

ORDINANCE NO. 21-1428U

AN URGENCY ORDINANCE OF THE CITY OF HERMOSA BEACH
EXTENDING THE TEMPORARY MORATORIUM ON COMMERCIAL
EVICTIONS DURING THE COVID-19 PANDEMIC, EXTENDING
COMMERCIAL TENANT PROTECTIONS FROM PREMATURE
EVICTION BASED ON LANDLORD INTENT TO DEMOLISH OR
SUBSTANTIALLY REMODEL, 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. 20-1406U, 20-1407U, 20-1409U, 20-1414U, 20-1417U, 20-1420U, 20-1422U, and 21-1425U are still applicable and incorporated herein by reference.
- B. 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 required 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.
- C. 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. This order was further extended for commercial evictions through Executive Order N-80-20 through March 31, 2021, and again extended through Executive Order N-03-21 through June 30, 2021.
- D. Effective November 30, 2020, the County Department of Public Health enacted a new Health Officer Order requesting individuals to remain in their homes as much as possible and to avoid crowding and mingling with non-household members. The Order came after many Americans gathered and traveled over the Thanksgiving holiday in the midst of a winter surge of COVID-19 cases and deaths. According to the County Department of Public Health, daily peaks were more than double the County's peak of daily cases during the summer surge. Consequently, the region experienced a second overlapping surge in January 2021 following the winter holiday season.
- E. With Intensive Care Unit ("ICU") bed capacity rapidly decreasing throughout California, the Governor of the State of California issued a State Regional Stay at Home Order on December 3, 2020. The Order triggered greater restrictions on a region, which consisted of multiple counties, depending on that region's ICU hospital bed availability. Once a region had less than 15 percent ICU availability, all counties within the region were required to follow the State Regional Stay at Home Order within 24 hours for at least three weeks.

- F. The Southern California Region, which the City of Hermosa Beach was a part of, was at zero percent ICU capacity on January 15, 2021.
- G. On January 25, 2021, the California Department of Public Health (CDPH) ended the Regional Stay at Home Order, lifting the order for all regions statewide, including Southern California. This action allowed all counties to return to the Blueprint for a Safer Economy framework which uses color-coded tiers to indicate which activities and businesses can open based on local case rates and test positivity. It was only until recently, on March 13, 2021, that Los Angeles County moved out the strictest tier, the Purple Tier, to the less-restrictive Red Tier.
- H. On March 12, 2021, the County Department of Health issued a Revised County Health Officer Order (“Revised Order”), in light of increasing numbers of vaccinated individuals and the County’s move into the Red Tier, effective March 15, 2021. While cases are declining, the Revised Order cautions that the rate is still very high and that more contagious variants are present in the County. It strongly advises residents to remain at home as much as practicable, prohibits private gatherings of more than three households, and still mandates wearing face masks in public.
- I. The Revised Order continues to require the closure of “Higher-Risk Businesses” such as lounges, nightclubs, bars, and public entertainment venues, among others, but allows gyms to reopen indoor operations at 10% maximum capacity. Other “Lower-Risk Businesses”, such as movie theaters and restaurants, must operate at a reduced indoor capacity of 50% or less and implement the County Health Reopening Protocols applicable to their business types.
- J. The City has had a temporary moratorium on commercial evictions in place since March 16, 2020, which has been extended multiple times pursuant to its police powers and authority conferred by Executive Orders N-71-20 and N-80-20. It is set to expire on March 31, 2021.
- K. Though there is currently a statewide eviction moratorium in effect through June 30, 2021 (the COVID-19 Tenant Relief Act), it does not apply to commercial properties. Consequently, commercial tenants are left especially vulnerable to eviction during the pandemic-induced economic downturn. While specified sectors of the economy are progressively reopening as COVID-19 cases decline, it is uncertain if restrictions on commercial establishments will be reimposed. With new more transmissible variants of COVID-19 circulating in the County and a foreseeable uptick in cases after students return from their Spring Breaks, there is a very real possibility that rates may trend upward again.
- L. The City Council finds that the commercial eviction protections in this Ordinance are necessary and will serve a significant public purpose by stabilizing the City’s local economy, preventing an increase in unemployment, and supporting businesses’ compliance with government restrictions imposed to limit the spread of COVID-19.
- M. A temporary halt to the eviction of commercial tenants financially impacted by the pandemic can benefit landlords and tenants during this early phase of economic reopening. The temporary moratorium will give tenants more time and resources to invest in their

businesses so as to generate increased revenue to pay back-rent, if any, without fear of eviction. It is also critical that employers stay in business to sustain local jobs, which in turn will ensure residents have income to pay their rent and remain housed as long as possible.

- N. The purpose of this Ordinance is to extend the expiration date of the existing local commercial eviction moratorium through June 30, 2021 to be coterminous with the Governor's Executive Order N-03-21 and the COVID-19 Tenant Relief Act.
- O. 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. 21-1425U, 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 provided the tenant demonstrates that (1) 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 (2) 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 June 30, 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. Notice and documentation required under this ordinance shall be provided for each month that tenant is unable to pay rent. 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 December 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. During the moratorium period declared in response to COVID-19, no commercial landlord shall terminate a tenancy to demolish or substantially remodel the commercial real property unless and until the landlord secures all permits necessary to perform the work. For purposes of this Subsection, “substantially remodel” means to make a modification of the property that requires a permit from the City. This ordinance shall apply to tenancy termination notices, notices to quit and other eviction notices, and the unlawful detainer actions based on such notices, served or filed on or before the effective date of this ordinance; but, where the time to vacate the property has not passed.

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

SECTION 3. 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 4. 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 5. 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 6. 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 due under their commercial and residential leases. This ordinance reflects the statewide approach to residential and commercial eviction protection, while maintaining important and impactful local provisions. The City's existing commercial moratorium period expires on March 31, 2021. This urgency ordinance is needed during the ongoing emergency in the interest of protecting the public health and preventing transmission of COVID-19, especially given state and county directives to stay at home as much as practicable. Continuation of these commercial eviction protections is needed for local market stability and recovery, as there has been substantially reduced in-person shopping and increased unemployment due to government restrictions on businesses that have been in place for nearly a year. Business owners need temporary relief for the next few months more than ever as restrictions are slowly being lifted. 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 23rd day of March 2021.

Mayor

ATTEST:

City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:

City Attorney