

ORDINANCE NO. U-

AN URGENCY ORDINANCE OF THE CITY OF HERMOSA BEACH
EXTENDING THE TEMPORARY MORATORIUM ON COMMERCIAL
EVICTIONS DURING THE COVID-19 PANDEMIC 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. 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.
- C. 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. This action allowed all counties to return to the *Blueprint for a Safer Economy* framework which used color-coded tiers to indicate which activities and businesses could open based on local case rates and test positivity.
- D. Due in part to the substantially reduced rates of COVID-19 cases and deaths in the State, and with the majority of eligible Californians now fully vaccinated, on June 11, 2021, the Governor issued Executive Order N-07-21, which rescinded the *Blueprint for a Safer Economy*. To align with the Governor's order, the Los Angeles County Public Health Department issued an order that rescinded most of its operational restrictions on businesses, masking, and social distancing on June 15, 2021 ("County Order").
- E. Under the County Order, those who are fully vaccinated are not required to wear masks except in a few settings where masks are required for everyone. The unvaccinated must continue to wear masks in indoor public settings and businesses, and workplaces must comply with Cal/OSHA COVID-19 Prevention Emergency Standards.
- F. Despite the overall improved public health conditions, the pandemic is not over and several more contagious international variants are circulating in the County. The UK variant is now the predominant strain in Los Angeles County. For this reason, public health officials have raised concerns about unvaccinated people who choose not to wear masks acting as incubators of new more transmissible COVID-19 strains.
- G. There is currently a statewide eviction moratorium in effect through June 30, 2021 (the COVID-19 Tenant Relief Act), but it does not apply to commercial properties. Consequently, commercial tenants are left especially vulnerable to eviction during the economic recovery phase of the pandemic. Though the Legislature did not enact a state

moratorium on commercial evictions, the Governor issued a series of executive orders effective from March 16, 2020 through June 30, 2021, that suspends state law preemption of local commercial eviction moratorium. On June 11, 2021, the Governor issued Executive Order N-08-21 to extend these orders through September 30, 2021.

- H. The City has a local commercial eviction moratorium in place set to expire on June 30, 2021. The City Council finds that it is necessary to extend the City's moratorium through September 30, 2021, in alignment with the Governor's executive order, to prevent the irreparable closure of local businesses. With the County's reopening of the economy on June 15, many businesses are scrambling to rehire a labor force, readjust to pre-pandemic operations, and set aside extra money to repay rent in arrears. There is a high probability business owners will not be prepared to pay full rent beginning July 1, 2021, and will then be subject to eviction.
- 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 a time of economic recovery from an unprecedented and continuing 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. 21-1428U, 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 September 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 Section 2 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 March 31, 2022). 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 Section.

SECTION 3. 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 4. 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 5. 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 may suffer the irreversible closure of businesses resulting from evictions for nonpayment of rent. If the City does not immediately extend its commercial eviction moratorium, businesses will be required to pay monthly rent on time starting July 1, just as the County is reopening. Businesses need the next few months to ramp up operations and to adjust to the new market conditions to raise revenue to avoid eviction. Furthermore, during this local emergency, and in the interest of protecting the public health and preventing the emergence and spread of new variants of COVID-19, it is essential that businesses have the choice to impose restrictions more stringent than those imposed by the County. Vaccinations are not mandatory and employees may be fearful of returning to work due to potential infection to themselves and their households, particularly if they have children under 12 who cannot be vaccinated. A reduction in income as a result of self-imposed operational restrictions (e.g. limiting capacity, requiring masks) may inhibit City businesses from fulfilling their financial obligations, including payment of rent due under their commercial leases. This urgency ordinance is therefore needed in the interest of protecting the public health (including the public's mental health due to financial stress), as it will help prevent the emergence and spread of more contagious strains of COVID-19 at a time when governmental restrictions on business and social activities are being relaxed. Extended commercial eviction protections are also critical to allow time for the local market to recover, as there has been substantially reduced in-person shopping and increased unemployment due to government restrictions imposed on businesses since March 2020. 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 6. 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 22nd day of June 2021.

Justin Massey, Mayor

ATTEST:

Eduardo Sarmiento, City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:

Michael Jenkins, City Attorney