March 9, 2020

San José City Council  
San José City Hall  
200 East Santa Clara Street  
San José, CA 95113

Re: Agenda Item 8.3, Eviction Moratorium

Dear Mayor and City Councilmembers:

The Law Foundation of Silicon Valley writes in strong support of Mayor Liccardo’s efforts to enact a moratorium on evictions during the COVID-19 emergency. We are in unprecedented times and applaud the quick and decisive action taken by the Mayor and the City to protect its residents during this public health crisis. Additionally, we urge the Mayor and City Council to expand this eviction moratorium and enact an unconditional moratorium on non-payment of rent evictions until the emergency has passed.

At a minimum, the moratorium must include protections for tenants who do not learn of these emergency measures before their rent is due. These protections should include a requirement that landlords notify tenants of their rights during the emergency and a “right to cure” for tenants allowing them to notify their landlord of COVID-19-related financial impacts up until the date of the actual physical eviction in non-payment of rent cases.

I. The eviction moratorium should be unconditional to protect all impacted families.

As currently proposed, the moratorium would only apply to residents who can prove with written documentation that they have been affected by the COVID-19 prior to their rent being due. Many tenants will not be able to meet this requirement as tenants may not know they have such rights, especially given the fact that City services and public meetings are impacted by the emergency. Additionally, some tenants may not have access to this written documentation, including those who may be self-employed, or work in the “Gig” economy. Furthermore, some tenants may simply not be able to provide this written documentation to their landlord prior to their rent being due.

Given the severe consequence of evictions, including potential homelessness and potential for families moving into overcrowded conditions with the potential to spread the virus, we urge the City Council to consider an unconditional moratorium on evictions based on non-
payment of rent while the public health emergency remains. The City should declare that landlords may proceed with evictions or civil actions for non-payment of rent once the emergency has passed.

II. Alternatively, additional protections must be added so that eligible tenants are not denied protection for lack of knowledge or documentation.

Short of a full, unconditional moratorium on evictions, we encourage City Council to enact additional protections for tenants that would make it easier to access the moratorium’s protection from eviction if they had financial consequences related to COVID-19. We suggest requiring landlords to provide written notice of these emergency protections, so that tenants are immediately made aware that they have rights during this emergency. This notification should also include information about emergency assistance resources so that tenants are aware of the protections and resources available to them.

Additionally, the moratorium should include a “right to cure” for tenants to allow them to notify their landlord their COVID-19-related financial difficulties at any time up until their physical eviction date. This will protect eligible tenant families who merely do not provide notification to their landlord on or before the day rent is due. This right to cure should allow tenants to remain housed if they can provide documentation and access emergency rent assistance or other assistance to cover the cost of rent. For example, if a tenant cannot provide written documentation that their failure to pay rent is related to a consequence of COVID-19 prior to rent being due, and the landlord does proceed with an eviction, the tenant should be given an opportunity to cure this breach and pay rent and prevent an eviction from happening.

To implement these protections, we propose adding the following language to the Mayor’s memorandum:

A. Landlords must provide tenants notification of the emergency ordinance, and provide tenants a copy of a notice of available emergency rental assistance resources prior to issuing a notice for non-payment of rent or proceeding with an eviction process related to non-payment of rent while the moratorium is in effect.

B. Should a landlord proceed with an eviction while this moratorium is in effect, any affected tenants shall have a right to “cure” and remain in the property if the tenant provides adequate documentation, as described above, and payment of rent (either through emergency rent assistance or other services) any time prior to either their unlawful detainer trial date, or the date of the Sheriff’s Writ of Execution.

III. The COVID-19 emergency requires Council to take strong action and offer long-term support to everyone in our community throughout this emergency.

Lastly, we acknowledge that an unconditional moratorium may have some immediate negative consequences for landlords. Nevertheless, we strongly encourage the City to proceed given the severe consequences of eviction while this public health crisis is ongoing. We
additionally support the City’s efforts to work with the Apartment Association to support landlords during this moratorium, and hope that the City of San José will do all it can to minimize the long-run impacts of this crisis on the financial stability of our community.

We welcome an opportunity to discuss these comments with you. I can be reached at (408) 280-2453 or Nadia.aziz@lawfoundation.org.

Sincerely,

Nadia Aziz,
Directing Attorney

CC:
San José City Council
Rick Doyle, City Attorney
David Sykes, City Manager