

ORDINANCE NO. 20-

AN URGENCY ORDINANCE OF THE CITY OF HERMOSA BEACH AMENDING ORDINANCE NO. 20-1406U TO AMEND THE TEMPORARY MORATORIUM ON FORECLOSURES AND EVICTIONS DUE TO NONPAYMENT OF RENT BY RESIDENTIAL AND COMMERCIAL TENANTS IMPACTED BY THE NOVEL CORONAVIRUS (COVID-19), AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

The City Council of the City of Hermosa Beach does ordain as follows:

SECTION 1. Findings.

- A. 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 which has been named “coronavirus disease 2019,” abbreviated COVID-19, (“COVID-19”).
- B. On March 4, 2020, the Los Angeles County Board of Supervisors and Department of Public Health declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to COVID-19.
- C. On March 4, 2020, the Governor of the State of California 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.
- D. 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.
- E. On March 16, 2020, the City Council proclaimed the existence of a local emergency to ensure the availability of mutual aid and an effective City response to the novel coronavirus (“COVID-19”).
- F. On March 16, 2020, the Governor of the State of California issued Executive Order N-28-20, authorizing local governments’ through their police power to impose substantive limitations on residential or commercial evictions for nonpayment of rent for tenants financially impacted by COVID-19 through May 31, 2020.
- G. On March 16, 2020, the Los Angeles County Public Health Officer issued an order countywide that (1) prohibits gatherings where at least 50 or more people are expected to attend, (2) puts limits and regulations on gatherings of 10-49 people, (3) limits restaurants to drive-through/takeout/delivery only, and (4) closes bars (that don’t serve food), gyms, movie theaters, etc.

- H. The Centers for Disease Control and Prevention, the California Department of Health, and the Los Angeles County Department of Public Health have all issued recommendations including but not limited to strict adherence to social distancing guidelines, canceling or postponing group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus. Other counties throughout the state have issued essentially “shelter in place” directives.
- I. On March 19, 2020, the Los Angeles County Public Health Officer issued a second countywide order, the Safer at Home for Control of COVID-19 Order, which was further clarified on March 21, 2020. This public health order prohibits all public and private group gatherings and events and requires people to stay in their homes with limited exceptions; and requires closure of all non-essential retail businesses, shopping centers, playgrounds for children, bars, nightclubs, movie theaters and all similar gathering places. The purpose of the order is to further restrict and limit gathering of persons and require closures of non-essential retail businesses in an effort to stem or slow the spread of the virus.
- J. On March 19, 2020, the Governor of the State of California, also issued Executive Order N-33-20, an Order of the State Public Health Officer ordering all individuals living in California to stay home or at their place of residence except as needed to maintain continuity of operations of outlined federal critical infrastructure sectors.
- K. As of the date of this ordinance and in order to prevent further exposure, many businesses have imposed work from home policies; meetings, events and social gatherings are cancelled as people remain at home; customers are not patronizing restaurants and stores or hiring domestic help or travelling. With more closure of all non-essential businesses and people working from home, less of the workforce will be patronizing restaurants, hotels and other retail establishments that employ hourly workers, which is expected to lead to hourly cutbacks and employee terminations.
- L. As a result of the public health emergency and the precautions recommended by health authorities, many tenants in Hermosa Beach have experienced or expect soon to experience sudden and unexpected income loss.
- M. The Governor of the State of California has stated that individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19 and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks.
- N. Most, if not all, local schools are closed to prevent further spread of COVID-19. 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

- O. The situation is unprecedented and evolving rapidly. Further economic impacts are anticipated, leaving tenants vulnerable to eviction.
- P. This Ordinance is temporary in nature and only intended to promote stability and fairness within the residential and commercial 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.
- Q. In the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary to exercise authority to adopt this ordinance related to the protection of life and property, to ensure residents can remain in their homes and prevent proliferation of homelessness and further spread of COVID-19. Displacement through eviction and foreclosure 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 lack of moving services and supplies as stores and businesses close. During the COVID-19 pandemic outbreak, affected tenants who have lost income due to impact on the economy or their employment may be 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.
- R. People experiencing homelessness are especially vulnerable to the spread of COVID-19 due to an inability to practice social distancing and a lack of access to health care. The Governor has ordered the State to take extraordinary measures to secure shelter for homeless populations during this emergency to limit exposure to and spreading of COVID-19. Widespread evictions of tenants vulnerable to eviction due to financial hardship occurring due to COVID-19 would exacerbate the challenge of sheltering the homeless during this emergency and increase the risk of spread of COVID-19.
- S. Promoting stability amongst commercial tenancies is also conducive to public health, allowing businesses to follow the advice and directives of public health officials to close, and allowing employees to avoid public contact, during times of a public health crisis without fear of imminent eviction. The state and county health officials have ordered most commercial businesses to close and restaurants are limited to take out and deliver only. The rapid, immediate and unexpected loss of revenue from closure is devastating to local businesses.

- T. The City desires to prohibit evictions due to non-payment of rent for residential and commercial tenants where the failure to pay rent results from income loss resulting from the novel coronavirus (COVID-19).
- U. The day after the Urgency Ordinance No. 20-1406U was adopted, Governor Gavin Newsom, on March 25, 2020, announced a financial relief package negotiated with participating financial institutions (“Financial Relief Package”). *See* <https://www.gov.ca.gov/2020/03/25/governor-gavin-newsom-announces-major-financial-relief-package-90-day-mortgage-payment-relief-during-covid-19-crisis/>. By agreement with participating lenders, borrowers economically impacted by COVID-19 may apply for mortgage payment forbearances for up to 90 days.
- V. Under the Financial Relief Package, for at least 60 days, participating financial institutions also will not initiate foreclosure sales or evictions, consistent with the institutions’ applicable guidelines. As of the time of the Governor’s announcement, participating financial institutions included Citigroup, JPMorgan Chase, U.S. Bank, Wells Fargo, and roughly 200 state-chartered banks, credit unions, and loan servicers. A searchable updated list of participating institutions and their contact information can be viewed by going to the California Department of Business Oversight website at <https://dbo.ca.gov/covid19-updates-fi/>.
- W. Unlike the Urgency Ordinance No. 20-1406U, the Governor’s Financial Relief Package provides protection from not only judicial foreclosure, but from foreclosure sales in general. The package, however, only applies to those mortgagors owing payments to one of the participating financial institutions, and may not include all City of Hermosa Beach (“City”) properties.
- X. The City desires to protect mortgagors within its jurisdiction whose lenders have not yet elected to participate in the Financial Relief Package from judicial foreclosures, as authorized by Governor Newsom’s Executive Order N-28-20.
- Y. This Ordinance is adopted pursuant to the City's police powers and powers afforded to the city in time of national, state, county and local emergency during an unprecedented health pandemic, such powers being afforded by the State Constitution, State law and the Chapter 2.56 of the Hermosa Beach Municipal Code to protect the peace, health, and safety of the public. The Hermosa Beach City Council finds that this ordinance is necessary for the preservation of the public peace, health, and safety of residents living within the City and finds urgency to approve this ordinance immediately based on the facts described herein and detailed in the staff report. Under Government Code Section 8634, this ordinance is necessary to provide for the protection of health, life and property.

SECTION 2. Interim Urgency Ordinance No. 20-1406U is amended in its entirety to read as follows below.

SECTION 3. Temporary Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Crisis.

A. During the period of local emergency declared in response to COVID-19, no landlord shall endeavor to evict a tenant for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19.

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 serve a notice pursuant to CCP 1161(2), 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. A landlord knows of a tenant's inability to pay rent within the meaning of this ordinance if the tenant, within 30 days after the date that rent is due, notifies the landlord in writing of lost income and inability to pay full rent due to financial impacts related to COVID-19, and provides documentation or explanation to support the claim. For purposes of this ordinance, "in writing" includes email communications to a landlord or the landlord's representative with whom the tenant has previously corresponded by email. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim.

C. For purposes of this ordinance "financial impacts related to COVID-19" include, but are 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.

D. This ordinance applies to nonpayment eviction notices and unlawful detainer actions based on such notices, served or filed on or after the date on which a local emergency was proclaimed.

E. This ordinance grants a defense in the event that an unlawful detainer action is commenced in violation of this ordinance. Violation of this ordinance shall be punishable as set forth in Chapter 2.56 of the Hermosa Beach Municipal Code.

F. Nothing in this ordinance shall relieve the tenant of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency, and the tenant must repay within six months of the expiration of the local emergency. A landlord may not charge or collect a late fee or interest 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. A landlord shall not commence an eviction during the six months after the end of the local emergency, so long as the tenant pays rent in a timely manner after the period of local emergency and is repaying the past due rent that accrued during the emergency period. Nonpayment of rent in accordance with the terms of this ordinance shall not be grounds for eviction of a tenant even after expiration of the local emergency. To the extent it applies, this ordinance is intended to be more restrictive than Civil Code Section 1946.2 by further limiting the reasons for termination of a residential tenancy during the six month repayment period. Landlords are strongly encouraged to offer payment plans to tenants after the period of local emergency, which may go beyond the six month repayment period.

upon mutual written agreement of the parties. Tenants may draw down on a security deposit during the repayment period to pay back rent and such security deposit shall be replenished by the end of the six month repayment period or longer if mutually agreed upon in writing between the parties.

G. No other legal remedies available to landlord are affected by this ordinance.

SECTION 4. Temporary Moratorium on Evictions for Non-Payment of Rent by Commercial Tenants Impacted by the COVID-19 Crisis.

A. During the period of local emergency declared in response to COVID-19, no commercial landlord shall endeavor to evict a tenant for nonpayment of rent if the tenant demonstrates that the tenant's businesses is subject to the Orders referenced in Section 1 above or is otherwise limited or closed (voluntarily or by mandate) to prevent or reduce the spread of COVID-19 and the tenant demonstrates lost income and inability to pay rent as a result of such limitation or closure or other demonstrated financial impact related to COVID-19.

B. A landlord knows of a tenant's lost income and inability to pay rent within the meaning of this Order if the tenant, within 30 days after the date rent is due, notifies the landlord in writing of the lost income and inability to pay rent due to a limitation or closure of the tenant's business related to COVID-19, with appropriate supporting documentation. If a tenant suffers only a partial loss of income, the tenant shall pay the pro-rated share of their rent that corresponds to the income they generated during the period of loss. For purposes of this ordinance, "in writing" includes email communications to a landlord or the landlord's representative with whom the tenant has previously corresponded by email. All financial information provided to the landlord shall be kept in confidence and only used for evaluating the tenant's claim or enforcing this provision.

C. This Ordinance grants a defense in the event that an unlawful detainer action is commenced in violation of this ordinance. Violation of this ordinance shall be punishable as set forth in Chapter 2.56 of the Hermosa Beach Municipal Code.

D. Nothing in this ordinance shall relieve the tenant of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency and the tenant must pay within six months of the expiration of the local emergency. A landlord may not charge or collect a late fee or interest 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 during or after the period of local emergency. A landlord shall not commence an eviction during the six months after the end of the local emergency for non-payment of rent, so long as the tenant pays rent in a timely manner after the period of local emergency and is repaying the past due rent that accrued during the emergency period. Nonpayment of rent in accordance with the terms of this ordinance shall not be grounds for eviction of a tenant even after expiration of the local emergency. Landlords are strongly encouraged to offer payment plans to tenants after the period of local emergency, which may go beyond the six month repayment period upon mutual agreement of the parties.

E. No other legal remedies available to landlord are affected by this order.

SECTION 5. Temporary Suspension on Residential and Commercial Foreclosures.

A. For mortgagors that are not eligible for financial relief under Governor Newsom's Financial Relief Package found at: <https://www.gov.ca.gov/2020/03/25/governor-gavin-newsom-announces-major-financial-relief-package-90-day-mortgage-payment-relief-during-covid-19-crisis/>, no foreclosure action against a property owner shall be initiated or proceed during the period of declared local emergency in the City of Hermosa Beach for any mortgagor with a demonstrated financial impact related to COVID-19. Nothing in this ordinance shall relieve the mortgagor of liability for any unpaid mortgage payments, which the mortgagee may seek after expiration of the local emergency and the mortgagor must pay within six months of the expiration of the local emergency, unless a different time is agreed to between the parties. A mortgagee may not charge or collect a late fee or penalty for payments that are delayed for the reasons stated in this ordinance. The respective rights and obligations of the parties in any foreclosure proceeding shall be adjudicated in the appropriate court of law with jurisdiction over the matter at the conclusion of the local emergency or rescission of this ordinance.

B. Violation of this ordinance shall be punishable as set forth in Chapter 2.56 of the Hermosa Beach Municipal Code.

C. No other legal remedies available to parties to any foreclosure proceeding are affected by this order.

4. Mortgagees are strongly encouraged to offer payment plans to mortgagors to avoid foreclosure after the period of local emergency.

SECTION 6. In accordance with the Governor of the State of California's Executive Order N-28-20, this ordinance shall remain in effect until May 31, 2020. In order to prevent inconsistencies, the Director of Emergency Services may suspend the effectiveness of any provision in this ordinance in the event that the President of the United States, Congress, Governor of the State of California or California State Legislature or other body with jurisdiction adopts an order or legislation that similarly prohibits evictions and foreclosures for failure to pay rent by individuals impacted by the COVID-19 crisis.

SECTION 7. Severability.

If any section, subsection, sentence, clause, phrase or word of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the remaining provisions of this Ordinance.

SECTION 8. Environmental Review.

The City Council finds that adoption and implementation of this ordinance is not a "project" for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) sections 15061(b)(3), and 15378(b)(5). The effect of the proposed amendment will be to maintain the status quo. No new development will result from the proposed action. No impact to the physical environment will result. The City

Council also alternatively finds that the adoption and implementation of this ordinance is exempt from the provisions of CEQA as an administrative activity by the City of Hermosa Beach, in furtherance of its police power, that will not result in any direct or indirect physical change in the environment, per sections 15061(b)(3), and 15378(b)(5) of the CEQA Guidelines, as well as CEQA Guidelines section 15064(e) (economic regulations).

SECTION 9. Urgency Declaration; Effective Date.

The City Council finds and declares that the adoption and implementation of this ordinance is necessary for the immediate preservation and protection of the public peace, health and safety as detailed above and as the City and public would suffer potentially irreversible displacement of commercial and residential tenants resulting from evictions and foreclosures for failure to pay rent during the COVID-19 crisis. During this local emergency, and in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement, to protect the City's affordable housing stock, and to prevent housed individuals from falling into homelessness, especially given state and county directives to stay at home. Promoting stability amongst commercial tenancies is also conducive to public health, allowing businesses to follow the advice and directives of public health officials to close and allowing employees to avoid public contact during times of a public health crisis without fear of imminent eviction or foreclosure. Loss of income as a result of COVID-19 may inhibit City residents and businesses from fulfilling their financial obligations, including payment of rent and mortgages. Under Government Code Section 8634 and HBMC Chapter 2.56, this ordinance is necessary to provide for the protection of life and property for the reasons set out herein. The Council therefore finds and determines that the immediate preservation of the public peace, health and safety, and protection of life and property, require that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption by four-fifths of the City Council.

SECTION 10. Certification.

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published or posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this 14th day of April, 2020.

PRESIDENT of the City Council and **MAYOR** of the City of Hermosa Beach, California

ATTEST:

APPROVED AS TO FORM:

City Clerk

Michael Jenkins, City Attorney