

**February 9, 2021 Economic Development Subcommittee Meeting
Summary of Issues**

Definitions

Culver City – Current Definition of a Commercial Tenant

- 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.
- Effective June 1, 2020, the Eviction Moratorium does not apply to multi-national companies, publicly traded companies, or companies that employed 200 or more employees on March 20, 2020.

Santa Monica – Current Definition of a Commercial Tenant

Does not include the following:

- A large business or corporation, defined as multi-national companies, publicly traded companies, any company that, with its affiliates, employs more than 100 employees, or any company that has earned more than \$15 million over the previous three years;
- Occupies an office work space;
- Does not collect sales tax on revenue or collect sales tax on less than half of revenue;
- Does not provide medical, dental, veterinary, fitness, educational, or child, marriage, family, mental health, or substance abuse counseling services; and
- Is not a “substantially limited business”.

“Substantially limited business” means:

A restaurant; retail business; hair salon or barbershop; fitness facility; or museum, gallery, or other exhibit space, that closed or substantially limited its operations as required by the Los Angeles County Department of Public Health Safer at Home Order issued March 29, 2020,

Consider Revision to Definition of Commercial Tenant

Consider revision to definition of Commercial Tenant (revision in bold italics):

“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. Effective June 1, 2020, “Commercial Tenant” shall not include a multi-national company, publicly traded company, or a company that employed 200 or more employees on March 20, 2020. ***Effective March 1, 2021,***

“Commercial Tenant” shall not include a multinational company, publicly traded company, or a company that, together with that company’s parent, subsidiary, affiliated, and related companies, employed 200 or more employees on March 20, 2020.

Consider Defining Business By Decrease in Business Revenue Similar to PPP

To qualify for a second draw PPP loan, you need to have a quarter in 2020 when the business’ revenues falls by at least 25% as compared to the same quarter in 2019.

For example, if business generated \$100,000 of revenue each quarter in 2019; if in any quarter in 2020, revenue equals \$75,000 or less, then the business qualifies for the loan.

This option will be challenging to implement.

Payment Structure Options

Tiered Payment Structure (Similar to Santa Monica)

For Commercial Tenants, rents due between March 20, 2020 and March 31, 2021, a Commercial Tenant, having provided proper notice and documentation, cannot be evicted for nonpayment until after March 31, 2022. Tenants may be required to pay up to fifty percent (50%) of rents due between March 1, 2021 and the end of the expiration of any current moratorium. This requirement for payment of up to fifty percent (50%) would not apply to any period during which said business(es) were required to remain closed because of any County Safer at Home Order or any other governmental requirement to cease operation.

Common Area Maintenance (CAM) Fees

Restaurants and retailers would not have to pay the fifty percent (50%) for any period during which they are/were required to remain closed or are/were restricted to only curbside pickup and delivery. If fifty percent (50%) of the rent is paid each month rent is due, a landlord would not be able to charge late fees or penalties.

*A lesser percentage also could be considered.

Restricted Capacity Structure

The payment required would align with the Los Angeles County Public Health percent occupancy restrictions in place for that business category.

Example: If a retail business can open at 25% occupancy per COVID-19 restrictions, the business would be required to pay 25% of their rent.

Documentation

Culver City Requirements

1. **Notice:** Tenant can include email/ text to the Landlord each and every month indicating tenant's inability to pay full rent.
2. **Documentation:** of the inability to pay rent due to COVID-19 include one or more of the following:
 - A financial statement certified by the Commercial Tenant, showing a decline in gross business income;
 - 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;
 - Written communication from the Commercial Tenant's outside employer citing COVID-19 as a reason for reduced work hours, suspension of wages, or termination;
 - Paycheck stubs and time cards from the Commercial Tenant's outside employment;
 - Notification from a school declaring a school closure related to COVID-19 or other public notice of a school closure;
 - Proof of out-of-pocket medical expenses;
 - Proof of out-of-pocket childcare expenses; and
 - Proof of COVID-19 medical care or medical quarantine.

Santa Monica Requirements

1. **Notice:** Notice asserting that the tenant has suffered financial impacts related to COVID-19 that resulted in substantial loss of income; and
2. **Documentation:** Documentation sufficient to demonstrate that the loss of income or increase in expenses:
 - a. is related to COVID-19; and
 - b. has material negative effect on the tenant's ability to pay rent.

Supporting documentation may include, but is not limited to, a profit and loss statement, a letter from an accountant, or a written explanation setting out an objectively verifiable explanation of the financial impacts the tenant is experiencing. If the tenant has received compensation for financial impacts related to COVID-19 through business interruption insurance or federal or state government relief funds or other programs that provide such compensation, the notice and documentation must state the compensation received, which shall be considered when determining whether the tenant has experienced a substantial loss of income or substantial increase in expenses that has materially negatively affected its ability to pay rent.

City Form to Prove a Loss in Gross Revenue

Assistance from a consultant and a funding source would be required.

Note: Loss in revenue can also be caused by child/health care costs, family care, etc. Such form is not recommended per the City Attorney's Office and the City's financial consultant due to the varying circumstances, corporate structure and cash flow of each business.

Use Business Tax Data Base to Confirm Lost Revenue

- May not provide the full picture of a tenant's financial condition.
- Documentation of 2020 revenue may not be available until March/April.
- Obligation is on the tenant, not the City, to provide supporting documentation to demonstrate an inability to pay rent.

Note: Loss in revenue can also be caused by child/health care costs, family care, etc.

Mediation Services

Staff has researched the City of Santa Monica's mediation program. Santa Monica does not offer in-house mediation services, but rather refers inquiries to LA Represents, a coalition of law firms, bar associations and attorneys who will provide COVID-19-related legal services free of charge as part of their pro bono commitments. More information is available at <https://corona-virus.la/LARepresents>.

As an additional option, Culver City staff have identified Pettit Kohn, a local firm of experienced attorneys who could act as a neutral third-party to help resolve lease disputes between commercial landlords and tenants and facilitate reaching an agreeable repayment plan. Pettit Kohn charges \$500 for two hours of mediation services. If the City Council is interested in this option, it may want to consider funding some or all of the mediation costs incurred, or to refer parties, at their cost, to Pettit Kohn or another third-party service.

Extension

Most cities have remained consistent with the Governor's Executive Order when establishing the expiration date of their commercial eviction moratoria. Currently, the EO establishes a March 31st expiration. It is uncertain whether it will be extended again. The following is a summary of several other cities' expiration dates:

- Beverly Hills: Expired September 30, 2020.
- Burbank: Expired on December 31, 2020.
- Glendale: Expired June 30, 2020.
- Hermosa Beach: Expired January 31, 2021.
- Inglewood: Effective through duration of local emergency.
- Long Beach: Expired September 30, 2020.
- Los Angeles: Effective through duration of local emergency.
- Pasadena: Effective through duration of local emergency.
- Santa Monica: Qualified businesses protected through March 31, 2021.
- Los Angeles County: Expiration is February 28, 2021

(Note that these programs are subject to change on short notice)