



**TWENTY-EIGHTH SUPPLEMENT TO MAYORAL PROCLAMATION
DECLARING THE EXISTENCE OF A LOCAL EMERGENCY
DATED FEBRUARY 25, 2020**

WHEREAS, California Government Code Sections 8550 et seq., San Francisco Charter Section 3.100(14) and Chapter 7 of the San Francisco Administrative Code empower the Mayor to proclaim the existence of a local emergency, subject to concurrence by the Board of Supervisors as provided in the Charter, in the case of an emergency threatening the lives, property or welfare of the City and County or its citizens; and

WHEREAS, On February 25, 2020, the Mayor issued a Proclamation (the “Proclamation”) declaring a local emergency to exist in connection with the imminent spread within the City of a novel (new) coronavirus (“COVID-19”); and

WHEREAS, On March 3, 2020, the Board of Supervisors concurred in the Proclamation and in the actions taken by the Mayor to meet the emergency; and

WHEREAS, On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency to exist within the State due to the threat posed by COVID-19; and

WHEREAS, On March 6, 2020, the Health Officer declared a local health emergency under Section 101080 of the California Health and Safety Code, and the Board of Supervisors concurred in that declaration on March 10, 2020; and

WHEREAS, On March 16, 2020, the City’s Health Officer issued a stay safe at home order, Health Officer Order No. C19-07 (the “Stay Safer At Home Order”), requiring most people to remain in their homes subject to certain exceptions including obtaining essential goods such as food and necessary supplies, and requiring the closure of non-essential businesses; the Health Officer has amended the Stay Safer At Home Order to modify the ongoing restrictions; and

WHEREAS, There have been over 11,000 confirmed cases of COVID-19 within the City and 101 COVID-19-related deaths in the City; there have been more than 810,000 confirmed cases in California and more than 15,000 COVID-19-related deaths in California; and



WHEREAS, On March 16, 2020, the Governor issued Executive Order N-28-20, finding that it is necessary to promote stability among commercial tenancies to further public health and mitigate the economic pressures of the emergency. Accordingly, paragraph 2 of the Executive Order waived certain provisions of state law so that local jurisdictions may achieve these purposes. The Governor has extended paragraph 2 of the Executive Order twice, and it currently expires on March 31, 2021; and

WHEREAS, On March 18, 2020, the Mayor issued the Fourth Supplement to the Proclamation of Local Emergency, which created an eviction moratorium for commercial tenants unable to pay rent due to financial impact from the COVID-19 crisis. On April 1, 2020, the Mayor issued the Eighth Supplement to the Proclamation of Local Emergency, Section 2 of which clarified and amended certain aspects of the commercial eviction moratorium. The commercial eviction moratorium is currently set to expire on September 30, 2020; and

WHEREAS, COVID-19 has caused and is expected to continue to cause serious negative impacts on the local economy and serious negative financial impacts to local businesses, including, but not limited to, reductions in income due to lower customer demand or mandated closures and service reductions; and

WHEREAS, These serious negative impacts will irreparably harm local businesses and the residents they employ, and will jeopardize public health; and

WHEREAS, It is in the public interest to continue to take steps to ensure that local businesses can operate after the pandemic ends, including temporarily prohibiting the eviction of commercial tenants that have suffered serious financial impacts; and

WHEREAS, Disruptions caused by COVID-19 have led to the indefinite suspension of in-person classes at educational institutions in the City; and

WHEREAS, The City's educational institutions have experienced substantial decline in enrollment and resulting revenues due to the state of emergency, but remain subject to ongoing financial obligations, including those associated with the long-term lease of student housing facilities. Due to the current state of emergency, educational institutions are unable to fill available student housing beds, resulting in numerous vacant and underutilized potential housing units throughout the City; and



WHEREAS, Under the City’s Planning Code, even short-term conversion of existing student housing units to residential units may result in the loss of authorization for the underlying student housing, resulting in a permanent loss of student housing use; and

WHEREAS, Educational facilities represent a vital sector of the City economy, which has been negatively impacted by the COVID-19 virus. It is in the public interest to support educational institutions through this public health emergency and to ensure the long-term availability of facilities adequate to house the City’s student population; and

WHEREAS, The City is experiencing a significant need for housing across all sectors, including opportunities for housing of shorter occupancies. Increasing the available supply of housing during the emergency will provide greater opportunity for people to move from more crowded living situations and avoid the increased risk of exposure to the virus. Increasing housing opportunities will also promote housing stability and a reduction in homelessness, which will reduce the risk of continued transmission of the virus; and

WHEREAS, The Order in Section 2 below builds on an existing body of law and policy, including the Good Samaritan Tenancy provisions of the Rent Ordinance, that recognize the need for flexibility in our housing laws in times of crisis. The success of the Good Samaritan status has allowed the City to better utilize its limited housing stock in response to emergencies. This Order seeks to provide comparable flexibility to provide safe accommodation to as many San Franciscans as possible as the City endures COVID-19;

NOW, THEREFORE,

I, London N. Breed, Mayor of the City and County of San Francisco, proclaim that there continues to exist an emergency within the City and County threatening the lives, property or welfare of the City and County and its citizens;

In addition to the measures outlined in the Proclamation and in the Supplements to the Proclamation issued on various dates, it is further ordered that:

(1) The temporary moratorium on eviction for non-payment of rent by commercial tenants directly impacted by the COVID-19 crisis as imposed by the Fourth Supplement



to the Emergency Proclamation and amended through Section 2 of the Eighth Supplement to the Emergency Proclamation, is revised and replaced as follows:

(a) This Order applies only to commercial tenants registered to do business in San Francisco under Article 12 of the Business and Tax Regulations Code with 2019 combined worldwide gross receipts for tax year 2019 for purposes of Article 12-A-1 of the Business and Taxation Code equal to or below \$25 million. This figure shall be prorated in the case of businesses that were not operating for the entire 2019 tax year. Notwithstanding the foregoing, this Order shall not apply to any business that meets the definition of a formula retail use under Section 303.1 of the Planning Code.

(b) If a covered commercial tenant fails to make a rent payment that was due on or after March 17, 2020, then the landlord may not recover possession of the unit due to the missed or delayed payment, without first providing the tenant written notice of the violation and an opportunity to cure the violation, as set forth in subsections (c) and (d).

(c) The written notice from the landlord required under subsection (b) shall specify a cure period of at least one month from the date the tenant receives the notice, but landlords are encouraged to offer a longer period. Upon receipt of the notice, the tenant shall have the full cure period to either (1) pay the rent, or (2) provide documentation to the landlord showing that the tenant is unable to pay the rent due to a financial impact related to COVID-19. For purposes of this Order, the term “financial impact” means a substantial decrease in business income or substantial increase in business expenses that arose due to illness or other disruption, reduced open hours or reduced consumer demand, or temporary closure of the business, including temporary closure required to comply with restrictions or in response to restrictions under the shelter in place or other orders of the Health Officer. A financial impact is “related to COVID-19” if caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

(d) If the tenant provides the landlord documentation of the tenant’s inability to pay rent due to a financial impact related to COVID-19, then the cure period shall be extended by one month, so that the landlord and tenant can discuss the matter in good faith and attempt to develop a payment plan for the tenant to pay the missed rent. If the landlord and tenant cannot agree to a payment plan, then the tenant shall, on or before the new date that the cure period will expire, either (1) pay the rent, or (2) provide additional documentation of its continuing inability to pay due to a financial impact related to



COVID-19, in which case the cure period shall extend by one more month. Thereafter, the tenant may obtain additional monthly extensions of the cure period by providing updated documentation each month, so long as this Order remains in effect. If the tenant has not paid all outstanding rent at the end of the applicable cure period, or if this Order is no longer in effect, then the landlord may proceed with the eviction for non-payment.

(e) If the landlord owns less than 25,000 square feet of rentable space in the building, then the landlord may evict tenant(s) from that building due to the non-payment of rent notwithstanding subsection (b), if the landlord can demonstrate that being unable to evict would create a significant financial hardship (for example, default on debt or similar enforceable obligation) for the landlord.

(f) Failure to provide notice and/or documentation to the landlord shall not affect a tenant's ability to claim the protections of this Order as an affirmative defense in the event the landlord files an action to recover possession due to non-payment. Supporting documentation shall be required in court, though a court may in its discretion waive this requirement in circumstances where the documentation is unavailable.

(g) The moratorium imposed by this Order applies to all attempts to recover possession of a unit due to non-payment, including situations where the tenant is occupying the unit on a month-to-month periodic tenancy, holdover basis, or similar arrangement, and including where the landlord has the right to terminate or not renew the agreement at the landlord's discretion. In such situations, if a tenant misses a payment due to COVID-19, the moratorium shall apply, unless the landlord can demonstrate an alternative, non-pretextual reason for recovering possession of the unit (for example, turning the unit over to a new tenant under a previously executed agreement, planned renovations, or previous agreement to turn over the unit vacant to a new owner).

(h) The moratorium imposed by this Order also covers security deposits. This Order does not prohibit a landlord from drawing from an existing security deposit, in the event the tenant has missed a rent payment and the agreement allows the landlord to deduct rent from the security deposit, although this practice is discouraged. However, this Order does prohibit a landlord from requiring a tenant described in subdivision (a) to increase the security deposit. In addition, if an existing agreement contains a provision requiring a tenant to replenish a security deposit that the landlord has drawn from, the landlord shall not attempt to recover possession of the unit due to the tenant's inability to replenish the security deposit, if the tenant was unable to do so because of the financial



impacts of COVID-19. In such event, the landlord and tenant shall follow the notice and cure requirements set forth in subdivisions (c) and (d) with regard to replenishment of the security deposit. Any failure to replenish a security deposit as set forth in an existing agreement shall not be a basis to recover possession of the unit while this Order remains in effect.

(i) Nothing in this Order relieves a tenant of the obligation to pay rent, nor restricts a landlord's ability to recover the rent due through means other than an eviction for non-payment.

(j) This Order will remain in effect until November 30, 2020, until the Proclamation of Local Emergency is terminated, or until terminated by the Mayor or the Board of Supervisors, whichever occurs soonest. The Mayor may extend this Order by additional periods of up to two months at a time, if emergency conditions at the time warrant extension. The Mayor shall provide notice of the extension through an Executive Order posted on the Mayor's website and delivered to the Clerk of the Board of Supervisors. However, under no circumstance may any portion of this Order remain in effect beyond the date that paragraph 2 of the Governor's Executive Order N-28-20 shall expire (March 31, 2021, unless the Governor orders otherwise).

(k) The Office of Economic and Workforce Development ("OEWD") is delegated authority to adopt regulations and to develop and publish guidelines consistent with this Order, including forms and recommendations of the types of documentation that may show financial impacts related to COVID-19, and defining "significant financial hardship" for purposes of subsection (e).

(2) Notwithstanding any City law to the contrary, any lawful student housing as defined by the Planning Code that exists, or has obtained all required City permits, or is under construction in compliance with required City permits, may be offered for occupancy by a natural person for an initial stay, whether through lease, subscription, license, or otherwise, for a duration of greater than 30 consecutive days ("temporary housing use") as permitted by the terms of this Order. Use as a temporary housing use under this Order, shall not cause the housing to lose its designation as student housing under the Planning Code or its exempt status under Planning Code Section 415.3(f). Any provision in City law that limits such temporary housing use is hereby waived, and all otherwise applicable local requirements for public notice, the filing or approval of a discretionary entitlement, permit application, other approval, or the payment of fees are hereby waived, provided



that, before allowing a temporary housing use under this Order, a student housing owner or operator shall submit written notice of such temporary housing use to the Planning Department, including information about the total amount of student housing that the applicant owns or controls, the number of student housing units available for use as temporary housing use under this Order, and the address of such student housing, and any further information or graphic materials as may be required by the Planning Director or his designee. A student housing owner or operator shall notify the Planning Department when a temporary housing use is terminated and use of the site for student housing resumes.

Under this Order, (a) student housing used as a temporary housing use shall not be considered “rental units” for the purpose of the Rent Ordinance under Administrative Code Section 37.2(r); (b) individuals staying in such temporary housing shall not be considered “tenants” under Administrative Code Section 37.2(t); (c) Chapter 37 of the Administrative Code shall not apply to any unit used as a temporary housing use; (d) neither the temporary housing use nor the resumption of rentals to students shall constitute the loss of a residential unit under Planning Code Section 317; and (e) the restrictions in Planning Code Section 202.10 shall not apply to the authorized temporary housing use. Any provision of the Charter or Municipal Code authorizing an appeal to the Board of Appeals concerning authorizations under this Order is waived. This Order shall not authorize any conduct prohibited by orders or directives of the Health Officer. Authorization to use student housing for a temporary housing use shall not survive termination of this Order or termination of the local emergency, whichever occurs sooner, except that the Planning Director or the Director’s designee may authorize a temporary housing use to continue for a reasonable wind down period not to exceed 120 days to relocate individuals housed at the site. This Order shall remain in effect during the local emergency unless terminated earlier by the Mayor or the Board of Supervisors.

DATED: September 29, 2020

A handwritten signature in blue ink, reading "London Breed".

London N. Breed
Mayor of San Francisco