



Frequently Asked Questions on Commercial Eviction Moratorium

Last Updated: December 24, 2020

On November 25, 2020, the Board of Supervisors approved and Mayor Breed signed legislation creating a temporary moratorium on eviction for non-payment of rent by commercial tenants directly impacted by the COVID-19 crisis, which will remain in effect until March 31, 2021. A copy of the new ordinance may be found here beginning on December 26, 2020:

https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_admin/0-0-0-65019

Which tenants does this order apply to?

This order applies to certain commercial tenants (including subtenants) registered to do business in San Francisco under Article 12 of the Business and Tax Regulations Code with 2019 combined worldwide gross receipts for tax year 2019 for purposes of Article 12-A-1 of the Business and Taxation Code equal to or below \$25 million. This figure shall be prorated in the case of businesses that were not operating for the entire 2019 tax year.

This order also applies to tenants or subtenants that that occupy property that is zoned or approved for use as Office Use (as defined in Section 102 of the Planning Code) and have established and maintained valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code.

This order does not apply to for-profit tenants or subtenants occupying property that is zoned or approved for use as Office Use (as defined in Section 102 of the Planning Code).

This order does not apply to a tenant or subtenant renting space from the City and County of San Francisco (such as the Airport, Port, Municipal Transportation Agency, Recreation and Parks, and other agencies). Please direct any inquiries to your regular City contact regarding your lease.

What does this order do?

If a commercial tenant fails to make a rent payment that becomes due while the ordinance is in effect, then the landlord may not recover possession of the unit due to the missed or delayed payment. Additionally, this ordinance provides a commercial tenant with additional time after the moratorium expires to repay any unpaid rent ("Forbearance Period"). The Forbearance Period for a commercial tenant is determined by the number of employees the tenant has as of November 1, 2020. The Moratorium Period is currently set to expire on March 31, 2021. Detailed guidance on this ordinance may be found here:

oewd.org/sites/default/files/Documents/Guidance%20Temporary%20Moratorium%20on%20Commercial%20Evictions_v12.18.2020%20expires%203.31.21.pdf

Does the order apply to month-to-month tenancies?

Yes. A landlord may not terminate a month-to-month arrangement due to non-payment, without following the same procedures, unless the landlord can demonstrate an alternative, non-pretextual reason for recovering possession of the unit (e.g., turning the unit over to a new tenant under a previously executed agreement, planned renovations, previously executed agreement to turn over the unit vacant to a new owner).

What types of “rent” payments are covered?

The moratorium is intended to cover anything that a tenant may be required to pay to the landlord under the express terms of the lease. For example, it could include common area charges, maintenance fees, the tenant’s share of property tax, requests to replenish a security deposit, as well as any late fees, interests, penalties or similar charges that could attach to missed rent payments.

What is “a financial impact related to COVID-19”?

The term “financial impact” means a substantial decrease in business net income or substantial increase in business expenses due to illness or other disruption, reduced open hours or reduced consumer demand, or temporary closure of the business, including temporary closure required to comply with restrictions or in response to restrictions under the shelter in place or other orders of the Health Officer.

A financial impact is “related to COVID-19” if caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

What does a landlord need to do, if their tenant misses a rent payment?

Landlords and tenants are encouraged to negotiate an agreement for repayment plans. A landlord cannot evict a tenant during the moratorium period, and must allow a tenant an opportunity to repay any missed rent during a forbearance period after the moratorium expires. If a tenant still has unpaid rent after the forbearance period, a landlord may seek to recover possession of the unit.

If a landlord owns less than 25,000 square feet of Gross Floor Area in the City, it may seek to evict the tenant for non-payment of rent before the Forbearance Period for the tenant ends if the landlord can show that without an eviction it would face a significant financial hardship.

How does a landlord demonstrate significant financial hardship?

A landlord experiences financial hardship if it is unable to meet basic payment obligations for goods, services and other charges, voluntary or involuntary, necessary for the maintenance and ownership of its property. The landlord must maintain a reasonable method of documentation of this hardship that can be reviewed or verified objectively.

What if a tenant and landlord cannot agree on a repayment plan?

Beginning on January 11, 2021, a commercial tenant with 10 or fewer employees may terminate its lease after providing the landlord with thirty (30) days written notice. If the

tenant terminates the lease before March 31, 2021, it will not be liable for any penalties arising from the termination.

Does this order relieve a tenant of the obligation to pay rent?

No. The moratorium delays when a landlord may evict, but does not waive the tenant's obligation to pay rent, nor restrict a landlord's ability to take actions other than evict for non-payment.

How long will this order last?

The Moratorium Period is set to expire on March 31, 2021. The ordinance remains in effect until March 31, 2023, which is when the Forbearance Period for tenants with the lowest employee count is set to expire.

Will there be additional regulations or forms to implement this order?

The Office of Economic and Workforce Development ("OEWD") has adopted guidelines to help landlords and tenants with this process. The current version is available here at the OEWD.org website.