

REVISED LEGISLATIVE DIGEST
(Amended in Committee, 7/19/2021)

[Administrative Code - Effect Of COVID-19 On Commercial Leases]]

Ordinance amending the Administrative Code to establish a rebuttable presumption that a commercial tenant who was legally required to shut down due to COVID-19 may be excused from having to pay rent that came due during the shutdown.

Existing Law

Chapter 37C of the Administrative Code grants eviction protections to Covered Commercial Tenants who could not pay their rent due to the financial impacts of COVID-19. The term “Covered Commercial Tenant” means a tenant or subtenant registered to do business in San Francisco with combined worldwide gross receipts for tax year 2019 equal to or below \$25 million, but does not include for-profit tenants and subtenants who are occupying space zoned or approved for Office Use under the Planning Code. The eviction protections for Covered Commercial tenants are currently scheduled to expire in June 2023.

Meanwhile, state law may excuse a party to a contract from performing under the contract, in some cases, if performance has become impossible or where the purposes of a contract have been frustrated.

Amendments to Current Law

The ordinance would enact a new provision, Section 37C.4, that would apply to any Covered Commercial Tenant who had been legally prohibited from operating in a unit due to a state or local health order concerning COVID-19. As to that situation, Section 37C.4 would create a rebuttable presumption – absent a contract provision or other agreement between the parties to the contrary – that the tenant’s shutdown frustrated the purpose of the lease and that the tenant’s duty to pay rent that accrued during the period of the shutdown is excused. This presumption would apply unless and until evidence was introduced that would support a finding that the purpose of the lease was not frustrated and that performance remained possible, notwithstanding the shutdown order(s). The presumption also would not apply to rent covered by a written agreement between the landlord and tenant to waive, reduce, or extend the payment due date due to COVID-19. Section 37C.4 would sunset on June 30, 2025. The expiration date of Chapter 37C’s eviction protections would not change.

Background Information

This version of the digest reflects amendments made on July 19, 2021. The purpose of the ordinance is to simplify the burden of presenting evidence so that landlords and tenants, especially those who may be unable to afford legal representation or protracted litigation, may resolve their disputes regarding COVID-19 more easily and more economically.

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