

BOARD of SUPERVISORS



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MEMORANDUM

TO: Kate Sofis, Director, Office of Economic and Workforce Development
Ben Rosenfield, City Controller, Office of the Controller
Regina Dick-Endrizzi, Director, Office of Small Business

FROM: Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: August 26, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, introduced by Supervisor Ahsha Safai:

File No. 210809

Ordinance amending the Administrative Code to establish the COVID-19 Commercial Rent Relief Fund to provide financial support to landlords of certain Commercial Tenants where the tenant was unable to pay rent due to the COVID-19 pandemic, and setting a sunset date of 24 months from the effective date of the legislation.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org.

c: J'Wel Vaughan, Office of Economic and Workforce Development
Lisa Pagan, Office of Economic and Workforce Development
Todd Rydstrom, Office of the Controller

1 [Administrative Code - COVID-19 Commercial Rent Relief Fund]

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3 **Ordinance amending the Administrative Code to establish the COVID-19 Commercial**
4 **Rent Relief Fund to provide financial support to landlords of certain Commercial**
5 **Tenants where the tenant was unable to pay rent due to the COVID-19 pandemic, and**
6 **setting a sunset date of 24 months from the effective date of the legislation.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. Article XIII of Chapter 10 of the Administrative Code is hereby amended by
16 adding Section 10.100-51.2, to read as follows:

17 **SEC. 10.100-51.2. COVID-19 COMMERCIAL RENT RELIEF FUND.**

18 (a) **Establishment of Fund.** The COVID-19 Commercial Rent Relief Fund (the “Fund”) is
19 hereby established as a category eight fund to provide financial support to landlords of certain
20 Commercial Tenants where the tenant was unable to pay rent due to a Financial Impact Related to
21 COVID-19.

22 (b) **Definitions.** For purposes of this Section 10.100-51.2, the following terms shall have these
23 meanings:

24 “Commercial Tenant” means a Covered Commercial Tenant as defined in Administrative Code
25 Section 37C.2, provided that the Tenant has combined worldwide gross receipts for tax year 2019 for
purposes of Article 12-A-1 of the Business and Tax Regulations Code equal to or less than \$2.5 million,

1 which amount shall be prorated in the case of businesses that were not open for the entire 2019 tax
2 year.

3 “Financial Impact Related to COVID-19” has the meaning given in Administrative Code
4 Section 37C.2.

5 “Legacy Business” means a business registered as such under Administrative Code
6 Section 2A.242.

7 “Moratorium Period” has the meaning given in Administrative Code Section 37C.2.

8 “Neighborhood Anchor Business” means a business registered as such under Administrative
9 Code Section 2A.244.

10 (c) **Administration of Fund.** The Office of Economic and Workforce Development (OEWD)
11 shall administer the Fund.

12 (1) In consultation with the Controller’s Office, and with any other City agency as
13 OEWD deems appropriate, the OEWD Director or the Director’s designee shall adopt rules for
14 administration of the Fund, including rules for the distribution of monies in the Fund and for the
15 identification and prioritization of the most at-risk Commercial Tenants. OEWD shall make these rules
16 available on its website and at its office.

17 (2) To the extent claims exceed available funds, OEWD shall give priority to landlords
18 facing hardship, where the unpaid rent is likely to cause the landlord to become unable to pay
19 mortgage payments, perform other preexisting obligations, or complete necessary repairs at the
20 property. OEWD may develop additional criteria and procedures for the allocation of funds that
21 promote equity, efficiency, and transparency in the administration of the grant program.

22 (3) OEWD may award grants from the Fund until June 30, 2022.

23 (4) OEWD may consult with organizations representing the interests of landlords
24 and/or Commercial Tenants regarding its implementation of this Section 10.100-51.2.

1 (d) Use of Fund. OEWD's rules regarding the distribution of monies from the Fund shall
2 incorporate and develop the following criteria:

3 (1) The total grant may not exceed \$35,000. In determining the amount of a grant,
4 OEWD may consider any other financial assistance related to the COVID-19 pandemic that the
5 landlord and the Commercial Tenant have received from government sources. OEWD shall determine
6 the grant to a landlord based on the Commercial Tenant's unpaid rent at a single location or business,
7 regardless of whether the Tenant operates more than one location or business.

8 (2) The award of a grant shall be contingent upon the execution by the landlord and the
9 Commercial Tenant of an agreement that either restructures the existing lease by extending the term of
10 the lease as necessary to result in a term of at least three years from the date of the award of the grant,
11 or commits the parties to honor an existing lease that has three years or more left on its term. The
12 agreement shall also include provisions stating how the parties have addressed or will address the
13 missed rent payments that originally fell due during the Moratorium Period. If the parties do not
14 submit an agreement as specified in this subsection (d)(2), OEWD may, in its discretion, accept other
15 documentation showing a mutually-agreed upon approach by the parties to the management of the
16 unpaid rent and the extension of the lease terms or commitment to the existing lease terms consistent
17 with this subsection (d)(2).

18 (3) The landlord or Commercial Tenant must submit an application signed under
19 penalty of perjury by both parties that establishes all of the following:

20 (A) The grant request is based on unpaid rent that initially became due during
21 the Moratorium Period;

22 (B) The Commercial Tenant was unable to pay the rent due to Financial Impact
23 Related to COVID-19;

24 (C) The parties have satisfied the requirements of subsection (d)(2), above;
25

1 (D) The landlord and the Commercial Tenant acknowledge and agree that the
2 landlord will credit the full amount of the grant against the Commercial Tenant’s unpaid rent that
3 initially became due during the Moratorium Period; and,

4 (E) The Commercial Tenant still occupies the rented premises and has no
5 present intent to vacate.

6 (4) It shall be City policy to distribute grants from the Fund to landlords whose tenants
7 constitute a diverse range of businesses within the City.

8 (5) OEWD may give special consideration to businesses that are Legacy Businesses or
9 Neighborhood Anchor Businesses.

10 (e) Undertaking for the General Welfare. In enacting and implementing this
11 Section 10.100-51.2, the City is assuming an undertaking only to promote the general welfare. It is not
12 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable
13 in money damages to any person who claims that such breach proximately caused injury.

14 (f) Sunset Date. This Section 10.100-51.2 shall expire by operation of law two years after the
15 effective date of the ordinance in Board File No. _____, establishing this Section. Upon expiration of
16 this Section, the City Attorney shall cause it to be removed from the Administrative Code. Any monies
17 left in the Fund after the expiration of this Section shall be transferred to the General Fund.

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1 Section 2. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

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6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

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9 By: /s/ Thomas J. Owen
10 THOMAS J. OWEN
11 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - COVID-19 Commercial Rent Relief Fund]

Ordinance amending the Administrative Code to establish the COVID-19 Commercial Rent Relief Fund to provide financial support to landlords of certain Commercial Tenants where the tenant was unable to pay rent due to the COVID-19 pandemic, and setting a sunset date of 24 months from the effective date of the legislation.

Existing Law

The City currently does not have a special program or fund to support landlords whose commercial tenants did not pay rent due to the COVID-19 pandemic.

Amendments to Current Law

The proposal is an ordinance that would amend the Administrative Code to establish the COVID-19 Commercial Rent Relief Fund (the "Fund") to provide financial support to landlords of commercial tenants, where the tenants were unable to pay their rent because of the COVID-19 pandemic. A landlord would not be eligible for a grant from the Fund if the tenant had annual gross receipts of more than \$2.5 million.

The Office of Economic and Workforce Development (OEWD) would administer the Fund. The OEWD Director would be responsible for adopting rules for the Fund, including rules for prioritizing at-risk tenants and landlords facing financial hardship because of unpaid rent.

An individual grant could not exceed \$35,000. The landlord and the tenant would have to agree in the grant application that the landlord would credit the full amount of the grant against the tenant's unpaid rent. They would have to agree to either restructure the existing lease by extending its term to at least three years from the date of the grant, or commit to honor an existing lease that had three years or more left on its term. And the agreement would have to explain how the parties had addressed or will address the missed rent payments.

The ordinance would make it City policy to distribute grants from the Fund to landlords whose tenants constituted a diverse range of businesses within the City, and would authorize OEWD to give special consideration to businesses that were Legacy or Neighborhood Anchor Businesses.

The Fund would expire after two years.