ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE CITY OF CUPERTINO ENACTING AN IMMEDIATE TEMPORARY MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT FOR RESIDENTIAL TENANTS WHERE THE FAILURE TO PAY RENT RESULTS FROM INCOME LOSS RESULTING FROM THE NOVEL CORONAVIRUS (COVID-19), AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

WHEREAS, on February 3, 2020 and pursuant to Section 101080 of the California Health and Safety Code, the Santa Clara County Health Officer (the "Health Officer") declared a local health emergency throughout Santa Clara County (the "County") related to the novel coronavirus ("COVID-19"); and

WHEREAS, on February 3, 2020, and pursuant to Section 8630 of the California Government Code, the Santa Clara County Director of Emergency Services proclaimed a local emergency throughout the County related to 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; and

WHEREAS, on March 4, 2020, the County issued updated guidance for workplaces and businesses, stating that employers should take steps to make it more feasible for their employees to work in ways that minimize close contact with large numbers of people, including: 1) suspend nonessential employee travel; and 2) minimize the number of employees working within arm's length of one another, including minimizing or canceling large in-person meetings and conferences. The County also recommended that persons at higher risk of severe illness should stay home and away from crowded social gatherings of people as much as possible such as parades, conferences, sporting events, and concerts where large numbers of people are within arm's length of one another; and

WHEREAS, as of March 9, 2020, the County reported that there were 43 cases of persons testing positive for COVID-19 in the County, an increase of 23 in five days. In response, the County, pursuant to its authority under California Health and Safety Codes sections 101040, 101085, and 120175, ordered that private mass gatherings attended by one thousand persons are prohibited until March 31, 2020 (the "Order"). This Order was based upon evidence of increasing transmission of COVID-19 within the County, scientific evidence regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect vulnerable members of the public from avoidable risk of serious illness or death resulting from exposure to COVID-19; and

WHEREAS, on March 11, 2020, the City Manager for the City of Cupertino ("City") declared a local emergency throughout the City related to COVID-19; and

WHEREAS, on March 17, 2020, the Council ratified and continued the City Manager's declaration of a local emergency; and

WHEREAS, on March 13, 2020, the County issued a new Order mandating a countywide moratorium on gatherings of more than 100 persons and a conditional countywide moratorium on gatherings of between 35-100 persons. California Governor Gavin Newsom also called for bar, wineries, and brewery pubs to close. These restrictions impact how businesses operate that rely on customer patronage and will result in loss revenue for those that cannot continue to operate their businesses during this time or must operate under severe restrictions; and

WHEREAS, 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, also on March 16, 2020 the County, along with five other Bay Area counties, issued a sweeping a Shelter in Place Order; and

WHEREAS, the County Superintendent of Schools and all district superintendents in the County decided to close schools to students for three weeks beginning Monday, March 16, 2020. These school closures will cause children to have to remain at home, leading to many parents adjusting their work schedules to take time off work, whether paid or unpaid. Hourly wage earners are unlikely to be paid for time off. The inability to work due to school closures will economically strain those families who cannot afford to take off time from work to stay at home; and

WHEREAS, on March 19, 2020, Governor Newsom ordered all individuals living in the State of California to stay home or at their place of residence, with limited exceptions, to stop the spread of COVID-19; and

WHEREAS, as a result of the State of Emergency and the subsequent prohibitions on large gatherings, and shelter in place orders, many City 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, this Ordinance is a temporary moratorium intended to promote stability and fairness within the residential rental market in the City during the COVID-19 pandemic outbreak, and to prevent avoidable homelessness thereby serving the public peace, health, safety, and public welfare and to enable tenants in the City whose income and ability to work is affected due to COVID-19 to remain in their homes; and

WHEREAS, displacement through eviction destabilizes the living situation of tenants and impacts the health of Cupertino's residents by uprooting children from schools, disrupting the social ties and networks that are integral to citizens' welfare and the stability of communities within the City; and

WHEREAS, displacement through eviction creates undue hardship for tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing; and

WHEREAS, during the COVID-19 pandemic outbreak, affected tenants who have lost income due to impact on the economy or their employment are at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted; 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; and

WHEREAS, the City, 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 City; and

WHEREAS, given the severe consequences to public health and safety throughout the City that would result from evictions of residential tenants during the City-wide local health emergency, the City 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 City and contain the virus to the greatest extent possible and thereby serve the public peace, health and safety.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CUPERTINO:

SECTION 1. The uncodified Ordinance set out in the attached Exhibit A is hereby approved.

SECTION 2. Government Code section 36937(a) authorizes the adoption of 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 four-fifths of the Council.

SECTION 3. The City Council hereby finds, determines and declares that this urgency ordinance adopted pursuant to California Government Code section 36937 is necessary because 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, all of which are deemed true

and correct, as well any oral and written testimony at the March 17, 2020 and March 24, 2020 City Council meetings.

SECTION 4. 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 Section 3 of this Ordinance.

SECTION 5. The City Council of the City of Cupertino held a duly noticed public meeting on March 24, 2020, and after considering all testimony and written materials provided in connection with that meeting introduced this ordinance and waived the reading thereof.

SECTION 6. This urgency ordinance shall take effect immediately upon adoption in accordance with the provisions set forth in Government Code section 36937 and shall remain in effect for sixty (60) days, unless extended by the City Council.

IMMEDIATE TEMPORARY MORATORIUM ON EVICTIONS DUE TO
NONPAYMENT OF RENT FOR RESIDENTIAL TENANTS WHERE THE FAILURE TO
PAY RENT RESULTS FROM WAGE LOSS DUE TO THE NOVEL CORONAVIRUS
(COVID-19)

SECTION 1: Title

This Ordinance shall be known as the "COVID-19 Eviction Moratorium Ordinance."

SECTION 2: Policy and Purposes Declaration

The purposes of this Ordinance are to promote housing stability during the COVID-19 pandemic and to prevent avoidable homelessness. This Ordinance is immediately necessary for the immediate preservation of the public peace, health or safety because the COVID-19 pandemic has the potential for destabilizing the residential rental market for all of the reasons described herein. It is intended to enable tenants in the City whose employment and income have been affected by the COVID-19 pandemic to be temporarily exempt from eviction for non-payment of rent and to reduce the risk that these events will lead to anxiety, stress and potential homelessness for the affected City residents and their communities thereby serving the public peace, health, safety, and public welfare. The temporary moratorium on evictions for non-payment imposed by this Ordinance is created pursuant to the City's general police powers to protect the health, safety, and welfare of its residents and exists in addition to any rights and obligations under state and federal law.

SECTION 3: Term, Expiration

A.   This Ordinance is effective immediately and shall expire within sixty (60) days after its adoption.

B.   The moratorium will commence upon adoption by City Council of a Resolution setting forth the facts and circumstances for activation and shall expire forty-five (45) days after adoption, unless the Resolution is otherwise extended by approval of the City Council.

SECTION 4: Moratorium on Nonpayment and No Cause Terminations

A.   During the term of this Ordinance, while a moratorium is activated by Resolution of the City Council, no landlord shall endeavor to evict a tenant in either of the following situations:

(1) for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay full rent due to financial impacts related to COVID-19, including, but not limited to, tenant lost household income as a result of 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, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19; (3) compliance with a recommendation from a government health authority to 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; or

(2) for a no-fault eviction unless necessary for the health and safety of tenants, neighbors, or the landlord. A "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), 1161(5), or 1161c.

B.   A landlord who knows that a tenant cannot pay some or all of the rent temporarily for the reasons set forth above shall not file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for nonpayment of rent.

C.   Any 3-day pay or quit notice issued to a tenant shall be accompanied with written notice of the identity and mailing address of the Landlord, notice of the Moratorium and this Ordinance on a form approved by the City, and the amount of rent due.

D.   A landlord knows of a tenant's inability to pay rent within the meaning of Section 4.B if the tenant, before expiration of the 3-day pay or quit notice, notifies the landlord in writing of lost income and inability to pay full rent due to financial impacts related to COVID-19. For purposes of this Ordinance, "in writing" includes email or text communications to a landlord or the landlord's representative with whom the tenant has previously corresponded by email or text.

E.   The following documents, provided to the landlord at any point in time, shall create a rebuttable presumption that the tenant has met the documentation requirement set forth in Section 4.D, however, they are not the exclusive form of documentation demonstrating impacts to income due to COVID-19:

(1) letter from employer citing COVID-19 as a reason for reduced work hours or termination;

(2) employer paycheck stubs;

(3) bank statements.

Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim.

F.   Nothing in this Ordinance shall relieve the tenant of liability for the unpaid rent, which the landlord may seek after expiration of the Moratorium and the tenant must pay within 180 days of the expiration of the Moratorium. During that 180-day period, the protections against eviction found in Section 4 of this Ordinance apply as to any rent the tenant was unable to pay as a result of the causes set forth in Section 4.A.1.

G.   A landlord may not charge or collect a late fee or other penalty for rent that is delayed for the reasons stated in this Ordinance; nor may a landlord seek rent that is delayed for the reasons stated in this Ordinance through the eviction process.

H.   This Ordinance applies to pending nonpayment eviction notices and no-fault eviction

notices issued on or after March 11, 2020.

SECTION 5: Enforcement

A.   Non-compliance with any applicable component of this Ordinance shall constitute an affirmative defense for a tenant against any unlawful detainer action under California Code of Civil Procedure section 1161, as amended.

B.   Any landlord that fail(s) to comply with this Ordinance may be subject to civil proceedings for displacement of tenant(s) initiated by the City or tenant household for actual and exemplary damages.

C.   Whoever is found to have violated this Ordinance shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees.

D.   Treble damages shall be awarded for a landlord's willful failure to comply with the obligations established under this Ordinance.

SECTION 6: Severability

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated.

SECTION 7: Compliance with CEQA

The City Council finds that the adoption and implementation of this Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action to enact tenant protections would have no or only a de minimis effect on the environment because it helps preserve the status quo and reduce displacement. The foregoing determination is made by the City Council in its independent judgment.

SECTION 8: Publication

The City Clerk is directed to cause this ordinance to be published in the manner required by law.

Introduced and adopted as an urgency ordinance of the City of Cupertino at a special meeting of the City Council held on March 24, 2020, by the following vote:

Members of the City Council

AYES:
NOES:
ABSENT:
ABSTAIN:

SIGNED:	
_____ Steven Scharf, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	_____ Date