

ORDINANCE NO. 21-1156U

AN URGENCY ORDINANCE OF THE CITY OF WEST HOLLYWOOD EXTENDING THE TEMPORARY MORATORIUM ON COMMERCIAL EVICTIONS AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY.

The City Council of the City of West Hollywood does 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, 21-1133U, and 21-1146U are still applicable and incorporated herein by reference.
- B. The City Council desires to assist businesses in the economic recovery phase of the COVID-19 pandemic to prevent further devastation of the local economy and revitalize commercial activity and provide a transition period as businesses gradually move toward operating without restrictions (yet still bear the burden of sixteen months of closures and reduced operations). s.
- C. 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. This resulted in a prolonged period of depressed commercial activity in the City.
- D. 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.
- E. 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.
- F. On June 11, 2021, Governor Newsom issued Executive Order N-07-21 rescinding the Stay-at-Home Order issued on March 19, 2020, and the color-tiered *Blueprint for a Safer Economy*, allowing most businesses to operate without restrictions, except in limited situations. Concurrently, the Governor issued Executive Order N-

08-21 to extend the suspension of state law preemption of local commercial eviction moratoria through September 30, 2021.

- G. The State's eviction moratorium offers eviction protections and rental assistance to residential tenants. It does not apply to commercial properties, leaving commercial tenants especially vulnerable to eviction during the economic recovery. With the reopening of the economy, many businesses will be struggling to rehire a labor force, readjust to pre-pandemic operations, and repay rent in arrears after 16 months of reduced operations and closures.
- H. Despite the improvements in the overall public health conditions, COVID-19 has not vanished and more contagious international variants are circulating in Los Angeles County. The UK variant is now the dominant strain in the County, and public health officials are urging the public to remain vigilant. With the CDC recommending that fully vaccinated people can go into most settings without face masks, the unvaccinated could also easily not wear face masks, be infected, and act as incubators of new variants.
- I. 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 granting businesses the autonomy to impose their own operational restrictions to protect their workforce and customers. 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 and have a transition period to adjust to the new normal and catch up before risking sudden eviction.
- J. The intent of this ordinance is to extend the expiration date of the existing local commercial eviction moratorium through September 30, 2021 to be align with the Governor's Executive Order.
- K. 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. 21-1146U, 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 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. 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 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 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 6. 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 tenants resulting from evictions for failure to pay their regular monthly rent during the reopening phase of the COVID-19 crisis. 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 that are more transmissible, it is essential to that businesses have the choice to impose restrictions more stringent than those imposed by the state. Vaccinations are not mandatory and many employees are fearful of returning to work due to potential infection to themselves and their households, particularly if they have children under 12 because they cannot be vaccinated. Loss of income as a result of COVID-19 precautions may inhibit City businesses from fulfilling their financial obligations, including payment of rent due under their commercial leases. Failure to extend the commercial eviction moratorium would require businesses to immediately pay monthly rent on time starting July 1, just as the State is reopening. Businesses need the next few months to ramp up operations and adjust to the new market conditions to raise revenue so as to avoid eviction. A wave of mass evictions would be devastating to the local and regional economy. This urgency ordinance is needed during the emergency in the interest of protecting the public health (including the public’s mental health) and to prevent the emergence and spread of more contagious strains of COVID-19 during the relaxation of governmental restrictions on business and social activities. Commercial eviction protections are necessary for to allow time for the local market to recover, as there has been substantially reduced in-person shopping and dining and increased unemployment due to government restrictions on businesses since March 2020, and to avoid unnecessary business closures. 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 7. 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 21<sup>st</sup> day of June, 2021 by the following vote:

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

DocuSigned by:  
  


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 LINDSEY P. HORVATH, MAYOR

ATTEST:

DocuSigned by:

*Melissa Crowder*

MELISSA CROWDER, CITY CLERK

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

I, MELISSA CROWDER, City Clerk of the City of West Hollywood, do hereby certify that the foregoing Ordinance No. 21-1156U was duly passed, approved, and adopted by the City Council of the City of West Hollywood at a regular meeting held on this 21<sup>st</sup> day of June, 2021.

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

WITNESS MY HAND AND OFFICIAL SEAL THIS 23<sup>rd</sup> DAY OF JUNE, 2021.

DocuSigned by:

*Melissa Crowder*

MELISSA CROWDER, CITY CLERK