

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: August 19, 2021

TO: Honorable Members of the Economic Development and Jobs Committee

FROM: Sharon M. Tso 
Chief Legislative Analyst

Council File No. 20-0147-S19
Assignment No. 21-07-0565

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

SUMMARY

On June 22, 2021, the Economic Development and Jobs Committee considered a Chief Legislative Analyst (CLA) report dated May 25, 2021 that recommended several amendments to Ordinance Number 186606 concerning the temporary protection of commercial tenants from eviction due to a COVID-19 related financial hardship (Council File 20-0147-S19). The proposed amendments include an extension of the rent payback period, aligning the payback start date with the Governor's Executive Order, and requiring documentation demonstrating a COVID-19 financial impact, among other provisions. After a discussion with staff from our Office and the City Attorney, the Committee had a number of outstanding questions to be resolved to address potential amendments to the ordinance. This report provides responses to the several questions and discussion points raised by the Committee, including some additional issues for consideration.

RECOMMENDATION

Note and file this report, as it is for informational purposes only.

FISCAL IMPACT

There is no impact on the General Fund.

BACKGROUND

At its meeting on June 22, 2021, the Committee asked several questions and discussed several points regarding CLA recommended amendments to Ordinance Number 186606 concerning the temporary protection of commercial tenants from eviction due to a COVID-19 related financial hardship. Our Office provides responses to the questions and discussion points raised by the Committee, including some additional issues for consideration:

1. Has the Governor extended the Commercial Eviction Moratorium?

Yes. On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which extended local government’s ability to impose limitations on commercial evictions until September 30, 2021. This is the latest in a series of extensions from the original executive order. On June 22, 2021, the Los Angeles County Board of Supervisors voted to extend the County’s Commercial Eviction Moratorium until September 30, 2021.

The City’s current ordinance temporarily prohibits evictions of commercial tenants for failure to pay rent due to the financial impacts related 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.

2. Can the City require small businesses with one to nine employees to demonstrate proof of a COVID-19 financial impact?

Yes. Should the Committee wish to require businesses with one to nine employees to provide documentation of a COVID-19 financial impact to their landlord, the Committee can adopt the recommendations in the CLA report dated May 25, 2021, with an additional recommendation as follows:

- Require small businesses with one to nine employees to demonstrate proof of a COVID-19 financial impact to their landlord either by self-certifying in writing or submitting other documentation.

3. For determining the rent payback period, what is the definition of “employee” and what date should be used to define the number of employees?

Should the Committee wish to include a definition of “employee,” our Office recommends this definition:

“The number of employees will be determined by the business selecting one week between March 2, 2020 and July 2, 2021. An Employee is any individual who during this one week period performed a minimum of 32 hours (1 Full Time Equivalent) or 16 hours (0.5 Full Time Equivalent) of work within the geographic boundaries of the City for an Employer and is not considered a bona-fide independent contractor under the California Labor Code. Should the total number of employees not be a whole number, the number of employees will be rounded up to a whole number.”

The business has the flexibility to choose the week in which to count their number of employees, so long as the week falls between March 2, 2020 and July 2, 2021. We recommend this definition because it does not penalize businesses who were forced to lay off employees after the pandemic began.

4. Can the City expand the employee threshold for the 12 month payback period from businesses with one to nine employees to businesses with one to 50 employees?

Our Office consulted with the Economic and Workforce Development Department (EWDD) to determine the proportion of businesses that would be affected by the payback periods proposed in the May 25, 2021 CLA report:

Payback Periods Proposed in the May 25, 2021 CLA Report	Business Employee Count	Percentage of Businesses in the City (2019 data)	Months to Pay Back Rent
	1-9	79%	12
	10-99	19%	6
	100-500	2%	3

As the data shows, most of the businesses in the City are considered very small, with less than ten employees. Attachment A provides more detail on business employee count. Businesses with 49 or fewer employees represent 96 percent of the total businesses located in the City. Therefore, providing a 12 month payback period for businesses with 50 or fewer employees would provide this benefit to nearly all businesses in the City. The payback periods described above mirror the County guidelines (with the exception of support for businesses with 100-500 employees - the County provides no protections for these businesses). The Small Business Commission and business community has voiced that any eviction protections be simple and uniform in response, in order to provide the greatest clarity amongst landlords and tenants. Ultimately, defining the employee count threshold for each payback period is a policy decision for the City Council.

5. If a business receives commercial rental assistance from the City, should that change the payback period?

As described below, EWDD will be implementing a new grant program, which will provide grants of up to \$15,000 (or six months' rent, whichever is less) to support rental/lease costs for approximately 800 small businesses. As proposed, businesses over 100 employees are not likely to be eligible for this assistance. If a business receives financial support from the City to address rental arrears, the Council may wish to categorize these businesses separately by accelerating the overall rent payback period to either three or six months.

6. What are the differences between the proposed CLA recommendations and the County's commercial eviction moratorium?

As proposed in the May 25, 2021 CLA report, the eviction protections provided by the City will generally mirror the County. The only differences are: 1) including a more specific definition for a "multi-national" company and 2) protections for companies with 100-500 employees.

It is important to note that the City of Santa Monica and the City of Long Beach allowed their commercial eviction protections to expire, thereby deferring to the County's moratorium to protect commercial tenants in their jurisdictions. The respective councils of each city were comfortable with the protections provided by the County eviction moratorium.

An option for the Committee would be to repeal the City's ordinance, and allow the County's moratorium to protect the City's commercial tenants as well. This option would result in the end of protections for companies with 100-500 employees, which we report is only 2 percent of the City's businesses (based on 2019 data). This option would also reduce EWDD's administrative effort and potential legal challenges in managing a separate program.

7. Are mediation services available to commercial tenants and landlords?

The LA Represents Program is a coalition of law firms, bar associations, and attorneys who provide pro bono COVID-19-related legal services. As part of the program, Bet Tzedek Legal Services provides pro bono attorneys to assist small businesses. Such assistance includes implementing new workplace regulations, renegotiating commercial leases, applying for government relief programs, and navigating compliance with emergency health and safety orders.

Regulations

The May 25, 2021 CLA report recommends that EWDD, with the assistance of the CLA, promulgate rules and regulations to assist commercial tenants and landlords in complying with the eviction protection provisions. This information will be shared on the department's website, Business Source Centers, and other public outlets. These regulations will detail examples of documentation that can be used to prove a COVID-19 financial impact, among other provisions. Our Office will endeavor to use the County's guidelines to the greatest extent possible in crafting the City's regulations.

An important issue for consideration are the rules governing the payback period of past due rent. The County has different payback rules depending on the number of employees in the business:

- **Commercial Tenants with nine employees or fewer:** During the 12 month rent payback period, tenants are not required to pay rent or charges due immediately upon expiration of the moratorium, nor agree to a payment plan or make payments according to a schedule mandated or requested by a landlord.
- **Commercial Tenants with 10 or more employees, but fewer than 100:** During the six month rent payback period, tenants shall make such payments in six equal monthly installments, unless the tenant and landlord agree to an alternate payment schedule.

Since the County does not provide eviction protection to businesses with 100 to 500 employees, consistent with the May 25, 2021 CLA report, our Office recommends that these tenants be required to pay back rent in three equal monthly installments, unless the tenant and landlord agree to an alternate payment schedule.

Recent City Financial Assistance to Small Businesses

On June 30, 2021, the City Council adopted an EWDD report (C.F. 21-069) which provides \$50 million in financial assistance to small businesses affected by COVID-19. The two largest programs include \$25 million for general operating assistance and \$12 million for rental assistance:

Table 1. Recent City Small Business Assistance Programs

Activity	Description	Amount
Restaurant and Small Business Recovery Program	Deployment of \$5,000 grants to 5,000 small businesses impacted by COVID-19 including restaurants and other vulnerable industries needing assistance in their economic recovery efforts.	\$25,000,000
Small Business Rental Assistance Program	Grants of up to \$15,000 (or six months' rent, whichever is less) to support rental/lease costs for about 800 small businesses in qualifying industries for both current and arrears rent payments, and to eligible new businesses that need assistance with first and last month rent.	\$12,000,000
Jobs and Economic Development Incentive (JEDI) Zones Business Assistance	Funding to provide JEDI Zone Program incentives, including: <ul style="list-style-type: none"> • \$1.5 million in funding for Building and Safety and Planning permits, to assist approximately 150 businesses • \$1.5 million for façade improvement projects, to assist approximately 20 businesses • \$1 million for upgrading business technology needs, including website, point of sale and internet access, to assist approximately 166 businesses. 	\$4,000,000
Good Food Zones Business Assistance Program	Pilot program to assist food-oriented businesses located in approved Good Food Zones. Services and incentives include a Food Business Liaison, outreach and marketing materials, technical assistance, and grants of up to \$25,000 to qualified businesses to expand access to healthy foods. Assistance will be provided to 20 to 40 businesses.	\$1,000,000
Legacy Business Recovery Program	\$4.75 million to provide both technical assistance and grants of up to \$25,000 to support and preserve qualified legacy businesses. Assistance can be provided to approximately 190 businesses, approximately twelve (12) businesses nominated per City Council District. \$250,000 set aside for marketing and outreach to ensure equitable access to this funding opportunity.	\$5,000,000
Program Costs	Technical assistance to support business owners through the application process, particularly applicants with language and technology barriers. Third-party consultants to provide administrative support services for data facilitation and analytics for equitable delivery of programs, eligibility review and funding of grant applications to ensure timely delivery of assistance, and to assist in the marketing, outreach, and translation services to ensure equitable access and to reach businesses that may not have previously received funding assistance. Subrecipient administrative fee for the Restaurant and Small Business Recovery and Rental Assistance Programs. Salaries and related costs for EWDD staff carrying out American Rescue Plan activities.	\$3,000,000
TOTAL		\$50,000,000

Impact of the Commercial Eviction Protection Ordinance on Commercial Tenants

On July 1, 2021 the City Council adopted Motion (Raman-Martinez; C.F. 21-0570) which directs the CLA, EWDD, and the Small Business Commission to prepare a report examining the impact of the eventual end of the commercial eviction protection program on commercial tenants and the local economy. Our Office is working with EWDD to report to this Committee and Council as instructed.



Clay McCarter
Analyst

Attachment: A. Business Count by Number of Employees (2019)

Businesses in the City of Los Angeles By Employee Count (All data from 2019)

	1 to 4 Employees	5 to 9 Employees	10 to 19 Employees	20 to 49 Employees	50 to 99 Employees	100 to 249 Employees	250 to 499 Employees	500 to 999 Employees	1,000 or more Employees	Grand Total of Businesses in Los Angeles
Total	87,392	18,887	13,151	9,334	3,106	1,762	407	100	64	134,203

The following chart shows the same data as above, but segregated into the payback periods proposed in the May 25, 2021 CLA Report:

	Business Count City of Los Angeles	Percent of Businesses in Los Angeles
Businesses with 9 or fewer employees	106,279	79%
Businesses with 10-99 employees	25,591	19%
Businesses with 100-499 employees (this is the dataset range, the proposed threshold is 100-500 employees)	2,169	2%
Businesses with 49 or fewer employees (Not recommended in the May 25, 2021 report, but provided here for information)	128,764	96%

Source: MySidewalk/ U.S. Census Bureau. County Business Patterns (CBP). 2019. Published April 22, 2021. ZIP Code statistics (ZBP) published May 27, 2021. <https://www.census.gov/programs-surveys/cbp.html>