

SANTA MONICA'S NEW COVID-19 COMMERCIAL TENANT PROTECTIONS

- ✓ As of April 6, 2020, under state law, a landlord can file an unlawful detainer (eviction) complaint against a tenant in court, but may not serve the tenant with a summons or require a tenant to respond to the complaint until at least 90 days after the state of California's emergency declaration regarding the Novel Coronavirus (covid-19) pandemic is lifted (unless the eviction is necessary for public health or safety).
- ✓ Beginning on March 18, 2020, Santa Monica implemented eviction protections for commercial tenants. Over time those protections have been modified. On June 17, 2020, Santa Monica issued a **Fifth Revised Supplemental Order** revising the Eviction Moratorium for Commercial Tenants considering state and county orders allowing re-opening of certain commercial businesses. This Order shall:
 - ✓ take effect immediately and supersedes and replaces the Fourth Revised First Supplement and applies retroactively with respect to commercial tenants beginning March 18, 2020.
 - ✓ remain in effect until July 31, 2020, unless extended or expressly superseded by a duly enacted Resolution or Ordinance of the City effect Council or by a further Order by the Director of Emergency Services.
- ✓ The **Fifth Revised Supplemental Order** establishes three classifications of commercial tenants: **Commercial Tenant 1**, **Commercial Tenant 2**, and **Commercial Tenant 3**, with different protections depending upon the category.

COMMERCIAL TENANT 1

(Defined as NOT a **COMMERCIAL TENANT 2** or **COMMERCIAL TENANT 3**)

THE FOLLOWING EVICTION MORATORIUM FOR NONPAYMENT BY A COMMERCIAL TENANT 1 IMPACTED BY COVID-19 IS IMPOSED BY THE NEW ORDER:

- ✓ No landlord shall endeavor to evict a **Commercial Tenant 1** for nonpayment of rent due to financial impacts related to covid-19 until twelve months after June 30, 2020, if the required notice and documentation is provided, for rent that became due between March 18, 2020 and June 30, 2020 or between July 1, 2020 and July 31, 2020.
- ✓ If a **Commercial Tenant 1** is unable to pay rent due to financial impacts related to Covid-19, the tenant shall provide notice and documentation in writing (by email, text, letter or any other form of written communication) to the landlord within 30 days after rent is due.
- ✓ If the tenant fails to timely provide the required notice and documentation, the tenant shall not be entitled to these eviction protections.

REQUIRED NOTICE AND DOCUMENTATION

- ✓ WHERE PRIMARY BUSINESS IN THE LOCATION FOR WHICH RENT IS AT ISSUE IS A **SUBSTANTIALLY LIMITED BUSINESS**:
 - Notice and documentation showing any loss of income or increase in expenses due to COVID-19 is sufficient and a statement written by the tenant in a single communication may constitute both notice and documentation.
 - 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 and explain why it does not enable the tenant to pay rent.
- ✓ FOR ANY OTHER **COMMERCIAL TENANT 1**:
 - Notice asserting that the tenant has suffered financial impacts related to COVID-19 that have resulted in a substantial loss of income or substantial increase in expenses that has materially negatively affected its ability to pay rent together with supporting documentation sufficient to demonstrate that the loss of income or increase in expenses is related to COVID-19; and has a

material negative effect on the tenant's ability to pay rent, which 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.
- ✓ *Please consult your lease agreement before completing because such notice may trigger other issues, including potential default under your lease. Follow the lease provisions for the appropriate form and recipient of notices.*
- ✚ A Landlord of a **Commercial Tenant 1** may not, during the term of this Order or thereafter, charge or collect a late fee or penalty for rent that is delayed for reasons stated in this order if such rent is paid within twelve months **after June 30, 2020**.
- ✚ A landlord of a **Commercial Tenant 1** may not, during the term of this order, or thereafter, charge or collect interest that would accrue on such rent during the term of this Order, or for three months thereafter.
- ✓ A landlord may not recover rent that is delayed for reasons stated in this order if the landlord has already obtained compensation for the rent through federal or state government relief funds or other programs that provide such compensation.

COMMERCIAL TENANT 2

- ✚ You are a commercial tenant that is not a **Commercial Tenant 3**; if you are a tenant in office work space; are not a non-profit; do not collect sales tax on greater than 50% of your revenue; do not provide medical, dental, veterinary, fitness, educational, or child, marriage, family, mental health, or substance abuse counseling services; and do not use the office work space to engage primarily in a **Substantially Limited Business**.
- ✚ A **Substantially Limited Business** is defined as: 1. 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 LA County Department of Public Health Safer at Home Orders issued beginning March 29, 2020, and whose reopening is subject to substantial limitations as the result of a protocol imposed by the LA County Department of Public Health pursuant to its Reopening Safer at Work and in the Community for Control of COVID-19 – Moving the County of Los Angeles Into Stage 3 of California's Pandemic Resilience Roadmap order issued June 11, 2020 (the "Reopening Order"); or 2. a higher-risk business listed in paragraph 7 of the Reopening Order that closed as required by the Safer at Home Order and remains closed as required by the Reopening Order.
- ✚ **A TEMPORARY MORATORIUM ON EVICTION FOR NONPAYMENT OF RENT BY A COMMERCIAL TENANT 2 IMPACTED BY THE COVID-19 CRISIS is extended to and shall terminate as of July 31, 2020 as follows:**
 - ✓ No landlord shall endeavor to evict a **Commercial Tenant 2** that has provided the required notice and documentation for nonpayment of rent that became due between March 18, 2020 and July 31, 2020 due to financial impacts related to COVID-19 until thirty days after July 31, 2020.
 - ✓ As of September 1, 2020, a landlord of a **Commercial Tenant 2** will not be precluded from, in accordance with lease terms and any applicable law, charging and collecting a late fee or penalty for, beginning to accrue and charge and collect interest on, and endeavoring to evict based on any rent that became due from March 18, 2020 to July 31, 2020 and remains unpaid by the **Commercial Tenant 2**.
- ✚ **A LANDLORD MUST PROVIDE EACH COMMERCIAL TENANT 1 AND, UNTIL AUGUST 31, 2020, EACH COMMERCIAL TENANT 2 WITH THE FOLLOWING NOTICES:**

"You might be protected from eviction under certain circumstances, including nonpayment of rent due to financial impacts related to COVID-19. If you are unable to pay rent due to financial impacts related to COVID-19, you must provide notice and documentation to your landlord in writing within 30 days after rent is due. For additional information, contact the City of Santa Monica's Coronavirus Hotline at (310) 458-8400 or visit santamonica.gov/coronavirus."

- ✓ This must be provided to tenants in writing or posted in the lobby of the property or near a public entrance to the property.
- ✓ This must be in bold, underlined, 12 point or larger and the language landlord normally uses for verbal communications with tenant.
- ✓ Landlords must also include an additional copy of the notice when serving tenants with any notice to pay rent or quit, or other notices given to tenants as part of an eviction process; and failing to do so renders the eviction notice void and unenforceable.
- ✓ If a landlord files an unlawful detainer during the Judicial Council Emergency Rule's prohibition on issuance of summons, the landlord must serve the tenant with an additional copy of this notice **WITHIN 3 DAYS OF FILING** the complaint in court.
- ✓ A landlord who has provided notice as required under a previous revision of this Order is not required to provide an additional notice.

COMMERCIAL TENANT 3

✚ YOU ARE a **Commercial Tenant 3** if you are not a nonprofit that is: (A) a publicly traded company; (B) a business that, together with its affiliates, (1) employs more than 100 employees, (2) has average annual gross receipts of more than \$15 million over the previous three years, or (3) has business operations, other than sales conducted solely through online channels, in three or more countries, including the United States; or (C) a business whose payment of rent is guaranteed by a business falling within the scope of subsection (A) or (B), above. Absent a guarantee from the franchisor falling under subsection (C), an independent franchisee that is not a **Commercial Tenant 3** under subsection (A) or (B) shall not be deemed a **Commercial Tenant 3** simply because the franchisor is a **Commercial Tenant 3** under subsection (A) or (B).

✚ **Any prior protections accorded to a Commercial Tenant 3 shall terminate on June 30, 2020. As of July 1, 2020, a landlord will not be precluded from:**

- ✓ charging/collecting a late fee or penalty for, beginning to accrue and charge and collect interest on, and
- ✓ endeavoring to evict based on any rent that became due from March 18 to June 30, 2020 and remains unpaid by a **Commercial Tenant 3**.

THIS ORDER GRANTS A COMMERCIAL TENANT 1, A COMMERCIAL TENANT 2 THROUGH AUGUST 31, 2020, AND A COMMERCIAL TENANT 3 THROUGH JUNE 30, 2020, THE FOLLOWING AFFIRMATIVE DEFENSES:

- ✓ For actions taken on or after March 18, 2020, you have an **affirmative defense to an unlawful detainer** for non-payment of rent after providing required notice and documentation, creating a rebuttable presumption that you are unable to pay rent due to financial impacts related to COVID-19.
- ✓ For actions taken on or after April 24, 2020, you have an **affirmative defense to an unlawful detainer action** in the event that the action is commenced when the landlord failed to include the required notice language in an eviction notice.
- ✓ Your landlord can still pursue unpaid rent in a civil action other than an unlawful detainer but may not seek to regain possession.
- ✓ Your landlord must keep confidential any medical and financial documentation provided under step 2 above.
- ✓ Landlords and commercial tenants are encouraged to negotiate modifications to rental agreements and payment plans to accommodate changed economic circumstances arising from the financial impacts of COVID-19.
- ✓ So long as the landlord has provided the notice required by the Order and has not deceived the tenant regarding his rights and obligations under the Order, a modification to a rental agreement or payment plan between a landlord and commercial tenant that waives or modifies any rights under this Order is permitted.

✚ **A landlord who served an eviction notice in bad faith without reasonable grounds, or endeavors to evict a tenant shall be liable under this order unless the landlord withdraws the notice promptly after being informed by the tenant that the tenant is entitled to the protections of this Order.**

WHAT IF YOUR LANDLORD DOES NOT COMPLY WITH THESE RULES?

- Make a complaint to the City of Santa Monica.
- This Order shall be enforceable by the Santa Monica Police Department and any City Officer or employee granted authority to issue written notices.
- Violation may be a misdemeanor and the amount of the fine for each violation of any provision of this Order shall be up to a maximum of. A \$1,000 later payment charge of 10% of the applicable fine shall be imposed for the payment of an administrative fine imposed pursuant to this Order after its due date.
- You may have a private right of action against your landlord for unfair business practices.
- Your landlord may be guilty of a misdemeanor and subject to a fine or jail time.
- Contact the City of Santa Monica at 310-458-8400 or info@santamonica.gov.
- See [Covid 19 Eviction Moratorium](#) for more information.

***You still must comply with the non-rent lease obligations in accordance with the terms of your lease.
Failure to do so could still result in eviction.***

ADDITIONAL RESOURCES FOR NONPROFITS/SMALL BUSINESSES:

LA County Disaster Help Center <https://lacountyhelpcenter.org/for-business-owners/>

LA Department of Consumer and Business Affairs <https://dcba.lacounty.gov/>

City of Santa Monica <https://www.santamonica.gov/coronavirus-business-resources>



**FOR LEGAL ASSISTANCE,
PLEASE CALL 800-399-4529
OR VISIT LAFLA.ORG**