



## Temporary Moratorium on Commercial Evictions Regulations for Tenants and Landlords

*Updated: December 21, 2020*

**SUSPENSION OF COMMERCIAL EVICTIONS:** On March 18, 2020, the Mayor imposed a moratorium on landlords recovering possession of commercial units for non-payment of rent, if the tenant was unable to pay due to the COVID-19 crisis (the “Order,” viewable [here](#)). 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, September 29, 2020, and November 25, 2020. The Order currently expires on January 31, 2021 or when the Board of Supervisors Ordinance, File No. 201056, becomes effective. The effective date for the ordinance is December 26, 2020, with the moratorium expiring on March 31, 2021, unless extended by the Governor.

**NEW RULES FOR MISSED RENT PAYMENTS:** Under the moratorium, if a covered commercial tenant misses a rent payment that was due on or after March 16, 2020 and before the Expiration Date of March 31, 2021, and the payment was missed because of financial impacts resulting from the COVID-19 crisis, then landlord may not attempt to recover possession of the unit because of the missed payment. Additionally, landlords must provide covered commercial tenants a certain amount of time (“Forbearance Period”), detailed below, after the moratorium ends to repay the missed rent. Once the applicable Forbearance Period has ended and the tenant has not paid back the missed rent or made alternate arrangements with the landlord, then the landlord may attempt to recover possession at that time. Nothing in this moratorium relieves a covered commercial tenant from paying rent owed, and it does not prevent a landlord from recovering any rent owed.

### MORATORIUM PERIOD:

The Moratorium Period for eviction protections for covered commercial tenants is the time period between March 16, 2020 to March 31, 2021. The Moratorium Period may be extended if the Governor of California extends the State of California allowance, through executive order, for commercial eviction protection.

### COVERED COMMERCIAL TENANTS:

This moratorium applies to a covered commercial tenant and/or subtenant that:

- is registered to do business in San Francisco,<sup>1</sup> and

<sup>1</sup> See Article 12 of the Business and Tax Regulations Code

- has combined worldwide gross receipts for tax year 2019 equal to or below \$25 million.<sup>2</sup>

The moratorium does not apply to a tenant and/or subtenant that:

- Occupies space in property zoned or approved for use as Office Use<sup>3</sup>, and
- Is a for-profit tenant or a nonprofit tenant without a valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code.
- Leases property from the City and County of San Francisco.

The foregoing definition also applies to subtenants/sublessees. A tenant who is subleasing a unit to a subtenant is a “landlord” for purposes of these rules. The Office of Economic and Workforce Development (“OEWD”) encourages landlords, tenants, and subtenants to work collaboratively to ensure there is no eviction during the COVID-19 emergency.

### **FORBEARANCE PERIOD:**

After the expiration of the Moratorium Period, a landlord must provide a covered commercial tenant a certain amount of time to repay any missed rent. The length of this Forbearance Period for covered commercial tenant is determined by the number of full-time equivalent employees (“FTE”) that covered commercial tenant has as of November 1, 2020.

Commercial Tenant	Number of Full-Time Equivalent Employees (FTE)	Forbearance Period	Forbearance End Date
Tier 1	10 or fewer FTE	24 Months	March 31, 2023
Tier 2	Between 10 and 24	18 Months	August 31, 2022
Tier 3	Between 25 and 49	12 Months	March 31, 2021
Tier 4	50 or more FTE	None	March 31, 2021

### **TEMPORARY EVICTION PROTECTIONS:**

**STARTING DECEMBER 26, 2020, IF A COVERED COMMERCIAL TENANT MISSES A RENT PAYMENT DUE TO A FINANCIAL IMPACT RELATED TO COVID-19, THE LANDLORD CANNOT JUST EVICT. A LANDLORD MAY RECOVER POSSESSION ONLY IN THE FOLLOWING INSTANCES:**

- If rent remains unpaid by a covered commercial tenant after the end of the applicable Forbearance Period; or
- If the landlord owns less than 25,000 square feet of Gross Floor Area, and the landlord can demonstrate a significant financial hardship is created due to the inability to evict, then an eviction for non-payment may proceed before the applicable Forbearance Period ends

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<sup>2</sup> This figure shall be pro-rated if the business did not operate for the entire 2019 tax year

<sup>3</sup> As defined in Section 102 of the Planning Code

## **FINANCIAL IMPACT RELATED TO COVID-19**

A financial impact related to COVID-19, which must be documented by the covered commercial tenant, is an event caused by the COVID-19 pandemic or by a response from any local, state or federal government. A financial impact means a substantial decrease in the covered commercial tenant's business income or a substantial increase in business expenses because of 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.

## **LANDLORD AND TENANT AGREEMENTS:**

Negotiated agreements for repayment plans between landlords and covered commercial tenants must be in writing. If mutually agreement exists between both parties, the agreement may provide for a longer or shorter forbearance period than what is allowed by the City. This agreement will then provide the timing of the covered commercial tenant's obligation to pay the deferred rent.

## **DEFERRED PAYMENT ORDER:**

A covered commercial tenant may pay deferred rent in either installments or in a lump sum before the applicable Forbearance Period ends. In situations where a payment is made before the Forbearance Period, the landlord should first apply these payments to rent that comes due during the Forbearance Period, and then to unpaid rent that originally came due during the Moratorium Period.

## **MONTH TO MONTH PERIODIC TENANCY, HOLD OVER, OR OTHER SIMILAR ARRANGEMENT**

This moratorium applies to all attempts to recover possession of a unit due to non-payment, including situations where the tenant is occupying the unit on a month-to-month periodic tenancy, holdover basis, or similar arrangement, and including where the landlord has the right to terminate or not renew the agreement at the landlord's discretion. In such situations, if a tenant misses a payment due to COVID-19, the moratorium against recovering possession due to non-payment shall apply, 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, or previous agreement to turn over the unit vacant to a new owner).

## **TIER 1 COVERED COMMERCIAL TENANT LEASE TERMINATION**

Beginning on January 11, 2021 a Tier 1 covered commercial tenant that is unable to pay rent due to a financial impact related to COVID-19 may also have the option, despite any terms in the lease to the contrary, to terminate its lease upon thirty (30)

days' written notice to the landlord if it fails to reach a mutually satisfactory agreement for repayment.

Additionally, if the Tier 1 covered commercial tenant terminates its lease during the moratorium period (between March 16, 2020 and March 31, 2021), the Tier 1 covered commercial tenant is not liable for any penalties that arises from this termination, despite any terms in the lease to the contrary.

## **INTEREST AND OTHER CHARGES**

A landlord cannot assess interest or other charges on a covered commercial tenant during the Moratorium Period. If unpaid rent remains after the applicable Forbearance Period ends, a landlord may apply penalties to the extent allowed under the lease.

## **PRESERVATION OF AFFIRMATIVE DEFENSE FOR TENANT**

A covered commercial tenant may still claim protections of this moratorium as an affirmative defense in the event the landlord sues to recover possession even if the covered commercial tenant fails to provide the landlord notice and/or documentation of its inability to pay at the time of the missed rental payment.

## **EXCEPTION FOR LANDLORD EVICTION DUE TO SIGNIFICANT FINANCIAL HARSHSHIP**

If a landlord owns less than 25,000 square feet of Gross Floor Area<sup>4</sup> in the City and County of San Francisco, and the landlord can demonstrate that without an eviction that it would face a significant financial hardship, it may proceed to evict a covered commercial tenant before the applicable Forbearance Period ends.

## **INFORMATION AND RESOURCES**

For additional assistance to small business tenants who cannot afford to pay for an attorney on their own, please contact Lawyers Committee for Civil Rights of the San Francisco Bay Area - Legal Services for Entrepreneurs helpline at 415-543-9444 x217, or send an email to [lse@lccrsf.org](mailto:lse@lccrsf.org). To apply for assistance from Legal Services for Entrepreneurs, please submit an application at <https://lccr.com/get-help/economic-justice-legal-services-for-entrepreneurs-lse/>.

For free and low cost consultations please contact the Bar Association of San Francisco's Conflict Intervention Service (CIS) helpline at 415-782-8940, send an email to [cis@sfbbar.org](mailto:cis@sfbbar.org) or visit their website <https://www.sfbbar.org/adr-services/cis/>

For more information on this guidance as it relates to non-payment of commercial rent, please contact the Office of Economic and Workforce Development at [sfosb@sfgov.org](mailto:sfosb@sfgov.org).

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<sup>4</sup> See link [here](#) for definition of "Floor Area, Gross" in Section 102 of the Planning Code

In order to provide additional clarity, the Office of Economic and Workforce Development (“OEWD”) may publish additional guidelines for this moratorium on its website. Please visit the following link [here](#) for any additional guidance.