



Legislation Text

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Item #: 8a.

Urgency ordinance of the City of South San Francisco enacting a temporary moratorium on small business and nonprofit entity evictions due to nonpayment of rent where the failure to pay rent results from income loss resulting from the Novel Coronavirus (COVID-19)

WHEREAS, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named “SARS-CoV-2,” and the disease it causes has been named “coronavirus disease 2019,” abbreviated COVID-19, (“COVID-19”); and

WHEREAS, on January 30, 2020, the World Health Organization (“WHO”) declared COVID-19 a Public Health Emergency of International Concern, and on January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency; and

WHEREAS, on March 2, 2020, the County of San Mateo activated its Emergency Operations Center (EOC) to support the local County Health response to COVID-19; and

WHEREAS, on March 3, 2020, the County of San Mateo Director of Emergency Services issued a proclamation Declaring the Existence of a Local Emergency in the County and the County of San Mateo Health Officer issued a Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19); and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for a broader spread of COVID-19. The proclamation comes as the number of positive California cases rises and following one official COVID-19 death; and

WHEREAS, on March 10, 2020, the Board of Supervisors of the County of San Mateo adopted a resolution Ratifying and Extending the Declaration of a Local Health Emergency; and

WHEREAS, on March 11, 2020, the San Mateo County Health Officer issued a legal order barring unauthorized visitors and non-essential personnel from licensed skilled nursing facilities in the County; and

WHEREAS, on March 12, 2020, San Mateo County Health Officer issued an order prohibiting mass gatherings of 250 or more persons and as defined in the order, applicable to public and private gatherings and includes exceptions for houses of worship, museums, malls, hospital and medical facilities, and the normal operations of hotels and airports; and

WHEREAS, on March 12, 2020, due to an escalating increase in the number of cases in San Mateo County, under South San Francisco Municipal Code Chapter 2.72, the City Council of the City of South San Francisco adopted a resolution proclaiming a local State of Emergency related to the Novel Coronavirus 2019 (COVID-19); and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, on March 13, 2020, San Mateo County Health Officer issued a School Operations Modification Order requiring all schools to dismiss students from regular attendance; and

WHEREAS, on March 14, 2020, San Mateo County Health Officer issued an update regarding the legal order prohibiting mass gatherings, further limiting public or private gatherings of more than 50 persons as defined in the order; and

WHEREAS, on March 16, 2020, seven health officers within six Bay Area counties, including San Mateo County, took a unified step to slow the spread of novel coronavirus (COVID-19) and preserve critical health care capacity across the region by issuing a legal order directing their respective residents to shelter at home for three weeks beginning March 17, 2020. The order limits activity, travel and business functions to only the most essential needs. The guidance comes after substantial input from the U.S. Centers for Disease Control and Prevention (CDC) and best practices from other health officials around the world; and

WHEREAS, on March 16, 2020, California Governor Gavin Newsom issued Executive Order N-28-20 ordering waiver of time limitations set forth in Penal Code section 396(f) concerning protections against residential evictions, and suspending any provision of state law that would preempt or otherwise restrict a local government's exercise of its police power to impose substantive limitations on residential or commercial evictions related to COVID-19. The order further suspended statutory causes of action for judicial foreclosure, including Code of Civil Procedure section 725a *et seq.*; the statutory cause of action for unlawful detainer, Code of Civil Procedure section 1161 *et seq.*; and any other statutory cause of action that could be used to evict or otherwise eject a residential or commercial tenant or occupant of residential real property after foreclosure; and

WHEREAS, both large and smaller events across the Bay Area and in South San Francisco are cancelling or being postponed due to the County's and State's Orders and recommendations at all levels of government to cancel large gatherings amid concerns over spread of the virus. These cancellations and postponements cause loss in revenue for the event, as well as surrounding local businesses that rely on such events to bring in patrons to their businesses; and

WHEREAS, as a result of the public health emergency, the precautions recommended by state and county health officers, and in compliance with orders issued by those officers, many residents and businesses in South San Francisco have experienced or expect soon to experience sudden and unexpected income loss; and

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, and general welfare, of their citizens; and

WHEREAS, California Government Code Section 36937 authorizes the City Council to introduce and adopt an ordinance it declares to be necessary as an emergency measure to preserve the public peace, health, and safety at one and the same meeting if passed by at least four-fifths affirmative votes; and

WHEREAS, this Ordinance is a temporary moratorium intended to promote stability and fairness within the

rental market in the City during the COVID-19 pandemic outbreak, and to prevent avoidable evictions thereby serving the public peace, health, safety, and public welfare; and

WHEREAS, further economic impacts are anticipated as a result of COVID-19-related workplace closures, childcare expenditures due to school closures, health care expenses, labor shortages, and other expenditures stemming from compliance with emergency orders, leaving small business tenants vulnerable to evictions; and

WHEREAS, for the purposes of this Ordinance, a “small business” is defined as a business entity with gross receipts of less than \$25 million per year. For the purposes of this Ordinance, a “nonprofit” is an organization that is registered as a California public benefit nonprofit corporation or has received federal tax exemption under Internal Revenue Code section 501(c)(3).

WHEREAS, these economic impacts may inhibit small businesses from fulfilling their financial obligations, including rent and public utility payments such as water, sewer, and solid waste collection charges; and

WHEREAS, displacement of small businesses and nonprofits through eviction further destabilizes the local economy by causing non-essential businesses to cease operating and forcing the termination of employees who would otherwise be able to work, deepening the negative feedback loop of financial consequences of the COVID-19 pandemic; and

WHEREAS, on March 24, 2020, the County of San Mateo adopted an Emergency Regulation establishing a temporary, countywide moratorium on evictions for non-payment of rent by residential tenants directly impacted by the COVID-19 pandemic; and

WHEREAS, on March 27, 2020, California Governor Gavin Newsom issued Executive Order N-37-20, extending the deadline specified in Civil Code of Procedure section 1167 for a period of 60 days for any residential tenant who is served, while the Order is in effect, with an eviction notice for nonpayment of rent where the tenant paid rent due prior to date of the Order and the tenant notifies the landlord in writing of an inability to pay the full amount due to reasons related to COVID-19; and

WHEREAS, small businesses and nonprofits in South San Francisco are greatly affected by COVID-19 economic impacts and thus vulnerable to threat of eviction, which negatively impacts the local economy by laying off employees and ceasing to provide essential services to residents of the City; negatively impacting local health by forcing persons out of their shelter-in-place locations to prepare for business eviction, increasing potential COVID-19 exposure; and reducing the number of retail and commercial spaces available to provide essential services, also increasing potential COVID-19 exposure as a result of less retail and commercial spaces available for residents and thus less space available for social distancing; and

WHEREAS, the City Council finds and determines that regulating the relations between landlords and tenants is essential to preventing the spread of COVID-19 in the City and thereby serve the public peace, health, and safety; and

WHEREAS, an urgency ordinance that is effective immediately is necessary to avoid the immediate threat to public peace, health, and safety as failure to adopt this urgency ordinance would result in the avoidable displacement or exposure to COVID-19 of the City’s small businesses and to the amplification of the factors that lead to the spread of the virus, as described in these Recitals.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH SAN FRANCISCO, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings

The City Council of the City of South San Francisco finds that all Recitals are true and correct and incorporated herein by reference. The provisions of the Governor's issued Executive Order N-28-20 and Executive Order N-37-20, including all recitals, are incorporated herein as if fully set forth.

SECTION 2. Urgency Findings.

The City Council of the City of South San Francisco hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency measure, which finding is based upon the facts stated in the Recitals above, and in the staff report dated April 8, 2020, as well any oral and written testimony at the April 8, 2020 City Council meeting.

This Ordinance and any moratorium that may be established thereunder is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the City Council.

SECTION 3. Moratorium on Eviction of Small Businesses and Nonprofits for Nonpayment of Rent during the COVID-19 Emergency.

A temporary moratorium on eviction for non-payment of rent by small business and nonprofit entity tenants impacted by the COVID-19 crisis is imposed as follows:

- (a) During the term of this Ordinance, no landlord shall endeavor to evict a small business or nonprofit entity tenant in either of the following situations: (1) for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19 or (2) for a no-fault eviction unless necessary for the health and safety of tenants, neighbors, or the landlord.
- (b) Endeavors to evict that are prohibited by this Ordinance 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 Ordinance, 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 Ordinance.
- (c) Prior to taking any action, during the term of this Ordinance, 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: 1) written notice of this Ordinance; (2) 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; (3) 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 Ordinance; and (4) that the notice from the tenant to the landlord referenced in Section (d) regarding Delayed Payment must be provided to the landlord as soon as reasonably practicable thereafter.
- (d) For purposes of this Ordinance, notice provided by a tenant to the landlord within fourteen (14) days from the date rent is due or from the date of receipt of the landlord's written notice required pursuant to

subsection (c), whichever is later, 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.

(e) Nothing in this Ordinance shall relieve the tenant of the obligation to pay rent as it comes due after this Ordinance expires, or of the obligation for the unpaid rent that is a Delayed Payment, payment of which the landlord may seek after this Ordinance expires. However, with respect to any Delayed Payment covered by this Ordinance, a tenant shall have up to one hundred and eighty (180) days after this Ordinance expires to tender the full amount of the Delayed Payment, before the tenant shall be deemed to be in default of rent payment obligations. The tenant shall tender the full amount of the Delayed Payment in three months (90 days) if able to do so; however, if the tenant remains unable to tender the full amount of the Delayed Payment for the reasons set forth in Section (g), the tenant may provide the landlord another written notice and additional documentation to support that claim and thereby extend the payment date an additional month (30 days). The tenant may provide additional written notices and documentation each month (every 30 days) to further extend the deadline, but under no circumstances shall the landlord be required to extend the deadline beyond one hundred and eighty (180) days after this Ordinance expires. Further, a landlord may not charge or collect a late fee for a Delayed Payment as defined in this Ordinance. Any three-day notices to pay or quit or no-fault termination of tenancy notices served prior the effective date of this Ordinance but not yet expired are automatically deemed served the day following the expiration of this Ordinance.

(f) An action taken by a landlord to evict a tenant for a Delayed Payment shall not be considered a violation of this Ordinance 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 Ordinance, 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 Ordinance.

(g) (1) For purposes of this Ordinance, "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 as a result of "financial impacts related to COVID-19" including, but are not limited to, loss of income due to any of the following: (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (2) lay-off, loss of hours, reduction in staff reporting to work, reduction in opening hours, reduction in consumer demand, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19; (3) compliance with a recommendation or order from a government health authority to close non-essential business, stay home, self-quarantine, or avoid congregating with others during the state of emergency; (4) extraordinary out-of-pocket medical expenses; or (5) child care needs arising from school closures related to COVID-19.

(2) To qualify as a "Delayed Payment" under this Ordinance, a tenant must notify the landlord in writing within the time frame set forth in Section (d) 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. 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.

(3) Courts shall have the sole discretion to determine in an unlawful detainer action or other eviction action whether the tenant's written notice and documentation are sufficient to show a qualifying Delayed

Payment.

(h) For purposes of this Ordinance, “no-fault eviction” refers 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 Code of Civil Procedure sections 1161(1) or 1161(5).

(i) For the purposes of this Ordinance, a “small business” is a business entity with gross receipts of less than \$25 million per year. For the purposes of this Ordinance, a “nonprofit” is an organization that is registered as a California public benefit nonprofit corporation or has received federal tax exemption under Internal Revenue Code section 501(c)(3).

(j) This Ordinance provides an affirmative defense to eviction in the event that an unlawful detainer action is commenced in violation of this Ordinance. In addition, a knowing violation of this Ordinance shall be a misdemeanor and in the event of a knowing violation of this Ordinance, 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. 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.

(k) The limitations on evictions imposed pursuant to this Ordinance shall apply to the statutory cause of action for judicial foreclosure and any other statutory cause of action that could be used to evict or otherwise eject a small business or nonprofit entity after foreclosure, consistent with and as suspended by Executive Order N-28-20.

SECTION 4. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 5. Effective Date and Term.

This Urgency Ordinance shall become effectively immediate upon its adoption pursuant to California Government Code Section 36937 and shall remain in effect until May 31, 2020, unless further extended by the City Council before that date.

SECTION 6. Compliance with the California Environmental Quality Act.

The City Council hereby finds approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 *et seq.*, “CEQA,” and 14 Cal. Code Reg. §§ 15000 *et seq.*, “CEQA Guidelines”) under Section 15061(b)(3) of the CEQA Guidelines.

SECTION 7. Publication.

Pursuant to the provisions of Government Code Section 36933, a summary of this Ordinance shall be prepared by the City Attorney. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk’s Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting.
