CITY MANAGER'S OFFICE

CITY OF CULVER CITY

9770 CULVER BOULEVARD, CULVER CITY, CALIFORNIA 90232-0507

(310) 253-6000
•
FAX (310) 253-6010

JOHN M. NACHBAR
CITY MANAGER

Rules and Implementation Measures Regarding
COMMERCIAL TENANT EVICTION MORATORIUM

Issue Date: March 27, 2020

BACKGROUND:

On March 16, 2020, the City Manager, under the authority of Culver City Municipal Code (CCMC) Section 3.09.020, as the Director of Emergency Services, issued a Public Order enacting City measures to protect members of the public and City workers from undue risk of COVID-19 ("March 16 Order") and on March 20, 2020 issued a First Supplement to Public Order ("March 20 Order"). The March 16 Order and March 20 Order are collectively referred to as "Public Order". The Public Order will remain in effect through April 19, 2020, unless extended or renewed, and includes, among other things, the following order in Section 2 of the March 20 Order ("Commercial Tenant Eviction Moratorium"):

> *"[N]o landlord shall evict a commercial tenant in the City of Culver City during this local emergency period if the tenant is able to show an inability to pay rent due to circumstances related to the COVID-19 pandemic. These circumstances include:*
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> *A. loss of income due to a COVID-19 related workplace closure;*
> *B. child care expenditures due to school closures;*
> *C. health care expenses related to being ill with COVID-19;*
> *D. expenses or loss of income due to caring for a member of the tenant's household who is ill with COVID-19; or*
> *E. reasonable expenditures that stem from government-ordered emergency measures.*
>
> *Nothing in this Section 2 shall be construed to mean that the commercial tenant will not still be obligated to pay lawfully charged rent as provided below. Tenants will have up to six months following the expiration of the local emergency period to repay any back due rent. Commercial tenants may use the protections afforded in this Section 2 as an affirmative defense in an unlawful detainer action. The moratorium on evictions imposed by this subsection shall remain in effect during the pendency of the local emergency period, but will not apply in cases where eviction is necessary to address an imminent and objectively verifiable threat to the health and safety of tenant or tenant's employees, landlord or landlord's employees, or neighboring businesses or residents."*

On March 18 and March 26, 2020, the City Council adopted urgency ordinances (Ordinance No. 2020-006 and Ordinance No. 2020-007), confirming the March 16 Order and March 20 Order, respectively, pursuant to CCMC Section 3.09.020.B.1.h(2).

AUTHORITY: Section 3.C of Ordinance No. 2020-007 ("Urgency Ordinance") provides the City Manager the authority to promulgate rules and implementation measures (collectively, "Implementation Measures") with regard to the Commercial Tenant Eviction Moratorium, which are consistent with the provisions of the March 20 Order and the Urgency Ordinance. Section 4 of the Urgency Ordinance authorizes the enforcement of any violation of the Commercial Tenant Eviction Moratorium by the issuance of administrative fines up to $1,000 for each violation.

IMPLEMENTATION MEASURES:

Section 1. Definitions. For purposes of the March 20 Order, Urgency Ordinance, and these Implementation Measures, the following definitions shall apply:

A. "Affected Tenant" means a Commercial Tenant who is unable to pay their Rent due to circumstances related to the COVID-19 pandemic, including loss of income due to a COVID-19 related workplace closure, child care expenditures due to school closures, health care expenses related to being ill with COVID-19, expenses or loss of income due to caring for a member of the tenant's household who is ill with COVID-19, or reasonable expenditures that stem from government-ordered emergency measures.

B. "Back Rent" means that portion of Rent owed by an Affected Tenant that remains unpaid upon expiration of the Local Emergency Period.

C. "Commercial Property" means real property, including any part, portion, or unit thereof, and any related facilities, space, or services, except the following:

   i. Any dwelling unit as defined in Civil Code Section 1940.
   ii. Any dwelling unit in any mobilehome park, as defined in Health and Safety Code Section 18214.
   iii. Any recreational vehicle as defined in Civil Code Section 799.24.

   Commercial Property may include but is not limited to retail, office, industrial, manufacturing, assembly, warehousing, hotels, motels, and special uses such as gas stations, theaters, bowling alleys, health care facilities, nursing facilities, child care centers, and schools.

D. "Commercial Tenant" means any individual, agency, association, branch, corporation, estate, group, partnership, or other entity or organization entitled by

Lease or by sufferance, to the use or occupancy of a Commercial Property, provided that such person holds a valid business license issued by the City of Culver City, unless exempt from business license requirements under the Culver City Municipal Code.

E. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive Rent for the use and occupancy of a Commercial Property and the agent, representative, or successor of any of the foregoing.

F. "Lease" means the written or oral agreement setting forth the terms and conditions of the Commercial Tenant's use or occupancy of the Commercial Property.

G. "Local Emergency Period" means the term of the Public Order, including all supplemental orders, extension or amendments.

H. "Notice of Termination" means any notice, including notice given under Code of Civil Procedure section 1161, informing a Commercial Tenant of the termination of its tenancy for nonpayment of Rent.

I. "Rent" means the sum of all monetary payments and all nonmonetary consideration demanded or received by a Landlord from a Commercial Tenant for the use or occupancy of the Commercial Property, including the Commercial Tenant's access to and use of services provided by the Landlord related to the use or occupancy of the Commercial Property. Rent includes, without limitation, the fair market value of goods accepted, labor performed, or services rendered.

Section 2. Scope. The March 20 Order applies to Affected Tenants of every Commercial Property located in the City of Culver City and Landlords of Affected Tenants.

Section 3. Application.

A. The Eviction Moratorium shall apply to every Notice of Termination, eviction notice, and unlawful detainer action for non-payment of Rent brought under Code of Civil Procedure Sections 1161 and 1161.1, seeking to recover occupancy of a Commercial Property occupied by an Affected Tenant, regardless of the date it is served or filed, if the Commercial Property has not been permanently vacated as of the effective date of the Urgency Ordinance (March 26, 2020).

B. The Eviction Moratorium shall not apply in cases where eviction is necessary to address an imminent and objectively verifiable threat to the health and safety of the Affected Tenant, or the Affected Tenant's employees, the Landlord or the Landlord's employees, or neighboring businesses or residents. In such cases, the Landlord must give written notice to the Affected Tenant and to the Economic Development Division of the City of Culver City, describing in detail

the nature of the imminent threat, the reason eviction is necessary to address the threat, and the steps taken by Landlord to avoid eviction. The Economic Development Division may request additional documentation and may order suspension of the eviction process if it determines, in its reasonable discretion, that the eviction is unnecessary.

C. The March 20 Order and these Implementation Measures do not in any way diminish, nullify or supersede provisions, including but not limited to, Force Majeure provisions, in the Affected Tenant's Lease that entitle the Affected Tenant to additional protections, rights and benefits regarding the payment of Rent and such provisions continue to be fully enforceable by the Affected Tenant according to their terms.

Section 4. Prohibitions.

A. No landlord shall evict a Commercial Tenant in the City of Culver City during the term of the Public Order, as supplemented, amended, or extended, if the Commercial Tenant is able to show an inability to pay Rent due to circumstances related to the COVID-19 pandemic, which include one or more of the following:

1. Loss of income due to a COVID-19 related workplace closure or partial closure
2. Child care expenditures due to school closures;
3. Health care expenses related to being ill with COVID-19;
4. Expenses or loss of income due to caring for a member of the tenant's household who is ill with COVID-19; or
5. Reasonable expenditures that stem from government-ordered emergency measures.

B. Loss of income includes, but is not necessarily limited to, loss of business income from the Commercial Property and loss of personal income from the Commercial Tenant's outside employment.

C. A Landlord is prohibited from charging or collecting late charges or fees when payment of Rent is delayed for the reasons set forth in Section 4.A.

D. A Landlord may not unreasonably prohibit an Affected Tenant's subleasing of the Commercial Property or assignment of the Lease. The Landlord must provide a written statement of the reasons for prohibiting subleasing or assignment and provide a copy to the Affected Tenant and the Economic Development Division.

E. If the term of a Commercial Tenant's Lease expires during the Local Emergency Period but the Commercial Tenant is unable to remove their

personal property due to circumstances related to the COVID-19 pandemic, the Landlord may not attempt to collect holdover Rent during the Local Emergency Period.

F. A Landlord may not use the eviction process to seek Rent that is delayed for the reasons set forth in Section 4.A and these Implementation Measures. A Landlord may not engage in constructive eviction of an Affected Tenant, such as denying access to the Commercial Property or actions caused directly by Landlord or by a person or circumstance within Landlord's control, whereby the property is rendered wholly or substantially unsuitable for the use for which it was leased.

G. Nothing in the March 20 Order or these Implementation Measures relieves Landlord or the Affected Tenant of their respective maintenance and repair obligations and their obligations to pay taxes and assessments under the Affected Tenant's Lease or their respective obligation to provide the utilities and other services required by the Affected Tenant's Lease.

H. Nothing in the March 20 Order or these Implementation Regulations nullifies or supersedes the Affected Tenant's right to early termination under the terms of the Lease or relieves the Affected Tenant of its other obligations under the Lease relating to early termination.

Section 5. Notice. A Landlord who has knowledge that an Affected Tenant cannot pay some or all of the Rent for the reasons set forth in the Public Order shall not serve a Notice of Termination, file or prosecute an unlawful detainer action under Code of Civil Procedure Sections 1161 and 1161.1 or otherwise seek to evict an Affected Tenant for nonpayment of Rent. For purposes of this Section, a Landlord shall be presumed to have "knowledge" of an Affected Tenant's inability to pay Rent within the meaning of the Public Order if the Affected Tenant, within 30 days after the date that Rent is due, notifies the Landlord in writing of the Affected Tenant's inability to pay full Rent for any of the reasons set forth in Section 4.A of these Implementation Measures, and provides documentation to support the claim. For purposes of this Section, "in writing" includes email or text communications to the Landlord or the Landlord's representative with whom the Affected Tenant has previously corresponded by email or text.

Section 6. Documentation. One or more of the following documents, appropriate to the circumstances, may be used to create a rebuttable presumption that the Commercial Tenant has met the documentation requirement set forth in Section 5 of these Implementation Measures and qualifies as an Affected Tenant; however, the listed documents are not the exclusive form of documentation that may be used to create a rebuttable presumption that the Commercial Tenant qualifies as an Affected Tenant and is entitled to the protections of the March 20 Order:

A. A financial statement certified by the Commercial Tenant, showing a decline in gross business income;
B. Written records showing a reduction in operating hours, reduction in sales, temporary closures, or other identifiable impacts of COVID-19 on the Commercial Tenant's operations;
C. Written communication from the Commercial Tenant's outside employer citing COVID-19 as a reason for reduced work hours, suspension of wages, or termination;
D. Paycheck stubs and time cards from the Commercial Tenant's outside employment;
E. Notification from a school declaring a school closure related to COVID-19 or other public notice of a school closure;
F. Proof of out-of-pocket medical expenses;
G. Proof of out-of-pocket child care expenses;
H. Proof of COVID-19 medical care or medical quarantine.

The Landlord shall provide a copy of the Affected Tenant's documentation to the City's Economic Development Division upon request. All medical or financial information provided to the Landlord or the City shall be held in a separate confidential and secured file, and shall only be used for evaluating the Affected Tenant's claim. The Landlord shall retain all records pertaining to an Affected Tenant's claim for a period of at least one year and shall permit inspection and copying by the City's Economic Development Division.

Section 7. Affirmative Defense. Each Landlord that seeks to terminate a tenancy of an Affected Tenant must comply with the March 20 Order and these Implementation Measures. Non-compliance with any applicable provision of the March 20 Order or these Implementation Measures shall constitute an affirmative defense against an unlawful detainer action under California Code of Civil Procedure Sections 1161 and 1161.1, as amended. To assert this defense, an Affected Tenant shall have provided their Landlord with the notice and written documentation required by Sections 5 and 6 of these Implementation Measures, or other objectively verifiable information, establishing that the Affected Tenant's inability to pay Rent is due to one or more of the circumstances described in Section 4.A.

Section 8. Payment of Back Rent. Nothing in the March 20 Order or these Implementation Measures shall relieve an Affected Tenant of liability for unpaid Rent. An Affected Tenant will have a period of six months after the expiration of the Local Emergency Period to pay all Back Rent. During that six-month grace period, the Landlord may collect Rent as it accrues for each rental period but may not terminate the tenancy of an Affected Tenant for nonpayment of Back Rent. If during the Local Emergency Period the Landlord exercises a legal right to draw upon the Affected Tenant's deposit under Civil Code Section 1950.7 for payment of Rent, then the Affected Tenant may elect to have payment of Back Rent during the six-month grace period allocated to the deposit to restore the amount drawn down by the Landlord, in which case such amount shall be credited to the Back Rent owed. Upon the expiration of the six-month grace period, the

Landlord may take such actions as allowed by State and local law to collect any Back Rent that remains unpaid, including seeking recovery of possession of the Commercial Property.

Section 9. Enforcement. The rules and implementation measures promulgated by the City Manager, pursuant to the authority provided under the Urgency Ordinance, shall have the force and effect of law and may be relied upon by parties to determine their rights and responsibilities under the March 20 Order and the Urgency Ordinance.

Section 10. Issuance of Administrative Citations. Pursuant to the authority granted under Section 4 of Ordinance No. 2020-007, the City, in its sole discretion, may choose to enforce the provisions of the Commercial Tenant Eviction Moratorium and these Implementation Measures, through the administrative citation process set forth in Chapter 1.02 of the CCMC. Notwithstanding any provision in Chapter 1.02 to the contrary, each violation of any the Commercial Tenant Eviction Moratorium or these Implementation Measures may be subject to an administrative fine of up to $1,000. Each separate day, or any portion thereof, during which any violation occurs or continues, constitutes a separate violation. The City's decision to pursue or not pursue enforcement of any kind shall not affect an Affected Tenant's rights to pursue civil remedies.

Date: 3/27/2020

John M. Nachbar, City Manager
Director of Emergency Services
City of Culver City