



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

**Fourth Amended Rules and Implementation Measures Regarding
Commercial Tenant Eviction Moratorium Established by the
March 20, April 7, April 28 and May 19, 2020 (Revised May 26, 2020)
COVID-19 Public Orders, Urgency Ordinance Nos. 2020-006 and 2020-007,
and Resolution Nos. 2020-R020, 2020-R028 and 2020-R042**

Issue Date: May 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"). Section 2 of the March 20 Order included, among other things, the following 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:

- 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).

On April 7, 2020 the City Manger issued a Fifth Supplement to Public Order extending the Commercial Eviction Moratorium through May 31, 2020 (“April 7 Order”), which was confirmed by City Council Resolution No. 2020-R020 on April 13, 2020.

On April 27, 2020, the City Council considered whether to extend the period for the payment of unpaid rent to 12 months. Finding there to be a public interest in ensuring tenants have a sufficient recovery period once the Residential Tenant Eviction Moratorium has expired, preserving and increasing housing security and stability, and preventing residents from falling into homelessness due to the COVID-19 health crisis, the City Council directed the City Manager to extend the period for the payment of unpaid rent to 12 months.

On April 28, 2020, the City Manager issued a public order consistent with the City Council’s April 27th direction (“April 28 Order”), which was confirmed by City Council Resolution No. 2020-R028 on May 11, 2020.

On May 18, 2020, in light of the slow recovery period before businesses are able to go fully reopen have the income to pay rent, the City Council directed the City Manager to extend the Commercial Tenant Eviction Moratorium through August 31, 2020 or the termination of the local emergency proclaimed by the City on March 14, 2020 (“Local Emergency”), whichever occurs earlier. The City Council further directed the City Manager to exclude from the Commercial Tenant Eviction Moratorium multi-national companies, publicly traded companies, or companies that employ 200 or more employees; and reduce the grace period for the repayment of Back Rent from 12 months to 6 months for commercial tenants that have 10 or more, but less than 200, employees.

On May 19, 2020, the City Manager issued a public order consistent with the City Council’s May 18th direction (“May 19 Order”).

Also, on May 18, 2020, the City Council directed the City Manager to amend these Implementation Measures to include provisions to encourage and incentivize a landlord and tenant to mutually agree to a plan for the payment of Back Rent over the applicable grace period.

On May 26, 2020, the City Council amended the May 19 Order to strike/delete Section 4, which reduced the grace period for the repayment of Back Rent from 12 months to 6 months for commercial tenants that have 10 or more, but less than 200, employees.

The March 16 Order, March 20 Order, April 7 Order, April 28 Order and May 19 (Revised May 26) Order are collectively referred to as “Public Order.”

Ordinance Nos. 2020-006, 2020-007 and Resolution Nos. 2020-R020, 2020-R028 and 2020-R042 are collectively referred to as the “Urgency Measure.”

AUTHORITY: Section 3.C of Ordinance No. 2020-007 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 Public Order and the Urgency Measure.

IMPLEMENTATION MEASURES:

Section 1. Definitions. For purposes of the Public Order, Urgency Measure, 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 Moratorium 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. 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.

- 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.** "Moratorium Period" means the term of the Public Order, which currently expires on August 31, 2020 or the termination of the Local Emergency, whichever occurs earlier.
- 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 Public 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 Ordinance No. 2020-007 (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 Public 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 Moratorium Period, 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, fees or interest when an Affected Tenant is unable to pay Rent during the Moratorium Period 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 Moratorium 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 Moratorium 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 Public Order or these Implementation Measures relieves Landlord or the Affected Tenant from (i) making payments to third parties as may be required by the Affected Tenant's Lease, such as paying taxes or assessments, or (ii) performing their respective non-monetary obligations as may be required by the Affected Tenant's Lease, such as performing maintenance and repairs or providing utilities and other services.
- H.** Nothing in the Public 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.
- I.** Until the expiration of the 12-month grace period, a Landlord may not use the eviction process to seek Back Rent from an Affected Tenant who was unable to pay Rent during the Moratorium Period for the reasons set forth in Section 4.A.

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 Section 4.A 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 Public 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 Public Order and these Implementation Measures. Non-compliance with any applicable provision of the Public 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.

- A.** Nothing in the Public Order or these Implementation Measures shall relieve an Affected Tenant of liability for unpaid Rent.
- B.** An Affected Tenant that was unable to pay Rent during the Moratorium Period will have a period of 12 months after the expiration of the Moratorium Period to pay all Back Rent.
- C.** During the 12-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.
- D.** If during the Local Moratorium 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 12-month grace 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.
- E.** A Landlord and Affected Tenant are encouraged to mutually agree to a plan for the payment of Back Rent ("Repayment Plan") during the 12-month grace period; however, a Landlord may not require an Affected Tenant to enter into a Repayment Plan. By mutual agreement of a Landlord and Affected Tenant, the Repayment Plan also may waive portions of what an Affected Tenant owes in Back Rent, and may grant an Affected Tenant additional time to pay Back Rent beyond the 12-month grace period.
- F.** An Affected Tenant's failure to comply with an agreed upon Repayment Plan prior to the end of the 12-month grace period is not cause to evict. If a Landlord and Affected Tenant do not agree on a Repayment Plan, then a Landlord may have cause to evict an Affected Tenant based on the unpaid Back Rent once the 12-month grace period ends.
- G.** A Landlord is prohibited from evicting an Affected Tenant for the failure to pay Back Rent, unless a Landlord can demonstrate that, among other things required by law, prior to delivering a Notice of Termination, the Landlord offered the Affected Tenant a reasonable Repayment Plan over the 12-month grace period, beginning from the expiration of the Moratorium Period. This Section 8.G is deemed to be satisfied regardless of whether the Affected Tenant agrees to the offered Repayment Plan.
- H.** Subject to the requirements of Section 8.G, upon the expiration of the 12-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. Inspection and Copying of Records. Landlords must retain for a period of at least one year after expiration of the Moratorium Period all records and documents pertaining to every Notice of Termination that is given and every unlawful detainer proceeding that is commenced or prosecuted during the Moratorium Period and must permit inspection and copying of such records and documents by the Economic Development Division or its agents. For every Notice of Termination that is given and every unlawful detainer proceeding that is commenced or prosecuted based on an Affected Tenant's failure to pay Rent during the 12-month grace period for payment of Back Rent, the relevant records and documents must be retained for a period of at least one year after expiration of the 12-month grace period.

Section 10. Retaliation and Harassment Prohibited. Retaliatory action against a Commercial Tenant for filing a complaint with the Economic Development Division (or exercising any other legal right) is prohibited under California law.

Section 11. Enforcement.

- A.** The rules and implementation measures promulgated by the City Manager, pursuant to the authority provided under the Urgency Measure, shall have the force and effect of law and may be relied upon by parties to determine their rights and responsibilities under the Public Order and the Urgency Measure.
- B.** Pursuant to the authority set forth in Ordinance No. 2020-007, notwithstanding any provision in CCMC Chapter 1.02 to the contrary, each violation of any of the provisions of the Public Order and 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 a tenant's rights to pursue civil remedies.
- C.** Any violation of any of the Public Order and these Implementation Measures may be enforced under the CCMC, which provides for criminal penalties not to exceed \$1,000 or imprisonment not to exceed six months or both.
- D.** Individual officers should use their discretion in enforcing the Public Order and these Implementation Measures and always keep the intent of the Public Order and Implementation Measures in mind.

///

///

///

Section 12. Severability. If any provision of these Implementation Measures or the application of any such provision to any person or circumstance is held invalid, then such invalidity shall not affect other provisions or applications of these Implementation Measures that can be given effect without the invalid provision or application, and to this end the provisions of these Implementation Measures are severable.

Date: 5/27/2020



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