



Frequently Asked Questions on Commercial Eviction Moratorium

9/29/20

On March 18, 2020, Mayor Breed ordered a temporary moratorium on eviction for non-payment of rent by commercial tenants directly impacted by the COVID-19 crisis. This informational sheet provides more information about that mayoral order, which can be downloaded here:

https://sfmayor.org/sites/default/files/Supplement_v4_03182020_Stamped.pdf

All of the Mayoral Declarations regarding COVID-19 may be found here:

<https://sfmayor.org/mayoral-declarations-regarding-covid-19>

Which tenants does this order apply to?

This order applies to 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.

Please note, if you are a renting space from the City and County of San Francisco (such as the Airport, Port, MTA, Parks & Rec, and other agencies), you should be getting more information from your regular City contact regarding your lease. The City Administrator has adopted a policy regarding leases related to property owned by the City and County of San Francisco.

What does this order do?

If a commercial tenant fails to make a rent payment that becomes due while the Order is in effect, then the landlord may not recover possession of the unit due to the missed or delayed payment, without first providing the tenant written notice of the violation and an opportunity to cure the violation. The Order is currently set to expire on September 30, 2020, so it would, for example, cover rent payments due on April 1, May 1, June 1, July 1, August 1, and September 1. If the Order is extended, it could cover additional rent payments.

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

If a tenant misses a rent payment, the first step is for the landlord to send the tenant a written notice specifying the amount of rent that is due, and providing a cure period. The cure period must be at least one month, though landlords are encouraged to offer a longer period.

After receiving notice from the landlord of the failure to make a rent payment, what are a tenant's options?

Upon receipt of the notice, the tenant shall have the full cure period to either (1) pay the rent or (2) provide documentation to the landlord showing that the tenant is unable to pay the rent due to a financial impact related to COVID-19.

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 happens if a tenant provides documentation of "a financial impact related to COVID-19" to their landlord?

If the tenant provides the landlord documentation of the tenant's inability to pay rent due to a financial impact related to COVID-19, then the cure period shall extend for another month, so that the landlord and tenant can discuss the matter in good faith and attempt to develop a payment plan for the tenant to pay the missed rent. The payment plan can address matters such as how much of the back rent the tenant will be able to repay, and on what schedule.

If the landlord and tenant cannot agree to a payment plan, then the tenant shall, on or before the new date that the cure period will expire, at the one-month mark, either (1) pay the rent, or (2) provide additional documentation of its continuing inability to pay due to a financial impact related to COVID-19, in which case the cure period shall extend by one more month.

Thereafter, the tenant may obtain additional monthly extensions of the cure period by providing updated documentation each month.

If the tenant has not paid all outstanding rent at the end of the applicable cure period, or at the termination of the Order, then the landlord may attempt to recover possession due to non-payment at that time.

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 Mayor first imposed the moratorium on March 18, to last for a period of 30 days. The Mayor issued Executive Orders extending the commercial eviction moratorium for 30-day periods on April 15, 2020, May 17, 2020, June 12, 2020, July 10, 2020, August 12, 2020, September 11, 2020, and September 29, 2020. The Order currently expires on November 30, 2020. We will update this information if the moratorium is extended.

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.

Can landlords seek waivers from this order?

Landlords that own less than 25,000 square feet of rentable space in the building can seek waivers from OEWD, by demonstrating that they need to evict in order to avoid a significant financial hardship (for example, default on debt or similar enforceable obligation). Examples could include a preexisting agreement to deliver the premises vacant to a new owner, or where the landlord needs to pay a mortgage and has an alternative paying tenant lined up for the unit.