



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

*Updated: September 29, 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 and September 29, 2020. The Order currently expires on November 30, 2020. On April 1, 2020, the Mayor declared the moratorium to apply to all attempts to recover possession of a unit due to non-payment including situations where a tenant occupies a 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. Furthermore, the Mayor declared that this moratorium shall cover the use and prohibitions of a tenant’s security deposit for the purposes of offsetting the tenant’s missed rent payment.

**NEW RULES FOR MISSED RENT PAYMENTS:** Under the moratorium, if a commercial tenant misses a rent payment that was due before the Expiration Date, 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, **PROVIDED THAT** the landlord and tenant follow the rules noted below. Once the applicable cure period has ended or the Order is no longer in effect and the tenant has not paid back the missed rent or made alternate arrangements with the landlord, then the landlord may attempt to recover possession at that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.

### **COVERED COMMERCIAL TENANTS:**

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

- is registered to do business in San Francisco,<sup>1</sup> and
- has combined worldwide gross receipts for tax year 2019 equal to or below \$25 million.<sup>2</sup>

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

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

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. OEWD encourages landlords, tenants, and subtenants to work collaboratively to ensure there is no eviction during the COVID-19 emergency.

## **STEP ONE: NOTICE**

STARTING MARCH 17, 2020, IF A TENANT MISSES A RENT PAYMENT, THE LANDLORD CANNOT JUST EVICT. INSTEAD, THE LANDLORD MUST PROVIDE THE TENANT A WRITTEN NOTIFICATION OF THE VIOLATION AND AN OPPORTUNITY TO CURE THE VIOLATION.

- This written notice from the landlord must specify a cure period of at least 30 days from the date the tenant receives the notice. However, the City encourages landlords to offer longer cure periods.
- If the landlord (including a representative of the landlord such as a property manager) usually uses a language other than English to communicate with the tenant, then all written notices required under these rules must be in that language. If any of the landlord’s notices fail to comply with this requirement, the notice shall not be effective.
- Upon receipt of the written notice, the tenant has the full cure period (at least 30 days or longer if allowed by landlord) to either (1) pay the rent specified in the notice **OR** (2) provide documentation to the landlord stating its inability to pay rent due to the “financial impacts” of COVID-19 (see Step Two below).
- For purposes of this guidance, the term “rent” means: Any type of rent payment that a tenant may owe to a landlord, including, but not limited to, payments of additional rent (e.g., tenant’s share of common area operating expenses or property tax), payments under existing stipulations/payment plans for back rent, security deposits, and any late fees or interest or similar amounts that a landlord may be authorized to charge due to delayed or missed payments under the express terms of a lease.
- The outstanding rent due shall not include any charges that are not expressly authorized in the written agreement that the tenant and landlord validly executed prior to March 17, 2020.

## **STEP TWO: FINANCIAL IMPACT DOCUMENTATION**

IF A TENANT CANNOT PAY RENT WITHIN THE SPECIFIED CURE PERIOD (MINIMUM 30 DAYS), THE TENANT MUST PROVIDE THE LANDLORD WRITTEN DOCUMENTATION THAT THE RENT PAYMENT WAS MISSED DUE TO FINANCIAL IMPACTS OF COVID-19.

- A tenant may satisfy this requirement with a letter, email, or other written communication to the landlord (or its agent) that explains the financial impact the

tenant is experiencing. The explanation should be objectively verifiable. Third-party documentation (such as a letter from an accountant) is not necessary to satisfy this step, but may be helpful.

- The definition of “financial impact” means a substantial decrease in business income due to illness or other disruption, reduced opening 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.
- A landlord may extend the tenant’s deadline to provide documentation.

**IF A LANDLORD OWNS LESS THAN 25,000 SQUARE FEET OF RENTABLE SPACE IN A BUILDING, THE LANDLORD MAY EVICT TENANT(S) FOR NON-PAYMENT OF RENT.**

- A landlord must first provide the tenant written notice of the violation and an opportunity to cure the violation.
- A landlord must demonstrate that failing to evict the tenant would create a significant financial hardship for the landlord.

### **STEP THREE: PAYMENT PLAN AND ADDITIONAL MONTHLY EXTENSIONS**

- If the tenant has provided documentation of a financial impact (see Step Two above), the cure period will automatically extend by an additional one month, so that the landlord and tenant can attempt to develop a payment plan for the missed rent.
- A payment plan may address issues such as how much of the back rent the tenant must repay, and on what schedule. If the landlord and tenant cannot agree to a payment plan, then the tenant shall, on or before the one-month cure period expires, either (1) pay the outstanding rent, **OR** (2) provide documentation of the tenant’s 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. The tenant may obtain further monthly extensions of the cure period by providing updated documentation each month.
- The landlord may not attempt to recover possession of the unit for non-payment until after the expiration of the cure period (including all extensions).
- The landlord may provide the tenant additional time under a payment plan or choose to forgo any payment due by providing written notice to the tenant.
- If the tenant fails to provide notice or documentation to the landlord, it does not affect the tenant’s ability to claim protection under this Order as an affirmative defense in the event the landlord files an action to recover possession due to non-payment.

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

This moratorium and the procedures described above apply 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).

## **SECURITY DEPOSITS**

A landlord may draw from a tenant's existing security deposit in the event of a missed rent payment and the agreement allows for the landlord to deduct rent from the security deposit, yet doing so is highly discouraged. However, the landlord may not require a tenant to increase or replenish the security deposit.

Where an existing lease agreement provides that a tenant must replenish a security deposit that the landlord has drawn from, the landlord shall not attempt to evict the tenant due to the tenant's inability to replenish the security deposit, if the tenant was unable to do so because of the financial impacts of COVID-19. In such an event, the landlord and tenant shall follow the notice and cure requirements of this regulation.

Any failure to replenish a security deposit shall not be a basis to recover possession of the unit while the Order remains in effect. Landlords are highly discouraged from using a tenant's security deposit to cover missed rent payments during the moratorium.

## **HARDSHIP WAIVER**

The Office of Economic and Workforce Development has the authority and sole discretion to grant waivers to this moratorium to landlords that demonstrate significant financial hardship. Requests for hardship waivers will be highly scrutinized, with a presumption not to offer such waiver unless significant and unmitigable hardship situations, as outlined below, can be demonstrated.

- At any time during the cure period, the landlord may request a waiver from the Office of Economic and Workforce Development to allow the landlord to proceed with the eviction for non-payment, if the landlord can demonstrate that it is necessary to evict in order to avoid a significant financial hardship.

- Demonstration of hardship shall require documentation showing the existence of certain, enforceable obligations upon the landlord that require the landlord to evict the tenant or terminate possession of the premises. For example, the Office of Economic and Workforce Development may consider matters such as:
  1. Whether there are any enforceable obligations
  2. Extent of hardship claimed
  3. Whether the landlord has an alternative tenant or other use for the property that will be able to proceed once the eviction is completed
  4. Landlord's overall financial assets, credit, and other similar financial documentation
- Upon the granting of the waiver, the landlord shall provide written notice to the tenant, as well a copy of the waiver, and informing them of its intent to proceed with eviction for non-payment of rent.
- Waiver requests may be sent to the Office of Economic and Workforce Development via email to [commercial.evictions@sfgov.org](mailto:commercial.evictions@sfgov.org).

## 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@sfbar.org](mailto:cis@sfbar.org) or visit their website <https://www.sfbar.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).