

RESOLUTION NO. .

EMERGENCY REGULATION NO. 2020-001

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

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**EMERGENCY REGULATION OF THE COUNTY OF SAN MATEO EXTENDING
THROUGH AUGUST 31, 2020, A TEMPORARY, COUNTYWIDE MORATORIUM ON
EVICTION FOR NON-PAYMENT OF RENT BY RESIDENTIAL TENANTS DIRECTLY
IMPACTED BY THE COVID-19 PANDEMIC, AMENDED TO EXTEND THE TIME
PERIOD IN WHICH DELAYED PAYMENTS SHALL BE PAID PURSUANT TO
SECTION 8634 OF THE GOVERNMENT CODE AND CHAPTER 2.46 OF THE SAN
MATEO COUNTY ORDINANCE CODE**

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 extension of Emergency Regulation 2020-001 (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 on April 7, 2020, the Board of Supervisors further extended this local health emergency, which remains in effect throughout San Mateo County; 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 local emergency, and this local emergency remains in effect, and on April 7, 2020, the Board extended the proclamation of local emergency (“Local Emergency”), which remains in effect; and

WHEREAS, on March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency related to COVID-19 (“State of Emergency”), 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 that, among other things, directed all individuals living within San Mateo County to shelter in their place of residence (“Original Shelter-in-Place Order”), and authorized 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, several times since March 16, 2020, and most recently, on June 4, 2020, the Health Officer issued revised Shelter-in-Place Orders extending the Original Shelter-in-Place Order due to evidence of continued significant community transmission of COVID-19 within the County and throughout the Bay Area; and

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-20, which granted 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, through May 31, 2020; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-

33-20, which, imposed a State Shelter 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 24, 2020, the Board adopted the Emergency Regulation, which places a temporary Countywide moratorium on evictions from residential units for (1) non-payment of rent by tenants directly impacted by the novel coronavirus (COVID-19) pandemic; and (2) certain no-fault causes unless the eviction is necessary for the health and safety of the tenant, other residents in the tenant's building, the landlord, or the landlord's family; and

WHEREAS, on March 27, 2020, Governor Newsom issued Executive Order N-37-20, which, until May 31, 2020, extended the period of time within which a tenant must respond to unlawful detainer summons under Code of Civil Procedure section 1167 from five (5) days to 60 days, if certain criteria are met; and

WHEREAS, on April 6, 2020, the Judicial Council of California issued a statewide emergency rule that effectively halts court proceedings related to unlawful detainer actions until 90 days after Governor Newsom lifts the COVID-19 State of Emergency, except where necessary to protect public health and safety; and

WHEREAS, on May 8, 2020, Governor Newsom announced a plan to allow the limited reopening of some businesses beyond those in the category of essential critical infrastructure, which is part of the "Resilience Roadmap" for California, the multiphase plan to modify the State Shelter Order; and

WHEREAS, on May 18, 2020, the Presiding Judge of the San Mateo County Superior Court issued an emergency order related to unlawful detainer proceedings, which, among other things, prohibited the entry of default in any pending unlawful detainer action through June 12, 2020; and

WHEREAS, on May 26, 2020, the Board extended the Emergency Regulation for

30 days through June 30, 2020; and

WHEREAS, on May 29, 2020, Governor Newsom issued Executive Order N-66-20, which among other things, extended the provision in Executive Order N-28-20 granting 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 through July 28, 2020; and

WHEREAS, on June 12, 2020, the Presiding Judge of the San Mateo County Superior Court extended the emergency order prohibiting the entry of default in any pending unlawful detainer action for an additional 30 days through July 12, 2020; and

WHEREAS, on June 16, 2020, the State approved the County's request for a variance allowing the County to align with the Resilience Roadmap for California; and

WHEREAS, on June 17, 2020, the Health Officer rescinded the June 4, 2020 revised Shelter-in-Place Order and replaced it, effective immediately, with a new order aligning the County with the State Shelter Order/Resilience Roadmap, emphasizing individual behavior and the practices that businesses must follow as they resume operations, including limiting gatherings to no more than 50 people, outlining social distancing and face covering requirements, allowing for social bubbles, and requiring businesses to implement a social distancing protocol and written health and safety plans, based on evidence of continued significant community transmission of COVID-19 within the County and throughout the Bay Area; and

WHEREAS, on June 23, 2020, the Board extended the Emergency Regulation for 28 days through July 28, 2020; and

WHEREAS, on June 30, 2020, Governor Newsom issued Executive Order N-71-20, which among other things, further extends the provision in Executive Order N-28-20 granting 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 through September 30, 2020; and

WHEREAS, on July 10, 2020, the Presiding Judge of the San Mateo County Superior Court further extended the emergency order prohibiting the entry of default in any pending unlawful detainer action from July 13, 2020 through August 28, 2020; and

WHEREAS, since the State and County began re-opening, the number of identified COVID-19 cases continues to grow; and

WHEREAS, as of July 30, 2020, there have been 5,306 confirmed COVID-19 cases, and 118 COVID-19 related deaths, within the County, and 488,000 confirmed COVID-19 cases, and 8,908 COVID-19 related deaths, State-wide; and

WHEREAS, on July 13, 2020, all counties statewide were mandated to shut down indoor activities such as museums, zoos, dining and theaters, and bars, both inside and outside, were also required to close; and

WHEREAS, on July 21, 2020, the Board extended the Emergency Regulation from July 28, 2020 through August 31, 2020; and

WHEREAS, the State Department of Health is maintaining a watch list of counties that are being monitored for worsening COVID-19 trends, and if a county is on the watch list for three days or longer, the State will order them to further roll back reopening; and

WHEREAS, as of July 29, 2020, San Mateo County has been placed on the watch list, and if it remains on the watch list for three consecutive days, it will be required to roll back some of its re-opening steps; and

WHEREAS, the \$600 weekly supplemental Federal Pandemic Unemployment Compensation benefit expired on July 31, 2020 without extension or replacement; 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); and

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 Local Emergency and the subsequent prohibitions on large gatherings and the issuance of shelter-in-place and related health orders, locally and statewide, 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, when the Emergency Regulation was first adopted on March 24, 2020, it was anticipated that six months after its expiration would provide tenants sufficient time to recover from the economic effects of COVID-19 and pay any delayed rent payments due to the pandemic; and

WHEREAS, as the Local Emergency continues and the State has begun to roll back re-openings in light of worsening COVID-19 trends, many County residential tenants continue to experience adverse economic impacts due to COVID-19 and, in many instances, these economic impacts worsen; 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 Shelter-in-Place Orders and a corresponding increased risk to public health and safety; and

WHEREAS, in light of these circumstances, this Board finds that it is appropriate to afford tenants covered by the Emergency Regulation additional time upon expiration of the Emergency Regulation to pay the full amount of any delayed rent payment; and

WHEREAS, it is necessary to also recognize the measures local property owners have voluntarily taken to protect tenants during this State of Emergency and the economic impacts to those property owners as a result of COVID-19 and a temporary moratorium on evictions; and

WHEREAS, given the severe consequences to public health and safety throughout the County that would result from evictions of residential tenants during the State of Emergency, the Board finds and determines that an additional extension of the temporary moratorium on evictions based on non-payment of rent due to COVID-19 or the government response to COVID-19 and certain no-fault terminations of tenancy (unless required for the health and safety of the tenant, neighboring residents in the tenant's building, the landlord or the landlord's family) imposed by the Emergency Regulation is necessary to protect life and property; and

WHEREAS, the Board finds that this Emergency Regulation is reasonably related to the protection of life and property throughout the entire jurisdictional boundaries of the County, given the County-wide nature of the proclaimed Local Emergency and the ongoing County-wide impact of COVID-19; and

WHEREAS, in extending the repayment period for delayed rent payments permitted under the Emergency Regulation, the County is taking action pursuant to 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) Except as otherwise provided in this Emergency Regulation, through August 31, 2020, unless further extended by the County before that date ("Termination Date"), 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, the Landlord, or the Landlord's Family. 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.
- (b) 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 the 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.

- (c) 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.
- (d) Nothing in this Emergency Regulation shall relieve the Tenant of the obligation to pay rent as it comes due after the Termination Date or of the liability for the unpaid rent that is a Delayed Payment, payment of which the Landlord may seek after the Termination Date. However, with respect to any Delayed Payment covered by this Emergency Regulation, a Tenant shall have up to six (6) months after the Termination Date to tender at least one half of the total amount of Delayed Payment, and up to twelve months after the Termination Date to repay, in full, the amount of the

Delayed Payment, before the Tenant shall be deemed to be in default of rent payment obligations. Prior to initiating repayment plans of any Delayed Payment(s) with their Tenants protected under this Emergency Regulation, Landlords shall inform such Tenants of their repayment rights pursuant to this subsection. 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 termination of tenancy 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.

- (e) An action taken by a Landlord to evict a Tenant for a Delayed Payment shall not be considered a violation of this Emergency Regulation where the action was taken before the Tenant provided the Landlord notice of the Tenant's lost income and inability to pay full rent on the Due Date and provided documentation to the Landlord in accordance with this section, provided that the Landlord ceases further endeavors to evict the Tenant on this basis upon receiving the notice and documentation from the Tenant required in this section.

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 until the Termination Date; (iv) a Tenant lost household income as a result of caring for minor children affected by school, pre-school and/or childcare closures until the Termination Date; (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 within the time frame set forth in Section 3(c). above of the Tenant's lost income and inability to pay full rent on the Due Date and provide documentation to support the claim within that same time frame. If, based on the above documentation provided to the Landlord, the Tenant is able to pay some portion of rent due, that portion of the rent must still be paid and does not qualify as a Delayed Payment. 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) "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.

- (3) "Landlord's Family" shall mean the Landlord's spouse, domestic partner, children, grandchildren, parents, or grandparents.
- (4) "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.
- (5) "Mobilehome Park" shall mean any mobilehome or manufactured home park, as defined in Civil Code Sections 798.4 and 798.6.
- (6) "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.
- (7) "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.
- (8) "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). Notwithstanding the foregoing, "no-fault termination of tenancy" shall not include

evictions initiated based on the intent to occupy the residential real property by the Landlord or the Landlord's Family.

- (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.
- (10) "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.

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 the Termination Date.

SECTION 6. REMEDIES.

- (a) 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.
- (b) In addition, a knowing violation of this Emergency Regulation, which is adopted pursuant to Chapter 2.46 of this Ordinance Code, among other authorities, shall be a misdemeanor.
- (c) Moreover, in the event of a knowing 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. The prevailing party in such civil proceeding(s) shall be entitled to reasonable attorney's fees and costs pursuant to court order.

- (d) 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.

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 extension of the Emergency Regulation, which originally took effect upon adoption on March 24, 2020, is effective immediately and shall remain in effect until the Termination Date.

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