




OFFICE OF THE CITY ADMINISTRATOR



London N. Breed, Mayor
Naomi M. Kelly, City Administrator

MEMORANDUM

TO: All City agencies and tenants

FROM: Naomi M. Kelly
City Administrator 

CC: Matt Hansen, Director of Risk Management
Andrico Penick, Director of Property

SUBJECT: City Policy Regarding Enforcement of Certain Tenant Lease Obligations by City Departments From March 17, 2020 through December 31, 2020 (“Policy”)

DATE: June 1, 2020

This memorandum updates and replaces the memorandum of March 27, 2020 regarding enforcement of certain tenant lease obligations by extending the Policy through December 31, 2020.

Background

The policy described below (this “Policy”) is prompted by the remarkably rapid developments in the recognition of and reaction to the COVID-19 pandemic. Two of the most impactful developments for the City’s economy over the last few months include the issuance and extensions of the March 16 Order by the Local Health Officer instituting shelter-in-place requirements to slow the spread of the disease, and the March 18 Order by Mayor Breed declaring a 30-day moratorium on commercial evictions related to financial impacts caused by COVID-19 for small and medium-sized businesses that have less than \$25 million in annual gross receipts (the “Eviction Moratorium Order”).

Many City agencies lease space to private tenants for a variety of business and recreational uses. In keeping with the spirit of the broad moratorium under the Eviction Moratorium Order, the City now wishes to issue further guidance so that affected tenants can have confidence in being able to retain their leasehold while they use their financial reserves on immediately pressing operational needs to retain employees and remain viable to the maximum extent possible. This Policy is directive to all General Fund agencies with private tenants (each, a “City Landlord Agency”). Mayor Breed encourages City enterprise agencies with private tenants to pursue similar tenant relief actions as appropriate to their respective portfolios.

It is important to note that this Policy is a baseline for Citywide action regarding City leases within the geographic boundaries of San Francisco. Individual agencies may target additional relief policies beyond these terms (including but not limited to extended payment dates and relief for those classes of tenant otherwise excepted below) based on each agency's mission and the financial situation of each agency in relation to their respective tenant portfolios. Every business saved will help the City's recovery when the spread of the disease is curbed enough to allow the economy to regain its footing.

Policy

1. Summary:

Under this updated Policy, to the extent not otherwise prevented by law or the City's own obligations to its lenders, trustees, bond holders and/or taxing agencies, City Landlord Agencies are directed to waive all late charges, default interest and associated penalties and fees for any delinquent rent payments that were or are due for use of City property for commercial purposes within San Francisco city limits during the period of March 17 through December 31, 2020 due to the impact of COVID-19. City Landlord Agency staff are also directed to follow the policies and timeframes set forth in the Eviction Moratorium Order with respect to the initiation of any default enforcement or eviction process due to the failure to pay rent owed under any commercial lease due to the impact of COVID-19 while the Eviction Moratorium Order is in effect.

2. Lease Obligations and Payment Provisions:

The relief offered by this updated Policy is contingent upon the tenant's continued compliance with all lease obligations other than the payment of rent (such as maintenance and repair obligations, percentage rent reporting obligations and obligations to pay taxes). Subject to any extension of these deadlines and/or additional relief targeted by individual City Landlord Agencies as noted in sections 3 and 4 below, this Policy requires tenant's resumption of normal timely rent payments on January 1, 2021 and payment of any rent arrearages in full no later than June 30, 2021. Any amounts not paid in full as of June 30, 2021 (or such later date as set forth under any subsequent relief program approved by the tenant's City Landlord Agency) would then be subject to interest and penalties from and after that date.

The forbearance program outlined in this Policy does not change the terms or conditions of any lease or other agreement. Further, this policy will not affect ongoing lease enforcement actions or lease enforcement actions for defaults not related to the current emergency. For any tenant claiming the benefit of force majeure or similar provisions in its lease, those provisions will control.

3. Agency Action:

The City has a range of agencies that lease property to private entities, and these agencies have differing authority for leasing property. City Landlord Agencies are directed to take all actions necessary to implement this Policy, to the extent further action is needed.

4. **Further Tenant Relief:**

This Policy is intended as a temporary emergency measure to provide clarity to the City's tenants. Each City Landlord Agency will monitor the performance of its tenants during this time and will determine whether in and in what form it should offer additional tenant relief in light of public health and safety developments.

5. **Other Sources of Relief:**

All departments are directed to work with the Risk Manager to document and seek recovery from any possible private or public insurance program or other assistance that is forthcoming in the ongoing response to this situation. Tenants have been and should continue to be encouraged to investigate any coverage available to them under any business interruption or similar policies or programs along with public assistance efforts.

6. **Eligibility:**

This Policy applies to all leases, licenses and other agreements to use City land located within the geographic boundaries of San Francisco under the jurisdiction of a City Landlord Agency. This Policy does not apply to MOUs among City departments, vessel berthing agreements and permits to enter where access to the property was not interrupted by the permittor. In any scenario where a tenant has subleased some or all of its space, including master tenants, such relief will only be available to the extent that the City's tenant has offered equivalent relief to the subtenant(s).