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## MEMORANDUM

TO: The Honorable Mayor and Members of the City Council of the City of Beverly Hills

FROM: Robin D. Harris

DATE: February 10, 2021

SUBJECT: Extension of Temporary Eviction Protections - Senate Bill 91 and the New CDC Order

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### Introduction

On January 29, 2021, the Governor signed Senate Bill 91 (“SB 91”), which extends statewide eviction protections for residential tenants who have been negatively impacted by COVID-19.<sup>1</sup> Under SB 91, these protections will remain in effect until **June 30, 2021**.<sup>2</sup> These protections were initially established by Assembly Bill 3088 (“AB 3088”), and would have expired on January 31, 2021. As a trailer bill, SB 91 took effect immediately.

On January 20, 2021, the Centers for Disease Control and Prevention (“CDC”) issued an order (“the New CDC Order”) to extend the federal ban which temporarily halted many residential evictions throughout the country until January 31, 2021. The federal ban on residential evictions is now in effect until March 31, 2021.

This memorandum addresses the extension of the state and federal eviction protections for residential tenants. It seems most likely that the federal ban will not apply in the City of Beverly Hills. However, the statewide eviction protections established by AB 3088 and extended by SB 91 will continue to affect the City’s existing eviction ban for residential tenants, and the authority of the City to adopt a new residential eviction ban or extend or modify the existing ban. As discussed below, SB 91 does not place any new limitations on the City’s existing

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<sup>1</sup> SB 91 also establishes the State Rental Assistance Program, which will distribute federal housing relief funds to affected localities, tenants, and landlords.

<sup>2</sup> SB 91 also adds several protections for tenants with COVID-19 rental debt until July 1, 2021, including prohibitions on charging late fees, increasing non-rental charges, or charging a fee for services previously provided without charge. (Civ. Code § 1942.9(a) (as amended by SB 91 § 7).)

residential eviction ban, except to modify certain dates and the repayment period established by AB 3088 for the repayment of COVID-19 rental debt.

### **AB 3088 and SB 91**

- **AB 3088**

One of the primary purposes of AB 3088 was to establish temporary, statewide eviction protections for residential tenants who are unable to pay rent (including other financial obligations under a lease) due to financial hardships caused by COVID-19. Under AB 3088, a residential tenant could not be evicted for nonpayment of rent coming due between March 1, 2020 and January 31, 2021 (the “Covered Time Period”) if the tenant demonstrated COVID-19 related financial distress by complying with a series of procedures. In addition, for rent coming due between September 1, 2020 and January 31, 2021, AB 3088 required the tenant to pay at least 25% of the total rent (in installments or a lump sum) on or before January 31, 2021.

If tenants complied with the procedural and payment requirements of AB 3088, their unpaid rental debt would be converted into consumer debt. The landlord could bring a civil suit to recover the unpaid amount, but could not evict the tenant for their failure to pay the rental debt. After February 1, 2021, the standard pre-COVID-19 eviction rules would have applied to any additional missed rental payments coming due after the Covered Time Period.

- **SB 91**

SB 91 extends these statewide eviction protections by extending the Covered Time Period through **June 30, 2021**.<sup>3</sup> Now, a COVID-19 impacted residential tenant cannot be evicted for nonpayment of rent coming due between March 1, 2020 and June 30, 2021.<sup>4</sup>

As before, the tenant must comply with certain procedures to demonstrate COVID-19-related financial distress.<sup>5</sup> In addition, for rent coming due between September 1, 2020 and June 30, 2021, the tenant must pay at least 25% of the total rent (either in installments or in a lump sum) on or before June 30, 2021.<sup>6</sup> Also, as before, the remaining COVID-19 rental debt of any

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<sup>3</sup> Code Civ. Proc. § 1179.02(a) (as amended by SB 91 § 16).

<sup>4</sup> Code Civ. Proc. § 1179.03.5(a) (as amended by SB 91 § 18).

<sup>5</sup> Code Civ. Proc. § 1179.03(g) (as amended by SB 91 § 17).

<sup>6</sup> *Id.*

tenant who complies with these requirements is converted to consumer debt and a landlord cannot evict the tenant for nonpayment.<sup>7</sup>

After June 30, 2021, the standard pre-COVID-19 eviction rules will apply to any additional missed rental payments.<sup>8</sup>

- **Effect on Local Eviction Bans**

During the COVID-19 emergency, Beverly Hills passed a local eviction ban that limits a landlord's ability to evict residential tenants impacted by COVID-19, and provides a time frame for the repayment of rental debt by tenants. The local eviction ban was authorized by the Governor under Executive Order N-28-20.

AB 3088 did not entirely preempt any local eviction ban that was adopted before August 19, 2020, and designed to protect **residential** tenants from eviction due to the COVID-19 pandemic. However, with the passage of AB 3088, the City's authority to amend its existing ban or to adopt new eviction measures designed to protect residential tenants impacted by COVID-19 was limited. AB 3088 provided that any new local residential eviction ban, or extension, expansion, renewal, or reenactment of an existing ban, adopted after August 19, 2020, will have no effect until February 1, 2021.<sup>9</sup> SB 91 extended this delay to **July 1, 2021**.<sup>10</sup>

Additionally, AB 3088 made changes to existing local bans by imposing a specific timeframe for the repayment of COVID-19 rental debt by residential tenants. SB 91 modified the repayment period established by the City's existing ban for rent that comes due during the period March 1, 2020 through June 30, 2021, as follows: the repayment period is deemed to commence on August 1, 2021 and end on August 31, 2021.<sup>11</sup> Prior to the passage of SB 91, the repayment period was deemed to be March 1, 2021 through March 31, 2022.

Aside from these specific changes, AB 3088 was silent about the ongoing effect of existing local residential eviction bans that were adopted before August 19, 2020.<sup>12</sup> The legislature's silence,

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<sup>7</sup> *Id.*

<sup>8</sup> California's standard eviction law provides that if a tenant does not timely pay his or her rent, the landlord may give just three days' notice of demand for payment. The tenant is subject to eviction if he or she does not pay the missed rent or vacate the property within the three days. (Code Civ. Proc. § 1161).

<sup>9</sup> Like AB 3088, the SB 91 limitations do not extend to eviction bans targeting **commercial** tenants. Under SB 91, cities may still adopt or amend measures taken to protect commercial tenants during the COVID-19 pandemic.

<sup>10</sup> Code Civ. Proc. § 1179.05(a)(1) (as amended by SB 91 § 21).

<sup>11</sup> Code Civ. Proc. § 1179.05(a)(2)(B) and (C) (as amended by SB 91 § 21).

<sup>12</sup> AB 3088 allowed cities to adopt a new ordinance (or amend, extend, expand, or renew an existing ordinance) which required just cause for termination of a residential tenancy and provided greater protection than state law;

coupled with the legislative history of SB 3088, implied that local eviction bans would remain in effect, with modified repayment periods.<sup>13</sup>

SB 91, on its face, is also silent about the ongoing effect of existing local eviction bans that were adopted before August 19, 2020. Further, aside from noting the modification to the repayment period for COVID-19 rental debt, the legislative history of SB 91 does not address the ongoing effect of local ordinances. Therefore, the Legislature's continued silence continues to support the conclusion that Beverly Hills' residential eviction protections remain in effect, with the modified repayment period described above.

The City's ordinance does not require COVID-19 financially impacted residential tenants to pay any rent during the period of local emergency if they are unable to do so, and comply with the requirements of the City's ordinance. As discussed above, SB 91 requires that residential tenants pay at least 25% of their rent coming due from September 1, 2020 through June 30, 2021. Because SB 91 is silent as to whether this 25% minimum payment requirement applies to local residential eviction bans, and because the Legislature intended to preserve existing local evictions bans in their current form, the payment provisions provided by the City's local residential eviction ban should continue to apply to residential tenants in the City. Therefore, residential tenants will have to pay the portion of the rent that they are able to pay, which may be more or less than 25%, and could even be zero dollars. However, if the tenant does not comply with the 25% requirement, the tenant's unpaid rent will not be converted to consumer debt under SB 91.

### **Federal Eviction Ban**

On September 4, 2020, the CDC issued an emergency order which prevented landlords across the country from evicting qualifying residential tenants for nonpayment of rent from September 4, 2020 until December 31, 2020.<sup>14</sup> The order did not preclude states and localities from imposing additional requirements that "provide greater public-health protection and are more restrictive than the requirements of this Order."

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provided that any such ordinance enacted or amended after August 19, 2020, could not apply to rental payments that came due between March 1, 2020 and January 31, 2021. SB 91 extends this period to June 30, 2021. (Code Civ. Proc. § 1179.05(b) (as amended by SB 91 § 21).)

<sup>13</sup> The Senate Judiciary Committee Report (Aug. 28, 2020) describes the preemption provisions of AB 3088 as "appear[ing] to set forth a compromise intended to freeze the local ordinance status quo until February 1, 2021," in which "existing local ordinances apply until they expire."

<sup>14</sup> The CDC Order was subsequently extended until January 31, 2021. (Pub. Law. 116-260 § 502.)

On January 20, 2021, the CDC issued the New CDC Order, which extended the original order through March 31, 2021.<sup>15</sup> No other changes were made. Although the New CDC Order continues to apply throughout all fifty states, it will not apply if a state or locality has adopted an eviction ban that provides the same or a greater level of public-health protection as the New CDC Order.

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<sup>15</sup> Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 86 Fed. Reg. 8020 (Jan. 31, 2021).