

ORDINANCE NO. 21-1146U

AN URGENCY ORDINANCE OF THE CITY OF WEST HOLLYWOOD EXTENDING THE TEMPORARY MORATORIUM ON COMMERCIAL EVICTIONS AND THE LIMITED GROUNDS TO EVICT RESIDENTIAL TENANTS AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY.

THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings.

- A. The findings set forth in Ordinance Nos. 20-1101U, 20-1103U, 20-1105U, 20-1108U, 20-1113U, 20-1124U, 21-1131U, and 21-1133U 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, related only to health and safety concerns.
- C. On March 27, 2020 Governor Gavin Newsom issued Executive Order N-37-20, which provided 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 preserved 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, the 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.
- E. On May 14, 2020, the City Manager issued Emergency Executive Order No. 2020-3, which, beginning on May 23, 2020, requires all persons to wear face coverings when out in public and away from their residence.
- F. 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 80-20 through March

31, 2021, and again extended through Executive Order N-03-21 through June 30, 2021.

- G. Effective April 6, 2020 the Judicial Council of California adopted emergency rules amending the California Rules of Court to effectively suspend all unlawful detainer (eviction) and foreclosure actions, unless necessary to protect public health and safety, until 90 days after the state's declaration of emergency is lifted. The Judicial Council voted to sunset those rules on September 1, 2020.
- H. On September 1, 2020, Governor Newsom signed AB 3088 (COVID-19 Tenant Relief Act of 2020). Among other things, this law superseded portions of the City's temporary moratorium on residential evictions for nonpayment of rent and adopted a moratorium through January 31, 2021 so long as tenants comply with the act's requirements. The act provided specific provisions for cities with existing moratorium ordinances. As a result, the City restated its urgency ordinance for the purpose of conforming to the new state law.
- I. 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. The region experienced a second overlapping surge in January 2021 following the winter holiday season.
- J. 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, that would trigger greater restrictions on a region consisting 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. The Southern California Region, which the City of West Hollywood was a part of, was at zero percent ICU capacity on January 15, 2021.
- K. 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. Los Angeles County is in the strictest tier, the Purple Tier.
- L. On January 29, 2021, Governor Newsom signed SB 91 (COVID-19 Tenant Relief Act) to amend and replace AB 3088, extending the statewide residential eviction moratorium to June 30, 2021. The act kept in place the same requirements tenants must follow to receive eviction protections but extended certain time limits of AB 3088 while shortening local repayment periods. It also created a State Rental Assistance Program that would offer landlords of lower income tenants' payment

for back-rent. A clean-up bill, AB 81, was signed in February 2020 to make technical corrections to SB 91.

- M. The Revised County Health Officer Order, dated February 18, 2021, currently in effect continues to mandate residents remain at home as much as practicable. Businesses that are to remain closed include “higher-risk businesses” such as lounges, nightclubs, bars, movie theaters, indoor onsite dining portions of restaurants, and businesses and food courts located inside indoor malls or shopping centers, among others. Other “Lower-Risk Retail Businesses” must operate at a substantially reduced indoor capacity of 25% or less.
- N. The situation is unprecedented and evolving rapidly. Further economic impacts are anticipated, leaving tenants vulnerable to eviction. News reports have cited a UCLA study last year, which determined that as many as 449,000 residential tenants in L.A. County could face eviction due to the economic slump caused by the COVID-19 pandemic and tenants' inability to pay rent. And according to a budget request from the Judicial Council for Fiscal Year 2021-2022, officials estimate 240,000 unlawful detainer cases will be filed against residential tenants this year, which is twice the cases filed in 2019-2020.
- O. The state eviction moratorium offers protections to residential tenants. It does not apply to commercial properties, leaving commercial tenants especially vulnerable to eviction during the 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 California, there is a possibility that rates may trend upward again.
- P. 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 allowing for businesses to observe government restrictions imposed to stop the spread of COVID-19. It is critical that employers stay in business to generate local jobs, which in turn will ensure residents have income to pay their rent and remain housed as long as possible.
- Q. The intent of this ordinance is to extend the expiration dates of the existing local commercial eviction moratorium and the limited grounds for evictions set forth in the existing residential eviction moratorium ordinance through June 30, 2021 to be coterminous with the Governor's Executive Order and the state residential eviction moratorium.
- R. To the extent that it applies, this ordinance is intended to be more protective than Civil Code Section 1946.2 by setting forth the permissible grounds for termination of residential tenancies.
- S. 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 2.80 of the West Hollywood Municipal

Code to protect the peace, health, and safety of the public. The West Hollywood 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. 21-1131U, 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 beginning August 1, 2020, 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. Notwithstanding and beginning on February 1, 2021, a commercial tenant that does not have capacity or other mandatory operating limitations from the state or county Health Officer to prevent or reduce the spread of COVID-19 shall pay a minimum 25% of the monthly rent due, or the pro-rated share of their rent that corresponds to the net income generated during the period of loss, whichever is more. 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. 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 2.80 of the West Hollywood 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 as follows. Commercial tenants with twenty (20) employees or fewer, shall have twelve (12) months to repay their landlords for any amounts due and owing. Commercial tenants with twenty-one

(21) or more, employees shall have six (6) months to repay their landlords for any amounts due and owing. This repayment shall begin at the conclusion of the moratorium period. Tenants and landlords are encouraged to agree on a payment plan during this moratorium period, and nothing herein shall be construed to prevent a landlord from requesting and accepting partial rent payments, or a tenant from making such payments, if the tenant is financially able to do so. 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 moratorium period. A landlord shall not commence an eviction during the repayment period 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 ordinance shall not be grounds for eviction of a tenant even after expiration of the moratorium period. Landlords are strongly encouraged to offer payment plans to tenants after the moratorium period, which may go beyond the 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.

F. This Section 2 is retroactive to March 16, 2020, the date that the City of West Hollywood declared a local emergency.

SECTION 3. Subsection A of Section 2 of the Temporary Moratorium on Evictions for Residential Tenants, as most recently amended in Urgency Ordinance No. 21-1133U, is amended and restated in full as follows:

A. Notwithstanding anything to the contrary in West Hollywood Municipal Code Title 17, and due to the declared local emergency, no landlord shall endeavor to evict a residential tenant except on the following grounds:

1. Nonpayment of rent not due to financial impacts related to COVID-19.

2. The tenant is using the rental unit for an illegal purpose and has failed to correct the condition after being given notice and an opportunity to cure. The required notice shall be in writing to the tenant and the City and shall describe in detail the nature of the illegal condition, the reason eviction is necessary, and the steps taken by the landlord to avoid eviction. The City Manager, or designee, may request additional documentation supporting the existence of the condition warranting the termination of the tenancy and the tenant's failure to cure. The City may also order suspension of the eviction process if the City Manager or designee determines that suspension is necessary in order to prevent abuse of this ordinance, with the purpose of the ordinance being to prohibit residential evictions during

the period of a health pandemic except in limited circumstances. Such determination may be appealed per Subchapter C of Chapter 6 of the Rent Stabilization Regulations.

3. The tenant has created and is maintaining a dangerous and unsanitary condition and has failed to correct the condition after being given notice and an opportunity to cure. The presence of an unauthorized animal companion or unauthorized pet in and of itself shall not constitute a dangerous and unsanitary condition. The required notice shall be in writing to the tenant and the City and shall describe in detail the nature of the dangerous and unsanitary condition, the reason eviction is necessary, and the steps taken by the landlord to avoid eviction. The City Manager, or designee, may request additional documentation supporting the existence of the condition warranting the termination of the tenancy and the tenant's failure to cure. The City may also order suspension of the eviction process if the City Manager or designee determines that suspension is necessary in order to prevent abuse of this ordinance, with the purpose of the ordinance being to prohibit residential evictions during the period of a health pandemic except in limited circumstances. Such determination may be appealed per Subchapter C of Chapter 6 of the Rent Stabilization Regulations.

4. Eviction is necessary to address an imminent and objectively verifiable threat to the health or safety of a member of the tenant's household or other residents of the rental property. The landlord shall give written notice to the tenant and the City describing in detail the nature of the dangerous and unsanitary condition, the reason eviction is necessary, and the steps taken by the landlord to avoid eviction. The City Manager, or designee, may request additional documentation supporting the existence of the condition warranting the termination of the tenancy and the tenant's failure to cure. The City may also order suspension of the eviction process if the City Manager or designee determines that suspension is necessary in order to prevent abuse of this ordinance, with the purpose of the ordinance being to prohibit residential evictions during the period of a health pandemic except in limited circumstances. Such determination may be appealed per Subchapter C of Chapter 6 of the Rent Stabilization Regulations.

B. This ordinance applies to 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.

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 2.80 of the West Hollywood Municipal Code. Serving a three-day (or 15-day) notice for evictions that are prohibited through this ordinance (or state law) during the period of this moratorium and reporting nonpayment of rent that is authorized through this ordinance to a credit agency are deemed tenant harassment under WHMC Title 17.

D. Subsection A shall be in effect through June 30, 2021. No other legal remedies available to landlords are affected by this ordinance.

SECTION 4. Subsection E of Section 2 of the Temporary Moratorium on Evictions for Residential Tenants, as most recently amended in Urgency Ordinance No. 21-1133U, remains in effect unchanged.

SECTION 5. 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 for failure to pay rent by individuals impacted by the COVID-19 crisis. The City Manager is authorized to promulgate administrative regulations to implement the purpose of this ordinance.

SECTION 6. 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 7. 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 ordinance 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 West Hollywood, 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 8. Urgency Declaration.

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. 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. 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

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individuals from falling into homelessness, especially given state and county directives to stay at home. Commercial eviction protections are necessary for local market stability, as there has been substantially reduced in-person shopping and increased unemployment due to government restrictions on businesses. Under Government Code Section 8634 and WHMC Chapter 2.80, 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 9. 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 by the City Council of the City of West Hollywood at a regular meeting held this 15th day of March, 2021 by the following vote:

AYES:	Councilmember:	D'Amico, Erickson, Shyne, Mayor Pro Tempore Meister, and Mayor Horvath.
NOES:	Councilmember:	None.
ABSENT:	Councilmember:	None.
ABSTAIN:	Councilmember:	None.

DocuSigned by:

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 LINDSEY P. HORVATH, MAYOR

ATTEST:
 DocuSigned by:


 MELISSA CROWDER, ACTING CITY CLERK

STATE OF CALIFORNIA)
 COUNTY OF LOS ANGELES)
 CITY OF WEST HOLLYWOOD)

I, MELISSA CROWDER, Acting City Clerk of the City of West Hollywood, do hereby certify that the foregoing Ordinance No. 21-1146U was duly passed, approved, and adopted by the City Council of the City of West Hollywood at a regular meeting held on this 15th day of March, 2021.

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I further certify that this ordinance was posted in three public places as provided for in Resolution No. 5, adopted the 29th day of November, 1984.

WITNESS MY HAND AND OFFICIAL SEAL THIS 16th DAY OF MARCH, 2021.

DocuSigned by:

MELISSA CROWDER

MELISSA CROWDER, ACTING CITY CLERK