

**REPORT OF THE  
CHIEF LEGISLATIVE ANALYST**

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DATE: May 25, 2021

TO: Honorable Members of the City Council

FROM: Sharon M. Tso   
Chief Legislative Analyst

Council File No. 20-0147-S19  
Assignment No. 20-05-0485

**Temporary Protection of Commercial Tenants During the COVID-19 Pandemic –  
Proposed Amendments to Ordinance Number 186606**

**SUMMARY**

On April 29, 2020, the City Council considered Motion (Koretz, Martinez - Price); Council File 20-0147-S19, requesting that the City Attorney amend Ordinance Number 186585 (Ordinance since revised to Number 186606), which pertains to temporary protections of residential and commercial tenants during the COVID-19 pandemic. The Motion seeks to extend the amount of time commercial tenants have to pay past due rent from three months to six months, as well as to include the time commercial tenants have to pay past due rent to 12 months should the business have 50 or fewer employees.

The Motion was adopted, as amended, instructing the Chief Legislative Analyst (CLA), in consultation with the Economic and Workforce Development Department (EWDD), the Office of the City Attorney, and the Small Business Commission, to report on various matters, such as alternative repayment periods, reviewing business size categories, and requiring proof of a loss of income, prior to presenting a revised ordinance to the Council. Our Office provides a discussion of each request by the Council, including recommended amendments to the ordinance. Our Office consulted with the Small Business Commission, which helped to inform our goal of revising the Ordinance to align closer with the County of Los Angeles' Temporary Eviction Moratorium for Commercial Tenants for ease of use and understanding by both tenants and landlords.

**RECOMMENDATIONS**

That the City Council, subject to the approval of the Mayor,

1. Amend the Temporary Protection of Commercial Tenants (relevant sections of Ordinance Number 186606) as delineated in this report as Numbers 1 through 9, which will extend the time commercial tenants have to remit past due rent and include a requirement for documentation of a COVID-19 impact for some tenants, among other provisions.

2. Direct the Economic and Workforce Development Department, with the assistance of the Chief Legislative Analyst, to promulgate rules and regulations for the Temporary Protections of Commercial Tenants, and to share this information on the department's website, Business Source Centers, and other public outlets.

## **FISCAL IMPACT**

There is no impact on the General Fund.

## **BACKGROUND**

On March 16, 2020, Governor Newsom issued Executive Order N-28-20, which removed state law restrictions on local government's ability to impose limitations on commercial evictions when the grounds for eviction is non-payment of rent due to a documented substantial decrease in income or increase in expenditures due to COVID-19, or government emergency orders related to COVID-19. The Executive Order does not relieve the tenant of the obligation to pay rent. This provision was extended until June 30, 2021 by Executive Order N-03-21.

The City's Ordinance, which was signed by the Mayor on March 31, 2020, temporarily prohibits evictions of residential and commercial tenants for failure to pay rent due to the COVID-19 pandemic. Commercial tenants have up to three months following the expiration of the local emergency period to repay any past due rent. The local emergency period is March 4, 2020 to the end of the local emergency as declared by the Mayor. The ordinance does not eliminate any obligation to pay lawfully charged rent. However, commercial landlords cannot charge interest or late fees on past due rent related to the COVID-19 pandemic.

Under the ordinance, "commercial real property" is defined as "any parcel of real property that is developed and used either in part or in whole for commercial purposes. This does not include commercial real property leased by a multi-national company, a publicly traded company, or a company that employees more than 500 employees." Tenants occupying commercial property, as defined above, would be subject to the protections under the ordinance.

On March 19, 2020, the Los Angeles County Board of Supervisors (County) adopted a resolution imposing a temporary moratorium on evictions for nonpayment of rent by residential and commercial tenants. On September 1, 2020, the County adopted a resolution extending its existing moratorium, as well as establishing its moratorium as a baseline for all tenants in the County, including incorporated cities that have their own local eviction moratoria (this would include the City). This means that the provisions in either the County or City moratorium that provide the strongest protection to commercial tenants will prevail.

The financial impact of the COVID-19 pandemic on small business is extensive throughout the City and State. The City's commercial tenant eviction ordinance provides a baseline of protections to tenants, however, landlords and tenants are free to negotiate their own rent repayment agreements. Ultimately, questions regarding the County or City's protections and which take precedence or other disputes between landlords and tenants will be determined by the Courts.

## RECOMMENDED AMENDMENTS TO THE CITY ORDINANCE

The Council directed our Office to explore several provisions of the current commercial tenant protections. We provide an analysis of each of these provisions, including the differences between the City and County protections, and our recommended amendments to the City ordinance. Our recommendations reflect a desire to more closely mirror the County moratorium where appropriate, which will provide consistent treatment of landlords and tenants throughout the County to support equity and clarity. This approach has been informed by discussions with the Small Business Commission. We do not recommend copying the County ordinance in its entirety, as doing so would eliminate current protections for businesses located in the City with greater than 99 employees.

For ease of reference, we provide a chart comparing these recommendations to the County's moratorium in Attachment A.

### Council Directions, Analysis, and Recommendations

1. Review the appropriate amount of time a commercial tenant should repay past due rent resulting from the COVID-19 pandemic.
  - **Current City ordinance:** commercial tenants with up to 500 employees have three months following the expiration of the local emergency to repay any deferred rent.
  - **County moratorium:**
    - Tenants with nine employees or fewer: 12 months to repay any deferred rent.
    - Tenants with 10-99 employees: six months to repay any deferred rent.
    - Tenants with 100-500 employees: no protections.
  - **Recommendation:** Mirror the County moratorium and add a specific category for companies with 100-500 employees:
    - Tenants with nine employees or fewer: 12 months to repay any deferred rent.
    - Tenants with 10-99 employees: six months to repay any deferred rent.
    - Tenants with 100-500 employees: three months to repay any deferred rent.
      - Larger companies have more resources and options to adjust to the business challenges brought on by COVID-19.
2. Review whether a small business commercial tenant should be defined as having 50 or fewer employees, or whether an alternative definition is appropriate.
  - **Recommendation:** Mirror County moratorium as described above. Businesses with nine employees or less will see an extension from three to 12 months.

Businesses between 10 and 99 employees will see an extension from three to six months on the time they have to pay back rent once the emergency period is concluded.

3. Report on whether the current definition of commercial tenant is appropriate, or whether a new definition will be required to address the proposed amendments.

- The current ordinance does not define “commercial tenant.” The ordinance instead defines “commercial real property” as follows: “any parcel of real property that is developed and used either in part or in whole for commercial purposes. This does not include commercial real property leased by a multi-national company, a publicly traded company, or a company that employs more than 500 employees.”
- **Recommendation:** A “multi-national company” is not defined by the ordinance. It is common practice for a foreign company to create a separate company (a subsidiary of the foreign parent company) to operate in the United States. Our Office recommends that a definition of a “multi-national company” be added to the ordinance, which is based on the definition used in the Los Angeles County ordinance (“a” and “b” below), but amended in such a way that subsidiaries would be treated as multi-national companies (“c”):

- “Multinational Company” means any of the following:

- a) a company operating within the City of Los Angeles but with its principal headquarters located outside of the United States;
- b) a company with its principal headquarters located in the United States but which derives 25 percent or more of its revenue from operations outside of the United States; or
- c) a subsidiary of a parent company (the parent company owns more than 50 percent of the subsidiary) headquartered outside of the United States.

4. Consider the pros and cons of requiring commercial tenants to provide evidence of a loss of income or inability to pay rent due to the COVID-19 pandemic.

- **Current City ordinance:** no documentation is required.
- **County moratorium:**
  - Tenants with nine employees or fewer: may self-certify COVID-19 impact, but not required.
  - Tenants with 10-99 employees: must show written documentation demonstrating a COVID-19 impact.
  - Tenants with 100-500 employees: no protections.

- **Recommendation:** Mirror the County moratorium and provide requirements for companies with up to 500 employees.
    - Tenants with nine employees or fewer: may self-certify COVID-19 impact, but not required.
    - Tenants with 10-500 employees: must show written documentation demonstrating a COVID-19 impact.
      - COVID-19 has hit the City's smallest businesses especially hard, as they often do not have the resources to weather an extended period of mandated closures. Therefore, it is recommended that businesses of nine employees or fewer not be burdened with having to prove COVID-19's negative impact. Discussions with the Small Business Commission resulted in a call for a more balanced approach between commercial tenants and landlords. To provide protections for both small businesses and landlords, and mindful that some landlords are small businesses themselves with their own struggles, tenant companies with 10-500 employees would be required to submit proof of a COVID-19 impact to be subject to eviction protections. The rules governing the type of documentation and the frequency of submitting this documentation to the landlord will be provided by the Economic and Workforce Development Department, with the assistance of the Chief Legislative Analyst.
5. Determine which City department will be responsible for managing commercial tenant repayment plans or related tasks.
    - Our Office recommends that EWDD provide assistance in complying with the revised ordinance.
  6. Report on how the proposed amendments would affect an existing rent repayment agreement between a commercial landlord and tenant.
    - The ordinance sets a baseline of tenant protections. Landlords and tenants have the right to agree to a different arrangement.
  7. Report on how the proposed amendments would impact commercial sublease agreements.
    - The ordinance currently protects sublease agreements and none of the proposed amendments would alter this.
  8. Review whether defining the number of employees appropriately reflects the financial needs of a business.

- We believe that employee count is the correct metric to determine which businesses receive the various protections of the ordinance. Our goal is to more closely mirror the County's provisions in order to provide tenants and landlords with protections that are simple and easy to understand, as suggested by the Small Business Commission. Employee counts have been used in other City business assistance programs, including the Microenterprise grant program.

9. Expiration Date

- **Current City ordinance:** states that the payback period for commercial tenants begins after the expiration date of the Mayor's Local Emergency. "Local Emergency Period" is defined as the period of time from March 4, 2020, to the end of the local emergency period as declared by the Mayor.
- **Recommendation:** The payback period begins when the Governor revokes the ability for the City to provide commercial tenant eviction protections.
  - The City derives its power to offer eviction protections from the Governor. When the Governor ends this authority, the payback period should begin. The Governor holds the ultimate authority on this matter, as municipalities generally lack regulatory powers over private commercial contracts (See California Civil Code Section 1954.27).
  - A State law could legislate commercial tenant protections, but no legislation has been approved to date.

Small Business Commission

Our Office discussed the issue of commercial tenant protections with the Small Business Commission on May 27, 2020 and February 17, 2021. Major comments include:

- Back rent during the payback period will represent a large percentage of rent increase.
- Ensure there is balance in policies for both tenants and landlords.
- The City should initiate an education campaign for small businesses to understand their rights under the law.
- Make the ordinance simple as disputes will end up in court.

  
 Clay McCarter  
 Analyst

**Proposed City Commercial Eviction Protections vs. County Moratorium**

	Employees	Months to Pay Back Rent	Proof of Documentation
<b>City Ordinance (Proposed)</b>	1-9	12	not required
	10-99	6	required
	100-500	3	required
<b>County Moratorium</b>			
	1-9	12	not required
	10-99	6	required
	100-500	not applicable	not applicable

**MOTION**

I HEREBY MOVE that Council AMEND Motion (Koretz – Martinez – Price) relative to amending Ordinance No. 186585 protecting commercial tenants from eviction in the event the pandemic results in the inability of the tenant to pay rent (Council file No. 20-0147-S19, Item No. 75 from the April 29, 2020 Council meeting) to add the following recommendation:

REQUEST the Chief Legislative Analyst, with consultation with the Economic and Workforce Development Department, the City Attorney, and the Small Business Commission, to report before moving forward on amending Ordinance No. 186585, regarding the temporary protection of tenants during the COVID-19 pandemic. Report should consider the pro's and con's of requiring some evidence of the inability to pay rent by commercial tenants.

PRESENTED BY \_\_\_\_\_  
BOB BLUMENFIELD  
Councilmember, 3rd District

SECONDED BY \_\_\_\_\_  
MITCH O'FARRELL  
Councilmember, 13th District

SECONDED BY \_\_\_\_\_  
NURY MARTINEZ  
Councilmember, 6th District

SECONDED BY \_\_\_\_\_  
JOE BUSCAINO  
Councilmember, 15th District

April 29, 2020

CF 20-0147-S19

TO CITY CLERK FOR PLACEMENT ON NEXT  
REGULAR COUNCIL AGENDA TO BE POSTED

#57

MOTION

The COVID-19 outbreak has resulted in an acute shock to the local economy, resulting in thousands of businesses closing their doors and laying off employees. The Los Angeles County Economic Development Corporation estimates that for the Los Angeles-Long Beach-Anaheim Metropolitan Statistical Area, over 1.7 million jobs could be lost due to the COVID-19 stay at home order. On March 27, 2020, the City Council adopted an emergency ordinance to protect commercial tenants from eviction in the event the pandemic has resulted in the inability of the tenant to pay rent. Once the state of emergency has been lifted, tenants have up to three months to pay the forebared rent. The City's small businesses have been extremely hard hit by this pandemic, and more should be done to ensure that once businesses do reopen, business owners have the opportunity to pay past due rent over a six month or 12 month period.

I THEREFORE MOVE that the City Attorney be requested to amend ordinance #186585, regarding the temporary protection of tenants during the COVID-19 pandemic, to extend the amount of time commercial tenants have to pay past due rent from three months to six months.

I FURTHER MOVE that the time period commercial tenants have to pay past due rent be 12 months should the business have 50 or fewer employees.

PRESENTED BY



PAUL KORETZ

Councilmember, 5<sup>th</sup> District

~~PRESENTED BY~~



NURY MARTINEZ

Councilmember, 6<sup>th</sup> District

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SECONDED BY

