

ORDINANCE NO. U 1186-20

AN URGENCY ORDINANCE OF THE CITY OF AVALON CONSISTING OF ADDITIONAL MEASURES THAT WILL FURTHER ADDRESS THE COVID 19 EMERGENCY AND HELP PROTECT THE HEALTH, SAFETY AND WELFARE OF CITY OF AVALON RESIDENTS

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

SECTION 1. Findings.

- 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”).
- 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.
- 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.
- 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.
- 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.
- 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.
- 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 to seek reimbursement

for costs associated with the emergency and response to the novel coronavirus ("COVID-19").

- 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.
- 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. A copy of the County order is available at City Hall and on the City's website.
- 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.
- As of the date of this ordinance and in order to prevent further exposure, many businesses have imposed work from home policies; meetings, events and social gatherings are cancelled as people remain at home; customers are not patronizing restaurants and stores or hiring domestic help or travelling. With tourism coming to a halt and no customers patronizing restaurants, hotels and other retail establishments that employ hourly workers, hourly cutbacks and employee terminations are expected.
- 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.
- 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.

- 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.
- The situation is unprecedented and evolving rapidly. Further economic impacts are anticipated, leaving tenants vulnerable to eviction.
- 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 Ordinance is temporary in nature and only intended to promote stability and fairness within the residential and commercial 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.
- 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 authority to adopt this ordinance related to the protection of life and property, to ensure renters can remain in their homes and prevent proliferation of homelessness and further spread of COVID-19. Displacement through eviction creates undue hardship for tenants through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing, and lack of moving services and supplies as stores and businesses close. During the COVID-19 pandemic outbreak, affected tenants who have lost income due to impact on the economy or their employment may be at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted.
- People experiencing homelessness are especially vulnerable to the spread of COVID-19 due to an inability to practice social distancing and a lack of access to health care. The Governor has ordered the State to take extraordinary measures to secure shelter for homeless populations during this emergency to limit exposure to and spreading of COVID-19. Widespread evictions of tenants vulnerable to eviction due to financial hardship occurring due to COVID-19 would exacerbate the challenge of sheltering the homeless during this emergency and increase the risk of spread of COVID-19.

- 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.
- The City desires to prohibit evictions due to non-payment of rent for residential and commercial tenants where the failure to pay rent results from income loss resulting from the novel coronavirus (COVID-19).
- 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 restrict gathering and loitering in public areas of the City of Avalon. Life and property is deemed to be in peril and speed is of the essence.
- State and county health orders and social distancing directives suggest that transient occupancies are not a safe practice and should be avoided unless provided for workforce for essential activities. As such, non-essential transient 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 transient occupancies of city-owned moorings should not be permitted during the period of emergency.
- 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.

SECTION 2. 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. Violation of this ordinance shall be punishable as set forth in Chapter 4-2 of the Avalon Municipal Code.

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.

G. No other legal remedies available to landlord are affected by this ordinance.

SECTION 3. 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.

SECTION 4. 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.

SECTION 5. Transient Occupancies.

A. Transient occupancies are prohibited, and the right to conduct a transient occupancy either through a conditional use permit or grandfathered conditional use permit are suspended, during the period of local emergency, unless the transient occupancy is for a person performing any work necessary or providing any services to 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.

B. New transient occupancies of city-owned moorings are prohibited for non-residents during the period of local emergency and only owners of moorings may use their moorings, they cannot be used by non-owners.

SECTION 6. Enforcement.

Violation of this ordinance, violation of an Executive Order of the Governor of the State of California related to COVID-19 and violation of any Order of the Health Officer of Los Angeles County related to COVID-19 shall be punishable as set forth in Title 1, Chapter 9 and Title 4, Chapter 2 of the Avalon Municipal Code.

SECTION 7. In accordance with the Governor of the State of California's Executive Order N-28-20, this ordinance shall remain in effect until May 31, 2020. In order to prevent inconsistencies, the City Manager 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 8. 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 9. 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 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 10. 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 welfare 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. Promoting stability amongst commercial tenancies is also conducive to public health and welfare, 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. Loss of income as a result of COVID-19 may inhibit City residents and businesses from fulfilling their financial obligations, including payment of rent and mortgages. 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 overwhelming of the of the one hospital on the island. The Council therefore finds and determines that the immediate preservation of the public peace, health, welfare 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 11. 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 special meeting of the City Council of the City of Avalon on this 25th day of March, 2020, by the following vote:

AYES: Mayor Marshall, Councilmembers Hoefs, MacGugan-Cassidy, and Olsen.

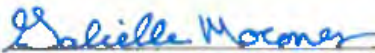
NOES: None

ABSENT: None

ABSTAIN: None


Ann H. Marshall, Mayor

ATTEST:


Gabrielle Morones, Deputy City Clerk

Date: 3/26/2020

APPROVED AS TO FORM:


Scott Campbell, City Attorney