

California Extends Local Ability to Enact Commercial Eviction Moratoriums and Questions Abound for Local Governments, Tenants and Landlords

By [Jonathan August](#)

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On September 23, California Governor Gavin Newsom issued an executive order extending the ability of local jurisdictions to enact their own eviction moratoriums on commercial tenancies from September 30, 2020 to March 31, 2021. This extension follows weeks of pressure from mayors and county officials throughout California who argued that a wave of commercial evictions would be coming if no action was taken legislatively or executively by September 30.

The Governor's action additionally follows on the heels of the decision of the California Judicial Council to suspend its emergency rules banning commercial evictions effective as of September 2, 2020.

The practical effect of the extension for local municipalities is that the status quo has not changed: each city and county may continue to determine its own rules on whether or not commercial tenants may be evicted due to a failure to pay rent, so long as such failure is due to the direct effects of COVID-19 or due to a government policy affecting operating hours, income, or employment. Despite not offering much change at the surface level, however, the extension offered by Governor Newsom does pose significant question for local governments, as well as commercial landlords and tenants.

With respect to local governments, some of the immediate questions that come to mind pertain to how much of an extension on eviction moratoriums should be offered, if any, and how does the Governor's extension affect any moratoriums currently in place. Major counties throughout the state have already responded to the extension offered by the Governor and modified their eviction moratoriums.

San Francisco Mayor London Breed and Supervisor Aaron Peskin recently issued statements and introduced a resolution calling for the extension issued by Governor Newsom. A few days after Governor Newsom's announced extension, Mayor Breed announced an extension and modification of its prior commercial eviction moratorium. For qualified San Francisco commercial tenants, the eviction moratorium has been extended through November 30 and the previous six-month maximum repayment period for past-due rents before an eviction action can be started has been changed to simply the final day the moratorium is in effect. Unlike the prior eviction moratorium in San Francisco, however, smaller landlords have been given some relief as well. Now, so long as a landlord owns less than 25,000 square feet in a given building, commercial tenants may be evicted for a failure to pay rent so

long as the landlord can prove it will sustain a substantial hardship (e.g. an inability to pay its own debt obligations) if it cannot evict such tenant.

Los Angeles County, similarly, has expanded and extended its moratorium, but unlike San Francisco that bases its qualified tenant status on 2019 gross receipts, Los Angeles uses employee numbers as the key metric. Businesses with one hundred (100) or fewer employees are entitled to eviction moratorium protections through the end of October, and each business shall be entitled to at least six (6) months following the expiration of the moratorium to pay back such rent, with businesses having nine or fewer employees receiving up to a year following the expiration of the moratorium to pay back such rents. Tenants that are multi-national, publicly-traded or have greater than 100 employees are not entitled to any such eviction protections. Both Los Angeles and San Francisco have reserved the right to extend their moratoriums up and through May 31, 2021 at their discretion.

If municipalities choose to extend their moratoriums through the end of May, or continue to push repayment periods back, the effect on both landlords and tenants will be significant. For tenants, the immediate effect is that they will receive a much-needed lifeline for their businesses. On the other hand, the fact the extension is being issued at all means tenants will have to contemplate long-term reopening strategies and must reach out to their landlords to adjust, or enter into, repayment plans. The comfort of knowing they cannot be evicted due a failure of paying rent will provide relief for businesses, but also great uncertainty about when they will start to have a consistent income stream once again. For some tenants, it may make more sense to simply close up shop and propose lease terminations with their landlords rather than postpone rent obligations and incur balloon payments months down the road.

Landlords, conversely, will likely need to be much more proactive in their discussions with tenants and any creditors they may have. If municipalities begin to extend eviction moratoriums en masse and rental income streams continue to decline, landlords may run the risk of defaulting on loans or other obligations they may have with creditors. Reaching out to those creditors now to discuss refinancing or payment extensions will be crucial to ensure that properties are not foreclosed upon. Similarly, landlords should be actively engaging their tenants in amendment discussions about extending term lengths, pushing out payments, and altering any improvement obligations of either party.

Obtaining certainty over rental income streams and outgoing payment obligations to creditors and contractors will help landlords better analyze their long-term risk and ensure they are in the best position to succeed when the economy begins to recover post-COVID-19. In addition, landlords need to keep in mind the practical limitations of filing eviction actions or seeking enforcement of other legal remedies following a lease default given the obvious backlog in the calendars of State courts.

Buchalter advises clients on complex issues such as these with a broad range of relevant expertise for commercial property owners and managers in these challenging times. Please contact one of the following attorneys with follow up questions.



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