

LEGISLATIVE DIGEST

[Administrative Code - Eviction of Commercial Tenants During COVID-19 Pandemic]

Ordinance amending the Administrative Code to temporarily restrict landlords from evicting commercial tenants for non-payment of rent that was not paid due to the COVID-19 pandemic.

Existing Law

On March 16, 2020, the Governor issued Executive Order N-28-20, paragraph 2 of which allows local governments to enact measures to protect commercial tenants from being evicted due to their inability to pay rent due to COVID-19. Paragraph 2 of the Executive Order is currently set to expire on March 31, 2021.

On March 19, 2020, the Mayor issued an Emergency Order to restrict landlords from evicting commercial tenants (other than those engaged in formula retail uses) that are registered to do business in San Francisco and that have worldwide gross receipts for tax year 2019 equal to or below \$25 million (“covered commercial tenants”). The Order applies to rent owed by covered commercial tenants from March 19 through the end of November 2020 (unless the November 2020 date is extended). Under the Order, a landlord may not evict a covered commercial tenant for non-payment of rent that fell due during the time period it covers until March 31, 2021, unless the landlord can demonstrate that the eviction is necessary to avoid a significant financial hardship to the landlord.

Amendments to Current Law

The proposed ordinance would broaden the definition of covered commercial tenant by deleting the exclusion for formula retail, but would narrow the definition by excluding for-profit tenants who are occupying space zoned or approved for Office Use as defined under the Planning Code. The proposed ordinance also clarifies that it does not apply to tenants leasing commercial space from the City.

The proposed ordinance would prohibit landlords from evicting covered commercial tenants who had missed rent payments that fell due while paragraph 2 of the Executive Order was in effect (from March 16, 2020 until March 31, 2021, unless the Governor extends the expiration date further; hereafter, the “Moratorium Period”), based on the number of employees that the tenant employs. Covered commercial tenants with 9 employees or fewer would have 24 months after the end of the Moratorium Period to make up for any missed rent payments before they could be evicted for non-payment. Those with 10-24 employees would have 18 months after the end of the Moratorium Period. Those with 25-49 employees would have until 12 months after the end of the Moratorium Period. Those with 50 employees or more would have until the end of the Moratorium Period. Interest could not begin to accrue until after the applicable payment deadline.

Landlords and tenants would be allowed to enter into written repayment plans to modify these deadlines. In addition, a landlord could proceed with an eviction for non-payment before the applicable deadline if the landlord owns less than 25,000 square feet of Gross Floor Area (as defined in the Planning Code) in the City, and can demonstrate that being unable to evict would create a significant financial hardship for the landlord.

Finally, if a covered commercial tenant with 9 employees or fewer elected to terminate their lease during the Moratorium Period, the tenant would still owe any back rent, but the landlord could not impose financial penalties based on the termination or continue to charge the tenant rent following the effective date of the termination.

Amendments to Current Law

This version of the legislative digest reflects amendments proposed on November 2, 2020.

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