

ORDINANCE NO. U-1189-20

**AN URGENCY ORDINANCE OF THE CITY OF AVALON
EXTENDING MEASURES THAT WILL FURTHER ADDRESS THE
COVID-19 EMERGENCY AND HELP PROTECT THE HEALTH,
SAFETY AND WELFARE OF CITY OF AVALON RESIDENTS AND
VISITORS AND SETTING FORTH THE FACTS
CONSTITUTING SUCH URGENCY**

The City Council of the City of Avalon does ordain as follows:

SECTION 1. Findings.

- A. International, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named “SARS-CoV-2,” and the disease it causes which has been named “coronavirus disease 2019,” abbreviated COVID-19, (“COVID-19”).
- B. On March 4, 2020, the Los Angeles County Board of Supervisors and Department of Public Health declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to COVID-19.
- C. On March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for a broader spread of COVID-19.
- D. On March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19.
- E. On March 16, 2020, the City Council proclaimed the existence of a local emergency to ensure the availability of mutual aid and an effective City response to the novel coronavirus (“COVID-19”).
- F. On March 16, 2020, the Governor of the State of California issued Executive Order N-28-20, authorizing local governments’ through their police power to impose substantive limitations on residential or commercial evictions for nonpayment of rent for tenants financially impacted by COVID-19 through May 31, 2020.
- G. On March 16, 2020, the Los Angeles County Public Health Officer issued an order countywide that (1) prohibits gatherings where at least 50 or more people are expected to attend, (2) puts limits and regulations on gatherings of 10-49

people, (3) limits restaurants to drive-through/takeout/delivery only, and (4) closes bars (that don't serve food), gyms, movie theaters, etc.

- H. On March 17, 2020, the City Council proclaimed the existence of a local emergency to assist in a coordinated public health response to reduce transmission and illness severity, provide assistance to health care providers, coordinate and mitigate public services that may be disrupted from this emergency, and mitigate any other effects of this emergency on the citizens of the City and allow the City of Avalon to seek reimbursement for costs associated with the emergency and response to the novel coronavirus ("COVID-19").
- I. The Centers for Disease Control and Prevention, the California Department of Health, and the Los Angeles County Department of Public Health have all issued recommendations including but not limited to strict adherence to social distancing guidelines, canceling or postponing group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus. Other counties throughout the state have issued essentially "shelter in place" directives.
- J. 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. This public health order prohibits all public and private group gatherings and events and requires people to stay in their homes with limited exceptions; and 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.
- K. 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.
- L. The Avalon City Council adopted Urgency Ordinances enacting a temporary moratorium on evictions due to nonpayment of rent by residential and commercial tenants impacted by the novel coronavirus (covid-19), preventing evictions, enacting a curfew and loitering restriction and prohibition on certain transient occupancies, including restrictions on the use of moorings in Avalon Harbor.
- M. As of the date of this Ordinance, 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. The restrictions have been in place for nearly

two months and according to a recent report from Los Angeles County, the Stay at Home Orders are likely to be in place for another three months.

- N. As a result of the public health emergency and the precautions recommended by health authorities, many tenants in Avalon have experienced or expect soon to experience sudden and unexpected income loss.
- O. The Governor of the State of California has stated that individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19 and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks.
- P. Schools are closed to prevent further spread of COVID-19. These school closures will cause children to have to remain at home, leading to many parents adjusting their work schedules to take time off work, whether paid or unpaid. Hourly wage earners are unlikely to be paid for time off. The inability to work due to school closures will economically strain those families who cannot afford to take off time from work to stay at home.
- Q. The situation is unprecedented and evolving rapidly. Further economic impacts are anticipated, leaving tenants vulnerable to eviction, which was the basis for the moratorium on evictions. Adding increased financial burden through rental increases at a time of extreme economic strain will further exacerbate the economic strain on residents and further threaten the public peace, health, safety and welfare by threatening housing security and increasing the potential for homelessness, which can exacerbate the vulnerability to COVID-19 exposure.
- R. Reducing spread of COVID-19 is particularly crucial in Avalon, an island with only one small hospital, the Catalina Island Medical Center. Measures to prevent the spread of COVID-19 and keeping residents in their homes are necessary to avoid overwhelming the small hospital, including measures to ensure proper social distancing and compliance with state and county health orders. This includes maintaining the rental status quo during the period of local emergency.
- S. This Ordinance is temporary in nature and only intended to promote stability and fairness within the residential rental market in the City during the COVID-19 pandemic outbreak, and to prevent avoidable homelessness thereby serving the public peace, health, safety, and public welfare and to enable tenants in the City whose income and ability to work is affected due to COVID-19 to remain in their homes. Avalon residents are likely to feel the economic and social impacts of COVID-19 faster than other areas across the country due to (1) the limited number of residential units, especially affordable units, (2) the economy's reliance upon tourism, and (3) the small population. Due to the limited supply of

residential units, Avalon is in a unique position with respect to needing to temporarily limit rent increases.

- T. In the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary to exercise immediate authority to adopt this ordinance related to the protection of life and property, to ensure renters can remain in their homes without added burden of increased rents and prevent proliferation of homelessness and further spread of COVID-19. It is of concern that landlord's would add to a renter's financial burden at a time when most businesses are closed and the economy is slowing to halt as people remain home. Nevertheless, the ordinance creates a mechanism for a landlord to seek an exception to the rule to ensure a just and reasonable return.
- U. Maintaining the rental status quo and reducing housing insecurity is also conducive to public health, allowing people 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. Increasing the rental burden at this time may create an incentive for people to leave their homes and work, in violation of state and county health orders in order to make increased rental obligations. The City desires to avoid that incentive.
- V. Upon proclamation of a disaster, the City Council is authorized to make and issue regulations on matters reasonably related to the protection of life and property as affected by such emergency. Under conditions of the declared local emergency, it is deemed necessary in the interest of public safety to; limit rent increases during the period of local emergency in the City of Avalon. It is also imperative to overwhelm of the one hospital on the island by limiting occupancies to avoid non-essential visitors to the island who may be carrying the virus unknowingly. Life and property is deemed to be in peril and speed is of the essence.
- W. State and county health orders and social distancing directives suggest that transient occupancies may not be a safe practice and should be avoided unless provided for workforce for essential activities. As such, non-essential hotel occupancies are not safe and violate the spirit of the county and state health directives to stay home. Further, with very limited medical facilities on the island and in an effort to avoid overwhelm of the hospital during this unprecedented health pandemic, new non-essential hotel occupancies should not be permitted during the period of emergency.
- X. The City Council desires to extend most provisions enacted in the prior Urgency Ordinances, combine them into one ordinance and make additional revisions to the emergency measures. The extension of the local regulations will prevent uncertainty and confusion for residents 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.

- Y. 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 Title 4, Chapter 2 of the Avalon Municipal Code to protect the peace, health, and safety of the public. The Avalon 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. The findings and recitals in the prior Urgency Ordinances are incorporated herein to the extent they are not included above. To the extent any provision in a previously adopted Urgency Ordinance conflicts with provision in this Ordinance, the provisions in this Urgency Ordinance take precedence.

SECTION 2. Temporary Moratorium on Rent Increases for Residential Tenants during the COVID-19 Crisis is amended to read as follows.

- A. The amount of monthly rent due to a landlord for rental of a residential dwelling unit shall not be increased during the period of local emergency (March 25, 2020 through December 31, 2020). This provision shall not apply if the unit or property is exempt from rent control under California Civil Code, Chapter 2.7 (commencing with Section 1954.50), or if the unit or property is otherwise exempt from local rent control under State law. Any landlord may apply in writing to the City Council for an exception to this rule, and an exception may be granted, following a public hearing and upon showing by that the landlord that it will not receive a just and reasonable return on the investment without the increase.
- B. This Section shall terminate on January 1, 2021.

SECTION 3. Temporary Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Crisis.

- A. During the period of local emergency declared in response to COVID-19, no landlord shall endeavor to evict a tenant for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19.
- B. A landlord who knows that a tenant cannot pay some or all of the rent temporarily for the reasons set forth above shall not serve a notice pursuant to CCP 1161(2), file or prosecute an unlawful detainer action based on a 3-day pay or quit notice, or otherwise seek to evict for nonpayment of rent. A landlord knows of a tenant's inability to pay rent within the meaning of this ordinance if the tenant, within 30 days after the date that rent is due, notifies the landlord in writing of lost income

and inability to pay full rent due to financial impacts related to COVID-19, and provides documentation to support the claim. 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. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant’s claim.

- C. For purposes of this ordinance “financial impacts related to COVID-19” include, but are not limited to, tenant lost household income as a result of any of the following: (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19; (2) lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19; (3) compliance with a recommendation from a government health authority to stay home, self-quarantine, or avoid congregating with others during the state of emergency; (4) extraordinary out-of-pocket medical expenses; or (5) child care needs arising from school closures related to COVID-19.
- D. This ordinance applies to nonpayment 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.
- E. This ordinance grants a defense in the event that an unlawful detainer action is commenced in violation of this ordinance.
- F. Nothing in this ordinance shall relieve the tenant of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency, and the tenant must repay within six months of the expiration of the local emergency. A landlord may not charge or collect a late fee 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. A landlord shall not commence an eviction during the six months after the end of the local emergency, so long as the tenant pays rent in a timely manner after the period of local emergency and is repaying the past due rent that accrued during the emergency 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 local emergency. Landlords are strongly encouraged to offer payment plans to tenants after the period of local emergency. To the extent it applies, this ordinance is intended to be more restrictive than Civil Code Section 1946.2 by further limiting the reasons for termination of a residential tenancy during the six month repayment period.
- G. No other legal remedies available to landlord are affected by this ordinance.
- H. This Section 4 shall remain in place while the County of Los Angeles is in Stages 1 and 2 of its reopening process as identified in its Roadmap to Recovery, referenced in Recital M above and then shall automatically terminate when the

County of Los Angeles enters Stage 3 of its reopening process, as determined by the City Manager.

SECTION 4. Temporary Moratorium on Evictions for Non-Payment of Rent by Commercial Tenants Impacted by the COVID-19 Crisis.

- A. During the period of local emergency declared in response to COVID-19, no commercial landlord shall endeavor to evict a tenant for nonpayment of rent if the tenant demonstrates that the tenant’s business 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 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.
- B. A landlord knows of a tenant’s lost income and inability to pay rent within the meaning of this Order 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, with appropriate supporting documentation. If a tenant suffers only a partial loss of income, the tenant shall pay the pro-rated share of their rent that corresponds to the income they generated during the period of loss. 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 Ordinance grants a defense in the event that an unlawful detainer action is commenced in violation of this ordinance.
- D. Nothing in this ordinance shall relieve the tenant of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency and the tenant must pay within six months of the expiration of the local emergency. A landlord may not charge or collect a late fee 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 period of local emergency. A landlord shall not commence an eviction during the six months after the end of the local emergency for non-payment of rent, so long as the tenant pays rent in a timely manner after the period of local emergency and is repaying the past due rent that accrued during the emergency 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 local emergency.
- E. No other legal remedies available to landlord are affected by this order.

- F. Landlords are strongly encouraged to offer payment plans to tenants after the period of local emergency.
- G. This Section 5 shall remain in place while the County of Los Angeles is in Stages 1 and 2 of its reopening process as identified in its Roadmap to Recovery, referenced in Recital M above and then shall automatically terminate when the County of Los Angeles enters Stage 3 of its reopening process, as determined by the City Manager.

SECTION 5. Curfew and loitering.

- A. The City Council hereby declares that a curfew be in effect starting daily at 8:00 p.m. for minors and 10 p.m., and ending at sunrise, and during which no person shall be upon the public street, avenue, alley, park, or other public place or unimproved public realty within the City of Avalon. This curfew shall not apply to the Los Angeles County Sheriff's department, firefighters, or other emergency personnel or civilians engaged in police or emergency work, or city employees while performing work.
- B. Loitering is prohibited in any public place when such loitering violates generally accepted social distancing guidelines "Loiter" means to delay, to linger, or to idle about without a lawful purpose for being present.
- C. Subsection (A) and (B) of this Section shall not apply to anyone engaged in Essential Activities or performing any work necessary or providing any services to or obtaining services from Essential Businesses or Essential Infrastructure or Healthcare Operations, as those terms are defined in the Los Angeles County Safer at Home Order, as may be amended, or any local, state, or federal officers, investigators, or medical or law enforcement personnel that are carrying out their lawful duties.
- D. The law enforcement forces of this City and County Sheriff are authorized and charged, to the extent provided by law, with the responsibility of enforcing this curfew and loitering restriction after due notice, oral or written, has been given to said person. The enforcement of these provisions will not be enforced until the City Manager, in consultation with the County Sheriff, decide enforcement is appropriate.
- E. This curfew and loitering restriction shall remain in effect until the termination or expiration of the local emergency, or such earlier time as may be deemed safe and appropriate by either the City Manager or the City Council.
- F. The City Manager is directed to announce the curfew and loitering restrictions and penalties for violating these rules on posted signs, on the city's website and other available messaging options.

- G. This Section 6 shall remain in place while the County of Los Angeles is in Stages 1 and 2 of its reopening process as identified in its Roadmap to Recovery, referenced in Recital M above and then shall automatically terminate when the County of Los Angeles enters Stage 3 of its reopening process, as determined by the City Manager.

SECTION 6. Harbor

- A. Avalon Harbor will be opened to resident and visitors Friday, May 22, 2020. Upon opening, shoulder rates will be effective until June 16, 2020. After that, and until October 15, 2020, the nightly rates will be in effect. Avalon will continually evaluate the conditions for keeping the Harbor open and the Harbor Master will develop and implement procedures for safety of Harbor visitors and Harbor Patrol, including such procedures as necessary to safely deliver supplies to boats in the Harbor.

SECTION 7. Enforcement.

Violation of this ordinance shall be punishable as set forth in Title 1, Chapter 9 and Title 4, Chapter 2 of the Avalon Municipal Code.

SECTION 8. This ordinance shall take effect immediately upon adoption and remain in effect until rescinded, except as otherwise stated above. Ordinance Nos. U-1186-20 and U- 1188-20 are hereby rescinded and superseded by this ordinance. 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 regulates the activities covered in this Ordinance.

SECTION 9. 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.

SECTION10. 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 on rents and to limit non-essential hotel occupancies to prevent the spread of the virus. 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 Avalon, in furtherance of its police power to protect public health and safety, 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 11. 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. Without this ordinance, 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 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 from fulfilling their financial obligations, including payment of rent. Further economic impacts are anticipated, leaving tenants vulnerable to eviction, which was the basis for the moratorium on evictions. Adding increased financial burden through rental increases at a time of extreme economic strain will further exacerbate the economic strain on residents and further threaten the public peace, health, safety and welfare by threatening housing security and increasing the potential for homelessness, which can exacerbate the vulnerability to COVID-19 exposure. It is of concern that landlords would add to a renter's financial burden at a time when most businesses are closed and the economy is slowing to halt as people remain home. Maintaining the status quo of rents for a temporary period is also conducive to public health, allowing tenants 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 increased rental burdens. Increasing the rental burden at this time may create an incentive for people to leave their homes and work, in violation of state and county health orders in order to make increased rental obligations. The City desires to avoid that incentive. By extending the local eviction moratorium ordinances, the City Council 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. Under Government Code Section 8634 and AMC Title 4, Chapter 2, this ordinance is necessary to provide for the protection of life and property for the reasons set out herein and to immediately slow the spread of the virus and avoid overwhelm of the one hospital on the island by limiting occupancies to avoid non-essential visitors to the island who may be carrying the virus unknowingly and including the other emergency measures aimed at slowing the spread of the virus. 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 12. 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 at a regular meeting of the City Council of the City of Avalon on this 19th day of May 2020, by the following vote:

AYES: Mayor Marshall, Councilmembers Cassidy, De La Rosa, Lavelle, and Ponce.

NOES: None

ABSENT: None

ABSTAIN: None

Ann H. Marshall, Mayor

ATTEST:

Denise A. Radde, City Clerk / City Manager

Date: _____

APPROVED AS TO FORM:

Scott Campbell, City Attorney
Best Best & Krieger, LLP