TEMPORARY MORATORIUM ON COMMERCIAL EVICTIONS FOR FAILURE TO PAY RENT DUE TO COVID-19 FOR BUSINESSES OPERATING AS A QUALIFIED BUSINESS USE TYPE

FAQ

In response to the COVID-19 pandemic, the City has passed two commercial tenant eviction protection ordinances. Ordinance 20-05 was passed by the West Sacramento City Council on March 18, 2020. Effective October 1, 2020, Ordinance 20-05 is terminated and Ordinance 20-14 is in effect.

Ordinance 20-14 provides protections from eviction to certain commercial tenants experiencing financial distress due to COVID-19. Below are frequently asked questions and answers for commercial landlords and tenants. This information is provided for informational purposes only. Parties are advised to research and consult with legal counsel on the method of service, content, and form of notices, as well as other issues.

WHO IS PROTECTED BY ORDINANCE 20-14?
Commercial tenants that operate one or more business use types enumerated in Ordinance 20-14 and experiencing financial distress due to COVID-19 are qualified to take steps to utilize the protections of the Ordinance.

Residential tenants and residential landlords experiencing financial distress due to COVID-19 are protected by state law – Assembly Bill 3088, the COVID-19 Tenant Relief Act of 2020. See more information here: https://www.cityofwestsacramento.org/business/economic-development-housing

WHAT SHOULD COMMERCIAL TENANTS NOT PROTECTED BY ORDINANCE 20-14 DO TO AVOID EVICTION?
Commercial tenants that operate as a business use type not listed in Ordinance 20-14 and who experience financial distress due to COVID-19 may contact their landlord to come to a mutually-agreeable arrangement, such as a rent reduction or payment plan, in order to avoid eviction. Other State and federal protections may also apply to their situation.
WHAT STEPS MUST A QUALIFYING COMMERCIAL TENANT TAKE TO BE PROTECTED?
Within seven days of rent being due, a qualifying commercial tenant must:

1. Submit to their landlord a signed Declaration of Financial Distress Due to COVID-19 form provided by the City;
2. Provide to their landlord verifiable documentation demonstrating financial distress due to COVID-19; and
3. Pay the landlord at least 25% of the amount of rent due.

WHAT IS A DECLARATION OF FINANCIAL DISTRESS DUE TO COVID-19?
This is a form prepared by the City stating that qualifying commercial tenant is unable to pay rent, or other financial obligations under the lease, due to COVID-19. A qualifying commercial tenant is to print the form, sign it under penalty of perjury, and then provide to their landlord. The form may be downloaded here: https://www.cityofwestsacramento.org/business/economic-development-housing

WHAT IS VERIFIABLE DOCUMENTATION?
Verifiable documentation is any documentation showing a loss of revenue or need to temporarily shut down due to COVID-19. Such documentation can include, but is not limited to, bank statements, financial records, or other documentation.

WHEN MUST THE QUALIFYING COMMERCIAL TENANT TAKE THESE STEPS?
The deadline to obtain the protections of Ordinance 20-14 is within seven days of rent becoming due. However, a tenant should provide the signed declaration, verifiable documentation, and payment to the landlord as soon as the tenant is aware that he or she will not be able to pay rent.

IS THE TENANT REQUIRED TO TAKE THESE STEPS EACH MONTH?
Yes, a qualifying commercial tenant must take the above steps each month in order to receive protection from eviction for failure to pay rent.

WHEN IS A TENANT REQUIRED TO PAY RENT DEFERRED UNDER ORDINANCE 20-14?
A qualifying commercial tenant that took the above steps will be required to pay the remainder of rent due on or after Ordinance 20-14 is terminated. The tenant is not absolved of the responsibility to pay rent; a landlord is simply prohibited from taking steps to evict the tenant for failure to pay rent when that failure to pay rent was due to financial distress due to COVID-19.
WHEN DOES THE TEMPORARY MORATORIUM TERMINATE?
Ordinance 20-14 will terminate at the earliest of four situations: the City Council takes action to terminate it, the City’s declaration of local emergency due to COVID-19 is terminated, Yolo County is listed at the Tier 4 level under the statewide metric "Blueprint for a Safer Economy" for at least three consecutive weeks, or the Governor's Executive Order N-80-20 expires.

BECAUSE THE PRIOR ORDINANCE TERMINATED, IS A COMMERCIAL TENANT REQUIRED TO PAY RENT DEFERRED UNDER THAT ORDINANCE AT THIS TIME?
Ordinance 20-05 terminated on October 1, 2020 and the rent properly deferred under its notice and timing provisions became due on that day for all commercial tenants. A qualifying commercial tenant under Ordinance 20-14 that continues to experience financial distress due to COVID-19 may take the steps above to continue to defer the total amount of rent due.

A commercial tenant that does not qualify for protection under Ordinance 20-14 may consult with their landlord to determine when their rent properly deferred under Ordinance 20-05 will become due.

WHAT IS A LANDLORD REQUIRED TO DO?
If a qualifying commercial tenant provides the landlord with a declaration of financial distress due to COVID-19, verifiable documentation, and at least 25% of the rent amount due, the landlord is prohibited from taking any steps to evict the tenant due to nonpayment of rent until the termination of Ordinance 20-14, if that non-payment was due to financial distress due to COVID-19.

CAN A TENANT BE EVICTED FOR REASONS OTHER THAN FAILURE TO PAY RENT?
Even if the tenant declares financial distress due to COVID-19, provides verifiable documentation, and pays at least 25% of the rent due, a tenant can still be evicted for "just-cause" (e.g., nuisance, committing waste, criminal activity, unauthorized subletting) or for no-fault reasons (e.g., owner intent to occupy).

WHAT HAPPENS IF THE LANDLORD MOVES FORWARD WITH AN EVICTION?
If a qualifying commercial tenant takes the steps above and a landlord pursues an unlawful detainer (also known as an eviction action) for failure to pay rent, the court will dismiss the action on the premise that, pursuant to Ordinance 20-14, a tenant that complies with its terms is not in default of rent until the termination of the Ordinance.