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June 17, 2021

San Francisco Board of Supervisors Enacts a New Commercial Eviction Moratorium Ordinance

Update: *This article was updated on June 17, 2021, to include that the Governor's emergency order was extended to September 30, 2021.*

Update: *This article was updated on March 15, 2021, to include that the governor's emergency order was extended to June 30, 2021.*

Update: *This article was updated on January 19, 2021, to include that the commercial eviction moratorium went into effect on January 11, 2021. The bullet points featuring the four tiers of the commercial tenants, created by the Board Ordinance, were also updated to include that each tier's full-time employee count is as of November 1, 2020.*

On December 1, 2020, the San Francisco Board of Supervisors unanimously approved a commercial eviction moratorium ordinance (the Board Ordinance), which Board Ordinance came into effect on January 11, 2021. When the Board Ordinance became effective, the mayor's previous executive orders which impose a moratorium on commercial evictions (the Mayor's Moratorium) terminated.

The Board Ordinance extends certain protections of the moratorium on commercial evictions to the date the governor terminates the governor's emergency order permitting locally enacted commercial eviction moratoria (the Moratorium Period). The governor recently extended the emergency order to September 30, 2021.

As compared to the Mayor's Moratorium, the Board Ordinance modifies the types of commercial tenants that are protected from eviction.

Specifically, when the Board Ordinance becomes effective, it will apply to tenants that had combined worldwide 2019 gross receipts of \$25 million or less (in calculating gross receipts the gross receipts of a subsidiary will be combined with the gross receipts of the parent company). In addition, with the exception of nonprofit office tenants, office tenants are no longer protected under the Board Ordinance. Tenants leasing property from the City and County of San Francisco are also no longer protected under the Board Ordinance.

Under the Board Ordinance, qualifying commercial tenants may defer rent through the Moratorium Period. The Board Ordinance also creates four tiers of commercial tenants:

- **Tier 1 Tenants:** Tier 1 tenants are tenants with 10 full-time employees or fewer, as of November 1, 2020. Tier 1 tenants will have up to two years to repay the deferred rent. Tier 1 tenants also have a right to terminate their leases by giving their landlord 30-days' notice and paying any rent due through the effective date of termination.
- **Tier 2 Tenants:** Tier 2 tenants are tenants with 10-24 full-time employees, as of November 1, 2020. Tier 2 tenants will have up to 18 months to repay the deferred rent.
- **Tier 3 Tenants:** Tier 3 tenants are tenants with 25-49 full-time employees, as of November 1, 2020. Tier 3 tenants will have up to 12 months to repay the deferred rent.
- **Tier 4 Tenants:** Tier 4 tenants are tenants with 50 or more full-time employees, as of November 1, 2020. Tier 4 tenants must repay the deferred rent when the Moratorium Period expires.

Landlords are not permitted to assess interest or late charges for any rent due during the Moratorium Period, or any penalties or fees in connection with the termination of a Tier 1 tenant's lease.

The Board Ordinance provides a waiver for landlords owning less than 25,000 square feet; however, a landlord must apply to the Mayor's Office of Economic and Workforce Development and prove that "being unable to evict would create a significant financial hardship" (e.g., default or debt or similar enforceable obligation).

Under the Board Ordinance, landlords and tenants are encouraged to negotiate and may freely enter into an agreement on terms different than those provided in the Board Ordinance. If the parties are unable to agree, then the provisions under the Board Ordinance will apply.

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