



City of Culver City

Mike Balkman
Council Chambers
9770 Culver Blvd.
Culver City, CA 90232
(310) 253-5851

Staff Report

File #: 21-460, **Version:** 1

Item #: A-1.

CC - (1) Discussion of the Commercial Tenant Eviction Moratoria, Including the Comments and Recommendations from the Economic Recovery Task Force; and (2) Direction to the City Manager as Deemed Appropriate.

Meeting Date: November 9, 2020

Contact Person/Dept: Heather Baker/City Attorney's Office
Elaine Warner/CDD, Economic Development

Phone Number: 310-253-5660
310-253-5777

Fiscal Impact: Yes ☐ No ☒

General Fund: Yes ☐ No ☒

Public Hearing: ☐ **Action Item:** ☒ **Attachments:** ☐

Commission Action Required: Yes ☐ No ☒ **Date:**

Public Notification: (E-Mail) Meetings and Agendas - City Council (11/04/2020); Culver City Business License List (11/04/2020)

Department Approval: John Nachbar, City Manager (11/04/2020); Sol Blumenfeld, Community Development Director (11/03/2020)

RECOMMENDATION

Staff recommends the City Council (1) discuss the Commercial Tenant Eviction Moratoria, including the comments and recommendations from the Economic Recovery Task Force; and (2) provide direction to the City Manager as deemed appropriate.

BACKGROUND

Declaration of Local Emergency and City Public Orders

On March 14, 2020, pursuant to the authority granted by Culver City Municipal Code ("CCMC") Section 3.09.020.B.1.a, the City Manager, as the Director of Emergency Services, issued a Proclamation of Local Emergency due to the outbreak and spread of the coronavirus respiratory disease ("COVID-19") pandemic.

On March 20, 2020, the City Manager issued a First Supplement to Public Order, which included, among other things, protections for commercial tenants against evictions based on an inability to pay rent due to COVID-19 related circumstances (“Commercial Tenant Eviction Moratorium” or “CTEM”) (Attachment 1), which was extended by the April 7, 2020 Fifth Supplement to Public Order, May 19, 2020 Twelfth Supplement to Public Order, August 4, 2020 Twenty-Second Supplement to Public Order and September 17, 2020 Twenty-Sixth Supplement to Public Order.

The Commercial Tenant Eviction Moratorium currently expires on January 31, 2021.

Summary of Commercial Tenant Eviction Moratorium

The following is a summary of the key provisions of the Commercial Tenant Eviction Moratorium:

- Prohibits tenant evictions for nonpayment or late payment of rent if the tenant has an inability to pay rent due to circumstances related to COVID-19.
- Late charges, fees or interest when the payment of rent is late during the CTEM are prohibited.
- Tenant required to provide notice and supporting documentation demonstrating inability to pay rent is due to circumstances related to COVID-19.
- 12-month grace period for the repayment of back rent, commencing after the CTEM expires.
- Landlords and tenants are encouraged to reach a repayment plan during the grace period, although it is not required.
- As of June 1, 2020, the CTEM does not apply to a commercial tenant that is a multi-national company, publicly traded company, or a company that employed 200 or more employees on March 20, 2020.

The implementation measures for the CTEM, which contain more details regarding the restrictions, implementation and enforcement of the CTEM, are included for reference as Attachment 2.

Since the enactment of the Commercial Tenant Eviction Moratorium, Economic Development staff has received approximately 60 requests for information or assistance regarding the CTEM.

County Public Health Orders

Beginning in May, 2020, the Los Angeles County Department of Public Health began implementation of its “*Reopening Safer at Work and in the Community for Control of COVID 19: Moving the County of Los Angeles through Stage 2 of California’s Pandemic Resilience Roadmap*,” to allow additional businesses to conditionally reopen, following the State of California’s phased reopening that progressively designates sectors, businesses, establishments or activities that may reopen or resume, with necessary modifications to protect the public health and safety, and to lower the risk of transmission of COVID-19.

Additional Los Angeles County Orders were issued in June 2020, to continue to align with the State of California as it moves through Stage 2 of the *Resilience Roadmap*, by allowing activities to resume and businesses to safely reopen. The City Manager issued further supplemental orders in alignment with the County orders, as well as orders unique to Culver City to assist with the recovery of existing businesses and help new businesses establish themselves.

However, later in June and during the month of July, 2020, due to increases in the daily reported COVID-19 cases, hospitalizations, and the testing positivity rates, the Los Angeles County Public Health Officer issued revised orders, in alignment with the California Governor's announcements, requiring the closure of specific activities and business sectors, superseding previous orders, to address the serious regression of COVID-19 indicators within Los Angeles County. Such closures of certain higher risk businesses, recreational sites, commercial properties, and activities, where more frequent and prolonged person-to-person contacts are likely to occur, superseded any previous openings permitted in Culver City.

In September 2020, the County of Los Angeles Public Health Officer issued a revised Order, to align with the State of California's August 28, 2020 *Blueprint for a Safer Economy*, which describes a tiered approach to relaxing and tightening restrictions based on specific criteria. This included the reopening of additional businesses (hair salons and barbershops) at significantly reduced capacity.

During October 2020, the County of Los Angeles Public Health Officer revised its Orders and protocols to continue to phase in additional limited reopenings.

Slow Recovery Period

Despite these gradual reopenings, there are a substantial number of businesses that remain closed or are operating at severely reduced capacities, resulting in a slow financial recovery for commercial tenants.

Since March 2020, the effects of the COVID-19 pandemic and the measures taken to slow its spread and protect the public's health and safety have impacted record numbers of workers. As of October 22, 2020, California's Employment Development Department (EDD) reports it has processed 15.2 million claims for unemployment benefits over a seven-month period of historic pandemic impact on California's workers, families, and communities, compared to about 3.8 million claims processed over the worst full year of the Great Recession (2010). According to the EDD, as of September 2020, California has an unemployment rate of 11%, with 2,017,200 jobless.

In September 2020, Yelp released its Economic Impact Report indicating:

- Business closures across the U.S. are increasing as a result of COVID-19.
- As of August 31, 2020, 163,735 businesses have indicated on Yelp that they have closed, a 23% increase since mid-July.
- According to Yelp data, permanent closures have reached 97,966, representing 60% of closed businesses that will not be reopening.
- Business closures have continued to rise with a 34% increase in permanent closures since mid-July.
- Different states face varying degrees of closures; looking at closures by state, California has the second largest number with approximately 19,000 closures (9,300 of those being permanent closures).

In order to gather closure data, Yelp monitors changes in business hours or descriptions on its app, offering an immediate, localized view of the impact the pandemic has had on small businesses.

Staff has also reached out to the Los Angeles County Economic Development Corporation (LAEDC) and may have additional information to present during the City Council meeting.

Assistance for Landlords and Tenants

Economic Development staff has been working closely with the Small Business Development Center (SBDC) along with the Los Angeles Economic Development Corporation (LAEDC) to refer commercial tenants and commercial property owners that are in need of financial assistance to available resources and opportunities for help.

State Executive Orders

On September 23, 2020, the Governor of California issued an Executive Order extending to March 31, 2021 prior orders waiving certain statutory restrictions enabling local governments to set limitations on commercial evictions.

City Council Direction

On September 14, 2020, the City Council discussed and directed the extension of the CTEM to January 31, 2021. In addition, City Council directed staff to work with the Economic Recovery Task Force (ERTF) to explore potential classifications or modifications to the current moratorium relative to reopening parameters outlined by the State and County.

DISCUSSION

The ERTF designated an external stakeholder working group to examine the CTEM relative to current reopening allowances at the State and County levels. The goal of the discussion was to determine if modifications to the CTEM could facilitate current rent payment and reduce large and likely untenable payments triggered at the termination of the moratorium.

The group met on two occasions to discuss financial considerations to businesses, the necessity for communication and concessions between tenants and landlords, and the practicality of creating a tiered percentage structure tied to reopening capacity. On October 27th, the working group presented these preliminary discussion points to the full ERTF (which includes both landlords and tenants) and facilitated breakout groups to understand additional considerations and recommendations.

While there was no consensus on a specific recommendation or modification, it was agreed that identifying a “one size fits all” solution was difficult due to the complexity of the issue and viability between and within economic sectors. It was noted that although some businesses may have the ability to reopen with partial capacity, that allowance may not equate to the same ratio of patronage or revenue, especially in light of increased operating costs due to personal protective protocols.

Additionally, the ERTF emphasized that there is differing success for businesses, even within the same sector, due to variations such as product, location, and opportunities for outdoor expansion.

The following summary outlines the issues, comments and recommendations discussed by the ERTF:

Voluntary or Mandatory Mediation

The ERTF explored the feasibility of offering or requiring mediation to encourage a realistic understanding of expectations between landlords and tenants. A skilled mediator, with practice in commercial lease regulations, could provide an open forum to enhance communication between parties and explore concessions or other payment structures on a case-by-case basis. The discussion could also identify whether tenants can reasonably re-open and recover and/or if the parties should consider early termination.

The specific timing of the mediation could occur prior to the termination of the CTEM or it could be implemented as a requirement prior to initiating an unlawful detainer process. While the City may be able to require mediation, it cannot force a landlord to provide concessions or abatement. Additionally, the City's ability to implement this suggestion is predicated on the condition that it does not violate any provisions of an existing lease.

If mediation were to be provided by the City, it may be offered either by contracting with professional mediators, or seeking volunteers experienced with commercial leases (for example, a system similar to the City's Landlord Tenant Mediation Board for residential property).

Redefine Rent Definition

The discussion also considered whether tenants could realistically pay common area maintenance (CAM) fees. CAM fees vary by property and may include costs such as sanitation, security, property taxes, and insurance. CAM fees are typically a passthrough to third parties that a landlord must pay in order to maintain the property.

The City could consider changing the definition of "Rent" in the CTEM Implementation Measures to exclude CAM charges thereby requiring tenants to pay, at minimum, CAM charges, which could be applied to all tenants or only those that have been allowed to re-open. If this were implemented, it was suggested that a tenant only be required to pay the amount of CAM fees that were in place as of March, or up to a certain percentage above those in place (e.g. 10%), in order to prevent a landlord from increasing CAM fees in order to make up for the rent they are unable to collect. This would not restrict a landlord from increasing CAM fees, as that is not within the City's authority, but would only restrict the amount the tenant would be required to pay to receive the protections of the Eviction Moratorium.

Tiered Payment Structure or Revenue Assessment

In considering reopening guidelines, the ERTF explored whether a tiered approach, in line with reopening tiers as provided by the State, could be used as a model to reignite rent payment among those who have received CTEM protections.

The following structure was proposed by a few of the businesses for consideration:

- Purple Tier - No rent payment and protections in place per current CTEM Implementation Measures.
- Red Tier - Tenants required to pay CAM fees (with a cap as discussed above) in order to be

eligible for eviction protection.

- Orange Tier - Tenants pay CAM fees plus 25% of current base rent in order to be eligible for eviction protection.
- Yellow Tier - Tenants pay CAM fees plus 50% of current base rent in order to be eligible for eviction protection.

This structure has limitations as it is based primarily on retail, fitness and restaurant services that have constrained capacity and may not be relevant or suitable for office or other uses which could potentially resume operations at full capacity provided they adhere to required modifications and protocols.

Another option focused on basing repayment on the current revenues of a business versus capacity. While this could provide a reasonable option for the tenant (“pay what they can”) it would be difficult for the City to certify records or manage the dynamic process. Additionally, this structure would be largely case-by-case and would need to be negotiated on a regular basis based on continued business recovery.

Increased Advocacy for Federal/State Forbearance Intervention

Some members of the ERTF acknowledged that this issue requires intervention beyond the local level. To that end, it was suggested that increased advocacy, or other legislative actions, be implemented to obtain forbearance for small businesses and landlords. This issue may be addressed in the forthcoming Federal stimulus package under consideration or it may be something that could be explored at a State or County level in conjunction with other relief measures.

Next Steps

Staff recommends the City Council discuss the Commercial Tenant Eviction Moratorium and direct the City Manager as deemed appropriate. If the City Council provides direction to further extend and/or otherwise regulate the CTEM, the City Manager will issue a supplemental public order consistent with such direction. Any supplemental public order issued will return to City Council for confirmation at the next City Council meeting. The CTEM Implementation Measures would also be amended consistent with any further supplemental order that may be issued.

FISCAL ANALYSIS

There is no fiscal impact associated with the discussion of this item. There may be staff costs associated with the enforcement of the CTEM; however, it is not estimated to be material at this time. If the City Council determines to offer mediation services to commercial landlords and tenants, there could be a substantial cost involved with providing those services, which are unknown at this time. If the City retained a volunteer panel of mediators (similar to the Landlord Tenant Mediation Board) with experience in commercial leases, the costs would likely be limited to staff time. If the City were to contract with professional mediators, the estimated costs are dependent on whether mediation is voluntary or mandated in some cases, the timing of the mediation in relation to the overall eviction moratorium costs, how many landlords/tenants would utilize the services, and the cost of the mediators. Staff is attempting to ascertain a reasonable guesstimate of such costs and may have

additional information to provide during the City Council meeting.

ATTACHMENTS

1. 2020-09-14_ATT 1 - March 20 First Supplement to Public Order
2. 2020-05-18_ATT 2 - CTEM Implementation Measures

MOTION

That the City Council:

1. Discuss the Commercial Tenant Eviction Moratorium, including the comments and recommendations from the Economic Recovery Task Force ; and
2. Provide direction to the City Manager as deemed appropriate.