

## **Form Letter for Small Businesses to Negotiate Rent Abatement and/or Deferment with Landlords.**

Updated: July 2021

The purpose of this document and the accompanying form letter, is to facilitate communication with your landlord regarding potential difficulties your business is having that affect your ability to pay rent. The form letter can be used to begin the negotiation process with your landlord to try to reach a mutually agreeable payment plan for unpaid rent accumulated during the pandemic.

### **What is the commercial eviction moratorium?**

This document also provides guidance on the current protections offered by the SF Board of Supervisors' Commercial Eviction Moratorium Ordinance ("Board Moratorium"), and how it applies to your small business.

The [Board Moratorium](#) went into effect on January 11, 2021, thus replacing the [Mayor's commercial eviction moratorium](#). The Board Moratorium will remain in effect until [September 30, 2021](#), subject to any further extensions. Helpful guidance about the Board Moratorium has been written by the law firm, Perkins Coie, at [this link](#).

The Board Moratorium protects small- to medium-sized businesses with gross receipts at or below \$25 million, registered to do business in San Francisco, from eviction, based on their inability to pay rent due to loss of income related to the COVID-19 pandemic. The ordinance establishes four tiers of eligible businesses based on the number of employees and includes a timeline for when all back rent accrued during the moratorium period must be repaid.

The four tiers of eligible businesses (referred to as "covered commercial tenants") are as follows:

- [Tier 1 Tenants](#) have 10 full-time employees or fewer, as of November 1, 2020. Tier 1 tenants will have up to two years to repay all deferred rent. Tier 1 tenants who are not able to reach an agreement on repayment with their landlords also have the ability, under the Board Moratorium, to terminate their leases by giving their landlord 30-days' written notice and paying any unpaid rent that is owed through the effective date of termination (further explained below).
- [Tier 2 Tenants](#) have 10 to 24 full-time employees, as of November 1, 2020. Tier 2 tenants will have up to 18 months to repay all deferred rent.
- [Tier 3 Tenants](#) have 25 to 49 full-time employees, as of November 1, 2020. Tier 3 tenants will have up to 12 months to repay all deferred rent.

- Tier 4 Tenants have 50 or more full-time employees, as of November 1, 2020. Tier 4 tenants must repay all deferred rent on or before the Board Moratorium's expiration, which is currently September 30, 2021.

Under the protections of the Board Moratorium, your landlord cannot evict you without giving you written notice and at least 30 days to try to catch up on missed rent payments. If you cannot pay your rent at the end of the 30-day period, you must provide written notice that you continue to experience financial hardship due to the pandemic. Examples of pandemic-related financial hardship include impacts of illness or other business disruption, reduced business hours, reduced consumer demand, and/or temporary closure of your business, including during periods when closure was required to comply with shelter-in-place or other state and local government health orders.

After you have communicated your pandemic-related financial hardship to your landlord in writing, you should try to negotiate with your landlord to work out a repayment plan, even if your business qualifies for protection under the tiered system outlined above. While the tiered system provides a baseline level of protection, you can try to negotiate more favorable terms with your landlord, and a timeline of when the back rent will be paid. You should continue to communicate with your landlord in writing at least each month about your ability or inability to pay rent and the reasons you are unable to pay. Negotiated repayment plan agreements must also be in writing.

You cannot be charged interest or other fees on rent accrued during the moratorium or the subsequent forbearance period. If any rent remains unpaid once the forbearance period ends, your landlord may begin to charge interest and penalties, to the extent this is allowed under your lease.

A small business tenant who falls into one of the four tiers described above may be protected by the Board Moratorium in the event that the landlord files a lawsuit to evict the small business tenant from the premises. The small business tenant can use the protections of the Board Moratorium as a defense in such a lawsuit, even if the small business tenant fails to provide the landlord with written notice of inability to pay at the time of the tenant's missed rental payment.

### **What if your landlord files an eviction lawsuit?**

If your landlord initiates an eviction lawsuit (an "unlawful detainer"), serves you with a summons and complaint for unlawful detainer based on nonpayment of rent, or initiates a lawsuit for breach of contract, **you must respond to the complaint by the deadline stated on the notice. It is much better if you are able to reach agreement on a payment plan before the landlord initiates a lawsuit.** To that end, we hope that the

form letter and template repayment plan, provided below, will assist you to negotiate a rent repayment plan with your landlord.

If your business is a Tier I business and you would like to exercise the option to terminate your lease because you were unable to reach a mutually satisfactory repayment agreement with your landlord, you may do so by providing your landlord with written notice that you will terminate your lease in 30 days' time, after which point you are not liable for any further rent and cannot be charged any penalties that may arise from early termination. You are still liable for repayment of all unpaid rent thus far accrued during the Board Moratorium period and preceding moratorium period, except as otherwise negotiated with your landlord.

**Caveat:** Landlords who own less than 25,000 square feet of commercial space in San Francisco who can demonstrate that "being unable to evict would create a significant financial hardship", including defaulting on a mortgage or other obligation, can apply for a waiver from the Mayor's Office of Economic and Workforce Development. If the waiver is granted, the landlord may evict even a covered small business tenant before the Board Moratorium or forbearance period ends. Also, the Board Moratorium does not apply to for-profit entities occupying space in property zoned or approved for use as "Office Use" under Section 102 of the Planning Code, or to entities leasing property from the City and County of San Francisco, with the exception of nonprofit office tenants.

Date: \_\_\_\_\_

Dear [INSERT LANDLORD NAME]:

As you know, we are in the midst of a global pandemic. The San Francisco Board of Supervisors enacted a Commercial Eviction Moratorium Ordinance (“Ordinance”) that went into effect on January 11, 2021, thus replacing the previous SF Mayor’s moratorium order. The Ordinance will remain in effect until September 30, 2021, unless further extended by another Executive Order.

**Under the Ordinance, if a commercial tenant misses a rent payment that was due before September 30, 2021 because of financial impacts resulting from the COVID-19 pandemic, the landlord may not attempt to recover possession while the Ordinance is in effect or during the subsequent corresponding forbearance period, which, based on the size of my business, extends until [INPUT THE CORRESPONDING REPAYMENT TIMEFRAME BASED ON THE NUMBER OF YOUR FULL-TIME EMPLOYEES SET FORTH IN THE TIERED SYSTEM EXPLAINED ABOVE].**

Pursuant to the Ordinance, I hereby notify you that, as a result of the COVID-19 pandemic, I am unable to pay **[INSERT MONTH(S)]** rent for to the following reason(s): My business, [INSERT NAME OF BUSINESS], located at [INSERT ADDRESS], San Francisco, CA [INSERT ZIP], has been forced to [INSERT OBJECTIVELY VERIFIABLE REASON, I.E., OPERATE UNDER LIMITED HOURS / HAS EXPERIENCED SUBSTANTIAL LOSS OF REVENUE DUE TO THE PANDEMIC AND SHELTER IN PLACE ORDER / IS NOT AN "ESSENTIAL BUSINESS," AS DEFINED IN SECTION 10 OF THE PUBLIC HEALTH DEPARTMENT ORDER]. As a result, I was forced to close my business from \_\_\_ to \_\_\_ [INSERT DATE RANGES OF MANDATED OR OTHER CLOSURE], a total period of [INSERT TOTAL CLOSURE TIME IN DAYS OR MONTHS]. Further, during the months of [INSERT MONTHS], my business has been operating at limited capacity [ELABORATE ON HOW YOUR BUSINESS HAS BEEN OPERATING AT LIMITED CAPACITY AFTER THE SHELTER-IN-PLACE ORDER HAS BEEN LIFTED], which has resulted in a substantial decrease in revenue.

Under the lease document [INSERT NAME OF LEASE DOCUMENT], dated [INSERT LEASE DATE], I am required to pay [INSERT RENT AMOUNT] per month in rent. I am hereby writing to request your agreement to a payment plan for the unpaid rent to date as follows: [INSERT PROPOSAL OF HOW MUCH YOU THINK YOU CAN PAY EACH MONTH TOWARD UNPAID BACK RENT, AND FUTURE RENT GOING FORWARD]

Additional COVID-19-related relief in the form of grants and government aid may become available before the end of the repayment period, but this proposal represents what I am able to pay in the meantime, with the hopes that you will agree to reduce the amount you expect me to pay due to the unforeseeable circumstances of the pandemic.

I understand that the pandemic likely also impacts your income and financial obligations, and I want to keep open lines of communication moving forward to try to reach a mutually beneficial resolution regarding the unpaid and future rent.

I appreciate your understanding and willingness to work together to find a path forward as we all adjust to this new normal, and work to respond to this global crisis, together.

Thank you for your consideration; I look forward to your response.

Sincerely,

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[Business Owner's Name  
Business Name  
Address  
City, State, Zip]

## Payment Plan Agreement for Deferred Rent

THIS PAYMENT PLAN AGREEMENT FOR DEFERRED RENT is entered as of the \_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date") by and between [\_\_\_\_\_] [INSERT LEASEHOLDER'S NAME] ("Tenant") and [\_\_\_\_\_] [INSERT LANDLORD'S NAME] ("Landlord").

### RECITALS:

- A. WHEREAS, Tenant leased the real property located at [\_\_\_\_\_] [INSERT ADDRESS] by entering into the [\_\_\_\_\_] [INSERT NAME OF LEASE DOCUMENT] ("Lease") with Landlord on [\_\_\_\_\_] [INSERT LEASE EXECUTION DATE];
- B. WHEREAS, the rampant and rapid spread of COVID-19 resulted in multiple, extended, government-mandated shutdowns of business activity beginning March, 2020, requiring businesses to operate at diminished capacity and preventing many businesses from operating at all, thereby limiting or eliminating their revenue;
- C. WHEREAS, on March 16, 2020, California Governor Gavin Newsom issued Executive Order N-28-20, which, among other things, (i) permits local governments to adopt regulations to halt evictions of commercial tenants for nonpayment of rent during the COVID-19 pandemic and (ii) has been extended until September 30, 2021;
- D. WHEREAS, the San Francisco Mayor issued Orders and the Board of Supervisors passed an Ordinance protecting commercial business tenants from eviction based on their inability to pay rent;
- E. WHEREAS, the Ordinance affords qualified commercial tenants the ability to pay less or no rent so long as the Ordinance is in effect and provides for set time periods after the Ordinance expires or is terminated by which tenants must repay any unpaid rent that accrued between March 17, 2020 and the Ordinance's expiration or termination, which is now set to expire on September 30, 2021;
- F. WHEREAS, Tenant was unable to pay rent in full due to the COVID-19 pandemic during the following months: [INSERT MONTH AND YEAR FOR EACH MONTH OF MISSED RENT PAYMENTS, ANY PARTIAL AMOUNTS PAID, AND THE AMOUNT OF OUTSTANDING UNPAID RENT]

<u>Month and Year (i.e. March 2020)</u>	<u>Paid Monthly Rent</u>	<u>Unpaid Monthly Rent</u>
Month and Year	Paid Monthly Rent \$	Unpaid Monthly Rent \$
Month and Year	Paid Monthly Rent \$	Unpaid Monthly Rent \$
Month and Year	Paid Monthly Rent \$	Unpaid Monthly Rent \$
Month and Year	Paid Monthly Rent \$	Unpaid Monthly Rent \$
Month and Year	Paid Monthly Rent \$	Unpaid Monthly Rent \$
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Month and Year	Paid Monthly Rent \$	Unpaid Monthly Rent \$
Month and Year	Paid Monthly Rent \$	Unpaid Monthly Rent \$
Month and Year	Paid Monthly Rent \$	Unpaid Monthly Rent \$

Month and Year	Paid Monthly Rent	Unpaid Monthly Rent
	\$	\$

G. WHEREAS, the total rent unpaid by Tenant as described in Paragraph E above is [\$\_\_\_\_\_][INSERT TOTAL AMOUNT OF UNPAID RENT] (“Unpaid Rent”);

H. WHEREAS, Landlord agreed to reduce the Unpaid Rent owed by Tenant by [\$\_\_\_\_\_][INSERT THE TOTAL AMOUNT OF REDUCTION GRANTED BY LANDLORD] (“Concession”); and

I. WHEREAS, Tenant owes Landlord [\$\_\_\_\_\_][INSERT TOTAL AMOUNT OF UNPAID RENT STATED IN PARAGRAPH F ABOVE LESS ANY REDUCTION OR FORGIVENESS FROM LANDLORD STATED IN PARAGRAPH G ABOVE] in Unpaid Rent, less the Concession granted by the Landlord (“Deferred Rent”).

J. WHEREAS, Tenant qualified for protection from eviction under the Orders and Ordinance, and, as a Tier [INSERT TIER NUMBER] Tenant, must repay all unpaid rent within [INSERT REPAYMENT PERIOD THAT CORRESPONDS TO BUSINESS TIER];

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

- Tenant agrees to repay \$[INSERT AMOUNT OF UNPAID RENT, MINUS ANY AGREED REDUCTIONS OR GRANTED FORGIVENESS] in Unpaid Rent;
- Tenant agrees to pay \$[INSERT MONTHLY PAYMENT AMOUNT] per month during the forbearance period following the expiration or termination of the Ordinance, with payment due to the Landlord on the [INSERT PREFERRED PAYMENT DAY] of each month;
- Tenant agrees to pay \$[INSERT NEW MONTHLY RENTAL AMOUNT THAT IS DUE, IF DIFFERENT FROM THAT WHICH IS STATED IN YOUR LEASE] in monthly rent, taking into consideration that my business is still operating at limited capacity, until [INSERT DATE THAT AGREEMENT TO PAY LESS MONTHLY RENT EXPIRES].
- Landlord agrees to not to initiate legal proceedings against Tenant for nonpayment of rent so long as Tenant makes timely monthly payments to pay down the total Unpaid Rent, by the end of the forbearance period;



- Tenant agrees that once this payment plan is formalized between the parties, further modifications or extensions of time to repay Unpaid Rent must be mutually agreed to in writing by Tenant and Landlord.
- Except as specifically set forth herein, the terms of the Lease shall remain unmodified and in full force and effect.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Payment Plan Agreement for Deferred Rent effective as of the Effective Date.

TENANT

LANDLORD

\_\_\_\_\_  
[Sign to agree to above payment plan]

\_\_\_\_\_  
[Sign to agree to above payment plan]

Tenant's Name

Landlord's Name

Business Owner's Name, Tenant  
Business Name  
Address  
City, State, Zip

Landlord Address  
City, State, Zip