



# Council Agenda Report

To: Mayor Farrer and the Honorable Members of the City Council

Prepared by: Trevor Rusin, Assistant City Attorney

Date prepared: May 26, 2020 Meeting date: May 29, 2020

Subject: Extension of Temporary Moratorium on Foreclosures and Residential and Commercial Evictions for Nonpayment of Rent During COVID-19 Pandemic

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**RECOMMENDED ACTION:** Adopt Urgency Ordinance No. 464U extending the temporary moratorium on foreclosures and evictions due to nonpayment of rent by residential and commercial tenants impacted by the COVID-19 virus, finding the same exempt from the California Environmental Quality Act and setting forth the facts constituting such urgency; a four-fifths vote of the City Council is required and, if approved, it will take effect immediately.

**FISCAL IMPACT:** There is no fiscal impact associated with the recommended action.

**WORK PLAN:** This item was not included in the Adopted Work Plan for Fiscal Year 2019-2020. This item is part of emergency operations.

**BACKGROUND:** On March 4, 2020, Los Angeles County declared a local and public health state of emergency in response to the increased spread of COVID-19, the disease caused by the novel coronavirus. On March 12, 2020, California Governor Gavin Newsom declared a State of Emergency in response to the increased spread of COVID-19. The President of the United States has also declared a federal emergency as a result of the spread of the COVID-19.

On March 16, 2020, Governor Newsom promulgated Executive Order N-28-20, which authorized local governments to exercise their police power to impose substantive limitations on foreclosures and residential and commercial evictions based on nonpayment of rent when the nonpayment of rent arose out of a substantial decrease in household or business income due to the effects of COVID-19.

On March 19, 2020, the Governor of the State of California, also issued Executive Order N-33-20, an Order of the State Public Health Officer ordering all individuals living in

California to stay home or at their place of residence except as needed to maintain continuity of operations of outlined federal critical infrastructure sectors.

On March 19, 2020, the Los Angeles County Public Health Officer issued a second countywide order, the Safer at Home for Control of COVID-19 Order, which was further clarified on March 21, 2020 and again on April 10, 2020 and May 13th. This public health order prohibits all public and private group gatherings and events and requires people to stay in their homes with limited exceptions. The order requires closure of all non-essential retail businesses, shopping centers, playgrounds for children, bars, nightclubs, movie theaters and all similar gathering places. The purpose of the order is to further restrict and limit gathering of persons and require closures of non-essential retail businesses in an effort to stem or slow the spread of the virus.

The restrictions have been in place for two months. According to a recent report from Los Angeles County, the Stay at Home Orders are likely to be in place for another three months. Restrictions are constantly evolving to prevent the spread of COVID-19 but also to relieve some of the economic burdens resulting from the restrictions. As of the drafting of this report, the Governor has authorized some limited retail and outdoor recreation venues to reopen and the County of Los Angeles updated its Safer at Home Order on May 13, 2020 to begin the move into stage 2 of the County's Roadmap to Recovery.

On March 14, 2020, the City of Malibu's Director of Emergency Services proclaimed the existence of a local emergency, and on March 16, 2020, the City Council declared a state of local emergency in response to the COVID-19 global pandemic and imposed certain orders in response to the pandemic. On April 13, 2020, the City Council adopted Urgency Ordinance No. 463U, which temporarily suspended foreclosures and residential and commercial evictions for nonpayment of rent resulting from COVID-19-related financial impacts through May 31, 2020. When the ordinance was enacted, the Los Angeles County Department of Public Health reported 13,734 confirmed cases across all areas of the County, including 464 deaths. As of May 23, 2020, those numbers had risen to 43,491 reported cases, and 1,958 deaths. The recitals and findings for the City's urgency ordinances remain applicable here.

The degree of health and economic impact is unprecedented and unknown. Unemployment numbers are higher than ever with millions of people filing for unemployment and the City has a tremendous interest in preventing widespread homelessness and supporting the purpose behind safer-at-home directives issued by federal, state and county health authorities.

## **EVICTIION PROTECTION THROUGHOUT THE STATE**

In addition to the City's local ordinances, eviction protection has been provided from other sources.

The Governor's Executive Order N-28-20 ("Order 28-20"), effective March 16, 2020, through May 31, 2020, creates statewide protections against evictions. Order No. 28-20 authorizes local governments to halt evictions in two ways. First, it suspends the preemptive effect of applicable state laws on local regulation of residential and commercial evictions. Notwithstanding state preemption, through May 31, 2020, the order permits cities to use their police power to impose restrictions on residential and commercial tenant evictions resulting from certain financial impacts of COVID-19, namely reduced income or out-of-pocket medical expenses caused by COVID-19. The order also temporarily protects tenants from eviction by authorizing cities to enact legislation that suspends judicial foreclosures (Code Civ. Proc. §§ 725a et seq.), unlawful detainers (Code Civ. Proc. §§ 1161 et seq.), "and any other statutory cause of action that could be used to evict or eject a residential or commercial tenant after foreclosure." Importantly and consistent with the order, the City's ordinance does not relieve a tenant of the obligation to pay rent or restrict a landlord's ability to recover rent due after the period of emergency. Consistent with the order, the City's ordinance is also in effect through May 31, 2020.

The next executive order affecting evictions was issued by Governor Newsom on March 27, 2020. Executive Order N-37-20, extends the deadline to respond to an eviction complaint by 60 days for any tenant who, from March 27 through May 31, 2020 is served a complaint seeking to evict the tenant for nonpayment of rent. To receive the extension, the tenant must satisfy specified requirements. The tenant must be current on rent payments at the time Order 37-20 was issued. The tenant must also notify the landlord in writing before rent is due, or no later than seven days after it is due, that he or she cannot pay the entire rent for financial reasons related to COVID-19. The City's ordinance says that the tenant must provide notice within 30 days after rent is due. The tenant's inability to pay must be verified with documentation (e.g. termination notice, pay stub, medical bills, etc.), but it need not be provided until the payment of back-due rent. Protected tenants are still obligated to repay the entire rent owed to landlords in a timely manner and will be subject to eviction enforcement once the executive order expires. The order also prohibits, through May 31, the Sheriff from enforcing any writ of possession to evict protected tenants.

Comparing the two orders, Order 37-20 delays nonpayment evictions without requiring cities to adopt local legislation mirroring the order. In effect, Order 28-20 gives local governments the option to suspend evictions, halt court actions that could result in eviction, and afford renters the ability to pay rent at a later date but does not require them to do so. Order 37-20, on the other hand, applies uniformly across the state and requires no local legislation. Tenants facing financial difficulties as a result of COVID-19 are still subject to unlawful detainer actions (unless a local ordinance pursuant to Order 28-20 prohibits them) and may be evicted after May 31, 2020.

Effective April 6, 2020, the California Judicial Council also approved eleven temporary emergency rules to be added to the California Rules of Court. Emergency Rule 1, in essence, prevents unlawful detainer actions filed on or after April 6 to proceed, bars

entry of default for any defendant who failed to appear in an action filed on or after April 6 (unless excused under an executive order), and sets or continues trial dates for at least 60 days, unless contrary to public health and safety. The rules remain effective until 90 days after the Governor lifts the state of emergency. Thus, tenants have some statewide relief from evictions generally.

On April 14, 2020, the County Board of Supervisors amended its county eviction moratorium. The resolution extends the county eviction moratorium to *incorporated* areas of the County; but, exempts “cities that have local eviction moratoria in place.” The County’s resolution extends the repayment period to one year and is effective through June 30th. The County’s resolution requires notice to landlords of inability to pay within 7 days (the City’s ordinance allows 30 days). The County’s resolution also prohibits no-fault evictions through June 30, 2020. The County’s resolution does not address foreclosures.

There is also an array of eviction protection bills pending in the state legislature for consideration now that the legislature is back in session.

We do not know if or when the Governor’s eviction orders will be extended beyond May 31. If the City Council desires to provide more assurances to renters that they will not be evicted after May 31, 2020, the proposed ordinance is intended to do that. The City’s authority for doing so is untested.

The web of regulation is complicated and this situation is unprecedented. The applicable rules continue to change and evolve and we are monitoring the situation closely. As of the time of writing this report, we do not know if the Governor’s Orders will be extended; however, it is likely that the state and local emergency period will extend well beyond May 31. As such, the stated justification for preventing mass commercial and residential evictions will remain beyond May 31, 2020.

Even if evictions are not being processed through the courts, the value of the City’s ordinance is the repayment protocols after the local emergency. The practical reality of this situation is that financially impacted tenants will not be able to repay back rent the day the emergency order is lifted and repayment provisions advance the stated purpose of the ordinance (and the state orders). The proposed ordinance separates the repayment provisions (which do not expire) from the moratoria provisions (extending those from May 31 to July 30). Given all of the interests at play for both the landlord and tenants, the City may consider extending moratoria in the local ordinance. However, the City is well-advised to proceed cautiously and slowly in its efforts to protect commercial and residential tenants and manage any risk associated with regulating evictions in the time of a global health pandemic.

Staff will continue to assess the status of the local emergency and the efficacy of the ordinance in relationship to the state and county protections. This will allow the City to revise local regulations as necessary as federal, state and county regulations evolve.

This is a complex and unprecedented area of the law, and the legal analysis underlying these ordinances should also be revisited periodically. The attached ordinance proposes to extend the moratoria for two months and eliminate the expiration date as to the repayment provisions.

ATTACHMENT: Ordinance No. 464U

## ORDINANCE NO. 464U

AN URGENCY ORDINANCE OF THE CITY OF MALIBU EXTENDING THE TEMPORARY MORATORIUM ON FORECLOSURES AND EVICTIONS DUE TO NONPAYMENT OF RENT BY RESIDENTIAL AND COMMERCIAL TENANTS IMPACTED BY THE COVID-19 VIRUS, FINDING THE SAME EXEMPT FROM CEQA AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

The City Council of the Malibu does ordain as follows:

### SECTION 1. Findings.

- A. The findings set forth in Ordinance No. 463U, Enacting a Temporary Moratorium on Foreclosures and Evictions due to Nonpayment of Rent by Residential and Commercial Tenants Impacted by the Novel Coronavirus (COVID-19) are still applicable and incorporated herein by reference.
- B. The City Council desires to extend the Malibu commercial and residential eviction and foreclosure moratorium urgency ordinance to prevent uncertainty and confusion for tenants associated with multiple state and county regulations governing evictions during the COVID-19 pandemic and to provide certainty for tenants on the processes in place to repay deferred rent.
- C. 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 Chapter 2.52 of Title 2 of the Malibu Municipal Code to protect the peace, health, and safety of the public. The Malibu 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 reports of this ordinance and Ordinance No. 463U. Accordingly and under Government Code Section 8634, this ordinance is necessary to provide for the protection of health, life and property.

### SECTION 2. Section 5 of Ordinance No. 463U is amended in its entirety to read as follows:

The moratoria provisions set forth in sections 2(A) and (B), 3(A), and 4(A) of Ordinance No. 463U shall remain in effect until July 30, 2020; the remaining provisions shall remain in effect unless otherwise amended or terminated. 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 or other protections provided in this ordinance. This Ordinance shall be retroactive to March 14, 2020, when

the local emergency was declared so long as the tenant or mortgagor were in possession of the property in question at the time Ordinance No. 463U was passed.

SECTION 3. Except as amended by Section 2 above, Ordinance No. 463U remains in full force and effect.

SECTION 4. Severability.

If any section, subsection, sentence, clause, phrase or word of this Chapter 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 month. 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 Malibu, 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 during a time of abnormal economic conditions, especially given state and county directives to stay at home. Similarly, stability amongst commercial tenancies is also necessary to protect the 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.

By extending the local eviction and foreclosure moratorium ordinance through June 30, 2020, the City Council also desires to prevent uncertainty and confusion for tenants associated with multiple state and county regulations governing evictions during the COVID-19 pandemic and to provide certainty for tenants on the processes in place to repay deferred rent after the initial period of

moratorium. The length of the period of federal, state and local emergency is unknown at this time and it is prudent to revisit these emergency response measures as the unprecedented situation and legal landscape evolve. The initial Urgency Ordinance is already in place and these amendments require immediate action so the ordinance does not expire. Under Government Code Section 8634 and Chapter 2.52 of Title 2 of the Malibu Municipal Code, 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 this \_\_\_\_ day of \_\_\_\_ 2020.

\_\_\_\_\_  
KAREN FARRER, Mayor

ATTEST:

\_\_\_\_\_  
HEATHER GLASER, City Clerk  
(seal)

Date: \_\_\_\_\_

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED  
BY THE CITY ATTORNEY'S OFFICE  
\_\_\_\_\_  
CHRISTI HOGIN, City Attorney