

REVISED LEGISLATIVE DIGEST
(Amended in Committee, 11/16/2020)

[Administrative Code - Eviction of Commercial Tenants During COVID-19 Pandemic]

Ordinance amending the Administrative Code to temporarily restrict landlords from evicting commercial tenants for non-payment of rent that was not paid due to the COVID-19 pandemic; and to allow certain tenants who are unable to pay rent to terminate their leases.

Existing Law

On March 16, 2020, the Governor issued Executive Order N-28-20, paragraph 2 of which allows local governments to enact measures to protect commercial tenants from being evicted due to their inability to pay rent due to COVID-19. Paragraph 2 of the Executive Order is currently set to expire on March 31, 2021.

On March 19, 2020, the Mayor issued an Emergency Order to restrict landlords from evicting commercial tenants (other than those engaged in formula retail uses) that are registered to do business in San Francisco and that have worldwide gross receipts for tax year 2019 equal to or below \$25 million (“covered commercial tenants”). The Order applies to rent owed by covered commercial tenants from March 19 through the end of November 2020 (unless the November 2020 date is extended). Under the Order, a landlord may not evict a covered commercial tenant for non-payment of rent that fell due during the time period it covers until March 31, 2021, unless the landlord can demonstrate that the eviction is necessary to avoid a significant financial hardship to the landlord.

Amendments to Current Law

The proposed ordinance would clarify that the term “covered commercial tenant” includes subtenants, and would broaden that term further by deleting the exclusion for formula retail. It would narrow the definition by excluding for-profit tenants and subtenants who are occupying space zoned or approved for Office Use as defined under the Planning Code. The proposed ordinance also clarifies that it does not apply to commercial tenants or subtenants of the City.

The proposed ordinance would prohibit landlords from evicting covered commercial tenants who had missed rent payments that fell due while paragraph 2 of the Executive Order was in effect (from March 16, 2020 until March 31, 2021, unless the Governor extends the expiration date further; hereafter, the “Moratorium Period”), based on the number of employees that the tenant employs. Covered commercial tenants with 9 employees or fewer (“tier 1 tenants”) would have 24 months after the end of the Moratorium Period to make up for any missed rent payments before they could be evicted for non-payment. Those with 10-24 employees (“tier 2 tenants”) would have 18 months after the end of the Moratorium Period. Those with 25-49 employees (“tier 3 tenants”) would have until 12 months after the end of the Moratorium

Period. Those with 50 employees or more (“tier 4 tenants”) would have until the end of the Moratorium Period. Interest could not begin to accrue until after the applicable payment deadline.

Landlords and tenants would be allowed to enter into written repayment plans to modify these deadlines. In addition, a landlord could proceed with an eviction for non-payment before the applicable deadline if the landlord owns less than 25,000 square feet of Gross Floor Area (as defined in the Planning Code) in the City, and can demonstrate that being unable to evict would create a significant financial hardship for the landlord.

Finally, if a tier 1 tenant covered commercial tenant was unable to pay rent due to COVID-19 and was unable to agree to a repayment plan, the tenant would have the option to terminate their lease. If the tier 1 tenant terminated during the Moratorium Period, the landlord could not impose financial penalties based on the termination, even if the lease purported to authorize them. Termination would not affect the tenant’s obligation to pay back rent.

Amendments to Current Law

On November 9, 2020, the Board proposed amendments to Board of Supervisors File No. 201056, to specify that rent payments must be allocated to rent as it comes due rather than to prior rent for which the forbearance period has not yet expired; delete language authorizing OEWD to process waiver requests; clarify that the ordinance is not intended to affect any legal or equitable defenses that a tenant may have with respect to the unpaid rent; clarify that the ordinance applies to tenants as well as subtenants; and correct a clerical error concerning the expiration date of paragraph 2 of the Executive Order. After making those amendments, the Board of Supervisors duplicated the file and proposed a further amendment, regarding the ability of a tier 1 covered commercial tenant to terminate their lease on written notice to the landlord.

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