property's Owner within fourteen (14) days of the Commercial Tenant's receipt of the written notice required pursuant to Section 5(c) shall be presumed to have been provided within a reasonable timeframe, provided that notices provided on a timeframe of greater than fourteen (14) days may be deemed reasonable, depending on the totality of the circumstances.
- (e) An Owner's failure to comply with this Ordinance shall render void any notice of termination of Tenancy or other attempt to recover possession of Commercial Real Property from a Commercial Tenant, where the termination would be in violation of this Section 5. Any eviction notices based on non-payment of Rent served prior the effective date of this Ordinance but not yet expired are automatically deemed served the day following the expiration or termination of this Ordinance.
- (f) Nothing in this Ordinance shall relieve a Commercial Tenant of the obligation to pay Rent. Moreover, nothing in this Ordinance excuses a Commercial Tenant from paying the portion of Rent the Commercial Tenant is able to pay when due.
- (g) An action taken by an Owner to evict a Commercial Tenant or otherwise to attempt to recover possession of Commercial Real Property from a Commercial Tenant for non-payment of Rent shall not be considered a violation of this Ordinance where the action was taken before the Commercial Tenant provided the Owner notice of the Commercial Tenant's inability to pay full Rent when due and provided documentation to the Owner in accordance with this Section 5,

provided that the Owner ceases further endeavors to evict or otherwise recover possession of the Commercial Real Property upon receiving the notice and documentation from the Commercial Tenant required in this section.

- (h) Upon expiration or termination of this Ordinance, a Commercial Tenant who demonstrated an inability to pay full Rent when due because of a loss of net business income as a direct result of the COVID-19 pandemic, as required under this Ordinance, shall have up to 180 days after the expiration or termination of this Ordinance to pay all past-due Rent. The Commercial Tenant shall tender the full amount of all past-due Rent within 90 days if able to do so; however, if the Commercial Tenant remains unable to tender the full amount of all past-due Rent for the reasons set forth in this Section 5, the Commercial Tenant may provide the Owner another written notice and additional documentation to support that claim and thereby extend the payment date an additional 30 days. The Commercial Tenant may provide additional written notices and documentation every 30 days to further extend the deadline, but under no circumstances shall the Owner be required to extend the deadline beyond 180 days after the expiration or termination of this Ordinance. An Owner may not charge or collect a late fee for any portion of unpaid Rent that is delayed because a Commercial Tenant's inability to pay in accordance with this Section 5.

SECTION 6. REMEDIES.

- (a) This Ordinance, while in effect, provides an affirmative defense to any eviction or other attempt to recover possession of Commercial Real Property from a Commercial Tenant commenced in violation of this Ordinance.
- (b) Moreover, in the event of a knowing violation of this Ordinance, an aggrieved Commercial Tenant may institute a civil proceeding for injunctive relief, money damages and any other relief the Court deems appropriate. The prevailing party in such civil proceeding(s) shall be

entitled to reasonable attorney's fees and costs pursuant to court order.

- (c) The remedies available under this Section shall be in addition to any existing remedies which may be available to the Commercial Tenant under local, state, or federal law.

SECTION 7. 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 Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly).

SECTION 8. SEVERABILITY.

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

SECTION 9. AUTHORITY; URGENCY STATEMENT.

The Board hereby finds that there is a current and immediate threat to the public peace, health, safety, life, property, and welfare that warrants establishment of a temporary moratorium on evictions of Commercial Tenants for non-payment of rent due to COVID-19, as described in this Ordinance. This finding is based on all the facts recited in this Ordinance and in the materials, matters, and information provided to the Board at its regular meeting on April 7, 2020.

SECTION 10. EFFECTIVE DATE.

Based on the findings by the Board that this Ordinance is adopted consistent with Government Code Sections 8634 and 25123, and is necessary for the protection of the public peace, health, safety, life, property, and general welfare, the Ordinance shall take effect immediately upon adoption by the Board and shall remain in full force and effect until May 31, 2020, unless extended or replaced by an affirmative vote of the Board.

* * * * *

Regularly passed and adopted this 7th day of April, 2020

AYES and in favor of said ordinance:

Supervisors: DAVE PINE

CAROLE GROOM

DON HORSLEY

WARREN SLOCUM

DAVID J. CANEPA

NOES and against said ordinance:

Supervisors: NONE

President, Board of Supervisors
County of San Mateo
State of California

Certificate of Delivery

I certify that a copy of the original ordinance filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.

Assistant Clerk of the Board of Supervisors