

ORDINANCE NO. 20-1417U

AN URGENCY ORDINANCE OF THE CITY OF HERMOSA BEACH CLARIFYING THE TEMPORARY MORATORIUM ON EVICTIONS DURING THE COVID-19 PANDEMIC TO REFLECT STATE LAW 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. The findings set forth in Ordinance No. 20-1407U, 20-1409U, and 20-0414U are still applicable and incorporated herein by reference.
- B. The City Council desires to prevent the spread of COVID-19, prevent homelessness and avoid displacement during safer at home orders and during the COVID-19 pandemic and to provide clear and limited bases on which a landlord may endeavor to evict a tenant consistent with state law.
- C. On March 27, 2020 Governor Gavin Newsom issued Executive Order N-37-20, which provides a 60-day extension for tenants to respond to an eviction complaint based on nonpayment of rent. As another indicator of the critical need for residents to remain at home, this order expressly preserves local authority to enact any public health measure that may compel an individual to remain physically present in any particular residential property.
- D. On May 13, 2020, Los Angeles County Department of Public Health issued a new Safer at Home Order for Control of COVID-19, which extended the order for people to remain in their residences except for essential business and requires all persons to practice physical distancing of at least six feet apart and wear a cloth face covering whenever they may have contact with people outside their household. On July 4, 2020, given the surge in COVID-19 cases in Los Angeles County, the Department issued a revised order urging residents to remain in their homes as much as practicable. The status of county and state health orders are still evolving daily.
- E. On June 30, 2020 Governor Newsom issued Executive Order N-71-20 extending the authorization for local governments to halt evictions of renters impacted by the COVID-19 pandemic through September 30, 2020.
- F. Effective April 6, 2020, the California Judicial Council approved temporary emergency rules, which suspends the processing of all eviction and foreclosure complaints until 90 days after the state's emergency declaration is lifted, unless necessary to protect public health and safety. The Judicial Council recently voted to sunset those rules on September 1, 2020.
- G. On September 1, 2020 Governor Newsom signed Assembly Bill 3088 (AB 3088), which enacted the COVID-19 Tenant Relief Act of 2020 ("the Act"). Among other things, this law supersedes portions of the City's temporary moratorium on residential evictions for nonpayment of rent and adopts a moratorium through January 31, 2021 so long as tenants

comply with the Act's requirements. The Act provides specific provisions for cities with existing moratorium ordinances. As a result, the City is restating its urgency ordinance for the purpose of conforming to the new state law.

- H. The intent of this Ordinance is to restate the most current provisions governing eviction protection in one consolidated ordinance, and to amend the existing ordinance to be consistent with the provisions of AB 3088. The City of Hermosa Beach has had a residential eviction moratorium in place since March 2020 and as of August 19, 2020, the repayment period was set by the new state law to start on October 1, 2020. AB 3088 allows the City to retain its six-month existing repayment period through March 31, 2021 under California Code of Civil Procedure Section 1179.05(a)(2)(C). To the extent any provisions of the City's current ordinance relating to residential eviction or foreclosure protections expire, they are to be replaced by AB 3088 and not the eviction protections set out by the County of Los Angeles that are applicable in cities without local eviction protection ordinances.
- I. This Ordinance is adopted pursuant to the City's police powers and powers afforded to the City in the time of a national, state, county and local emergency during an unprecedented health pandemic, such powers being afforded by the State Constitution, State law and HBMC Chapter 2.56 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. The Temporary Moratorium on Evictions for Non-Payment of Rent by Commercial Tenants Impacted by the COVID-19 Crisis, as most recently amended in Urgency Ordinance No. 20-144U, is amended and restated in full as follows:

A. During the moratorium period 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. For purposes of this Section 2, the moratorium period is March 16, 2020 through January 31, 2021.

B. A landlord knows of a tenant's lost income and inability to pay rent within the meaning of this Section 2 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, and provides appropriate supporting documentation within 30 days of providing the notice. If a tenant suffers only a partial loss of net income, the tenant shall pay the pro-rated share of their rent that corresponds to the net income they generated during the period of loss. For purposes of this Section 2, "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. 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 Section 2 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 Section 2 shall relieve the tenant of liability for the unpaid rent, which the landlord may seek after expiration of the moratorium period, and which tenant must pay within six months of the expiration of the moratorium period (i.e. no later than July 31, 2021). A landlord may not charge or collect a late fee or interest for rent that is delayed for the reasons stated in this Section 2; nor may a landlord seek rent that is delayed for the reasons stated in this Section 2, through the eviction process during or after the moratorium period. A landlord shall not commence an eviction during the six months after the end of the moratorium period for non-payment of rent, so long as the tenant pays rent in a timely manner after the moratorium period and is repaying the past due rent that accrued during the moratorium period. Nonpayment of rent in accordance with the terms of this Section shall not be grounds for eviction of a commercial tenant even after expiration of the moratorium 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 agreement of the parties. The security deposit may be used at any time, including during the repayment period, to pay back rent and such security deposit shall be replenished by the end of the repayment period or longer if mutually agreed upon in writing between the parties.

E. No other legal remedies available to a commercial landlord are affected by this ordinance.

SECTION 3. The Temporary Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Crisis, as most recently amended in Urgency Ordinance No. 20-144U, is clarified as needed to comport with state law and restated in full as follows:

A. With respect to residential evictions for non-payment of rent due to financial impacts from COVID-19, the following applies:

1. The "repayment period" for deferred rent that came or will come due between March 1, 2020 through January 31, 2021 (defined under the Act as "COVID-19 rental debt"), inclusive, is October 1, 2020 through March 31, 2021.

2. For the period of time of March 16, 2020 through September 30, 2020 (the "moratorium period"), no residential 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, subject to subparagraphs (a) and (b) below. A landlord shall not commence an eviction during the six months after the end of the moratorium period, so long as the tenant pays rent in a timely manner after the moratorium period and is repaying the past due rent that accrued during the moratorium period. A landlord may not charge or collect a late fee or interest for rent that is delayed for the reasons stated in this Paragraph 2. The parties may agree in writing to a longer repayment plan or reduced rental obligation in accordance with the Act.

(a) A landlord who knows that a tenant cannot pay some or all of the rent temporarily due to financial impacts related to COVID-19 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 an explanation within 30 days of the notice to support the claim. 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. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim.

(b) For purposes of this Paragraph 2, "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.

(c) Other legal remedies available to landlords are not affected by this Paragraph 2.

3. For the period of time of October 1, 2020 through January 31, 2021, tenants shall follow the preconditions for eviction protection under the Act to receive eviction protection, which include providing a declaration of hardship to their landlord within 15 days of receipt of an eviction notice and payment of partial rent (25% of all rent that came due from October 1, 2020 through January 31, 2021). Tenants shall repay the remaining rent due by the end of the repayment period.

4. Landlords are encouraged to offer payment plans to tenants, and any agreement between landlord and tenant to allow longer repayment periods or reduced rental obligations shall be in compliance with the Act.

5. Tenants may draw down on a security deposit at any time to pay back rent and such security deposit shall be replenished by the end of the repayment period on March 31, 2021 upon mutual agreement of the parties.

6. In accordance with the Act, tenants that comply with the terms of this ordinance have a defense from eviction and the corresponding rental obligations will not be deemed past due until the close of the repayment period set out above.

SECTION 4. 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 5. 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 6. 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 and extend the existing urgency ordinance for an additional period of time. 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 7. 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 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. This ordinance reflects the statewide approach to residential eviction protection, while maintaining important and impactful local provisions. The City’s existing residential moratorium period expires on September 30th and must be made to conform with state law before that date. This urgency ordinance is needed during the emergency in the interest of protecting the public health and preventing transmission of COVID-19, 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. 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 8. 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 ____ day of September 2020.

Mayor

ATTEST:

City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:

City Attorney