



## CITY MANAGER'S OFFICE

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### CITY COUNCIL STAFF REPORT

Meeting: March 24, 2020

#### Subject

Consideration of an Emergency Ordinance to provide tenant protection to commercial tenants.

#### Recommended Action

In consideration of the following policy considerations, it is staff's recommendation that Council not impose a moratorium on commercial evictions at this time due to the unique nature of commercial leasing and the State and Federal resources currently available to business owners. Furthermore, the City does not currently have the staffing resources nor allocated budget to develop meaningful loan or grant programs for small businesses. It is recommended staff continue to facilitate business owners' participation in Federal, State, and regional economic relief programs.

#### Discussion

The effects of Coronavirus Disease 19 (COVID-19) on the global and local economies are impacting many Bay Area companies in both the technology and non-technology sectors. On March 4, 2020, Governor Gavin Newsom declared a State of Emergency in California due to the threat of COVID-19. During the early stages of the pandemic many companies and agencies had implemented broad remote work policies to prevent exposure in the workplace. Additionally, on March 16, 2020 the County of Santa Clara, along with five other Bay Area counties, ordered residents to Shelter-in-Place. This drastic and sudden decline of consumers patronizing local restaurants and other retail establishments will likely result in business closures should the situation continue for a significant amount of time.

City Council direction on March 17, 2020 included a request that staff consider a moratorium on commercial evictions for nonpayment of rent. Staff have been in discussions on the possibility of enacting an ordinance establishing a moratorium on non-payment of rent evictions for small business tenants with incomes affected by the COVID-19 pandemic.

There are several differences between residential and commercial leases that require a separate analysis for each. Eviction affects residential and commercial tenants differently. While residential tenants involve individuals and families, commercial

tenants encompass a wide range of businesses, from sole proprietorships and partnerships, to multinational Fortune 500 companies. The monetary range in rent is exponentially greater in the commercial rental space and the level of investment and sophistication of individual contracts are not comparable.

The rental marketplace is different for commercial landlords and tenants than it is for residential. Typically, commercial tenants are much better positioned to negotiate with their landlords when they are unable to pay their rent, and landlords are more likely to want to work with their commercial tenants in order to avoid disruption in the tenant mix and overall operations of the commercial center.

Furthermore, the urgency of the need for intervention is also a stark difference. In residential evictions, some of our most at-need community members are in danger of being displaced from a safe, private home suitable for quarantining to having to live with extended family members in housing with more density and with more at risk age-groups, or to be forced to live on the streets. This creates a health risk to the individuals affected, as well as the community at large. Commercial evictions, however, are generally not related to concern for public health but rather to individual and public economic well-being.

At this time the majority of cities in California that have passed moratoriums on commercial evictions are in Southern California (Burbank, Camarillo, Moorpark, Oxnard, Santa Monica, and Simi Valley) with the cities of San Francisco and Los Angeles as exceptions. The business communities and property owner makeup of the aforementioned cities are very different from Cupertino. Moreover, City of San Jose expressly did not include commercial tenants in its recent eviction moratorium.

Additionally, not all commercial properties are owned by large corporations and smaller independent property owners are going to be affected by this economic hardship as well. It may not be in the City's best interest to set a precedence on commercial regulation at this time.

The Economic Development Manager has been in contact with the major property owners/managers of commercial centers in Cupertino since Governor Newsom's State of Emergency declaration. Commercial property owners/managers have indicated an interest in supporting their tenants. For example Sand Hill Property Company has been working with its Main Street tenants to offer gift cards with purchase (these special promotions are included on the [www.cupertino.org/OpenForBusiness](http://www.cupertino.org/OpenForBusiness) website). Kimco Realty, which owns and manages Cupertino Village, has created a corporate task force to work with tenants on a case-by-case basis to provide relief. Staff has not heard of commercial property owners/managers wishing to evict tenants at this time.

In consideration of these factors, it is not recommended that Council impose a moratorium on commercial evictions at this time.

## CURRENT STATE AND FEDERAL RESOURCES AVAILABLE TO BUSINESSES

Currently there are resources available from the State and Federal Government for small businesses and commercial property landlords. The Federal Government recognizes that when an economic disaster has been declared, impacted businesses that experience economic injury can apply for a Government loan administered by the Small Business Administration (SBA). Both the commercial landlord and the tenant can separately apply to the fund on proof of economic injury.

On March 19, 2020 the SBA amended its disaster declaration to include all California small businesses (Attachment A - SBA California Declaration #16332) economically impacted by COVID-19. SBA Economic Injury Disaster Loans are working capital (rather than loans for physical damage) to help small businesses and most private, non-profit organizations of all sizes meet their ordinary and necessary financial obligations that cannot be met as a direct result of the disaster. These loans are intended to assist through the disaster recovery period.

Federal law limits these to \$2,000,000 maximum for alleviating economic injury caused by the disaster, and the actual amount of each loan is limited to the economic injury determined by SBA, less business interruption insurance and other recoveries up to the administrative lending limit. SBA also considers potential contributions that are available from the business and/or its owner(s) or affiliates.

These loans may be used to pay fixed debts, payroll, accounts payable and other bills that can't be paid because of the disaster's impact. The interest rate is 3.75% for small businesses without credit available elsewhere; businesses with credit available elsewhere are not eligible. The interest rate for non-profits is 2.75%.

SBA offers loans with long-term repayments in order to keep payments affordable, up to a maximum of 30 years. Terms are determined on a case-by-case basis, based upon each borrower's ability to repay. The filing deadline is December 16, 2020. (Attachment B.)

The State of California Employment Development Department (EDD) has programs to assist employers in dealing with potential closures or layoffs. Services include expedited processing of eligible Unemployment Insurance and Disability Insurance claims. Employers can apply for the Unemployment Insurance (UI) Work Sharing Program if reduced production, services, or other conditions cause them to seek an alternative to layoffs. (Attachment C.) Employers planning a closure or major layoffs as a result of the coronavirus can get help through the Rapid Response program. Rapid Response teams will meet with business owners to discuss needs, help avert potential layoffs, and provide immediate on-site services to assist workers facing job losses. (Attachment D.) Business owners can receive assistance and services at the following local U.S. Department of Labor America's Job Center of California offices:

**NOVA Job Center**  
505 W Olive Avenue, #550  
Sunnyvale, CA 94086

**Work2Future San Jose Job Center**  
1601 Foxworthy Avenue  
Kirk Community Center  
San Jose, CA 95118

**North San Jose America's Job Center of California**  
1901 Zanker Road  
San Jose, CA 95112

**Menlo Park Workforce Services Center**  
1200 O'Brien Drive  
Menlo Park, CA 94025

Additionally, the EDD offers an optional Disability Insurance Elective Coverage (DIEC) program for employers and self-employed individuals who are not required to pay into State Disability Insurance (SDI) but want to be covered by Disability Insurance (DI) and Paid Family Leave (PFL). DIEC is funded through quarterly premiums and can protect against partial loss of income when unable to work.

DI provides benefits to eligible DIEC participants when they are unable to work and lose wages due to their own non-work-related illness, injury, pregnancy, or childbirth.

Also, employers experiencing a hardship as a result of COVID-19 may request up to a 60-day extension of time from the EDD to file their state payroll reports and/or deposit state payroll taxes without penalty or interest. A written request for extension must be received within 60 days from the original delinquent date of the payment or return.

On a regional level the Silicon Valley Community Foundation (SVCF) is launching the Small Business Relief Fund to provide immediate support, in the form of loans or grants, to struggling self-employed and small business owners. SVCF will partner with Opportunity Fund, California's largest nonprofit microlender, to ensure critical capital remains available to small businesses throughout this crisis. The type of support provided by Opportunity Fund to each business will depend on the business' current situation (<https://www.opportunityfund.org/assistance-for-small-business-owners-affected-by-covid-19/>).

On March 17, 2020 Facebook announced it will be offering \$100 million in cash grants and ad credits for up to 30,000 eligible small businesses in over 30 countries where Facebook operates (<https://www.facebook.com/business/boost/grants?ref=eml>). Exact details have not yet been released.

#### EXISTING OR PROPOSED LOAN OR GRANT PROGRAMS FOR BUSINESSES IN OTHER CITIES

Few cities have created or approved relief funds in an effort to help local businesses survive the economic impacts of the COVID-19 pandemic. The following is a brief overview:

Entity and Program Name	Total Fund Amount	Terms
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City of Seattle: Small Business Stabilization Fund	\$1,500,000	<ul style="list-style-type: none"> <li>- Emergency funds to provide working capital grants in amounts up to \$10,000 to qualifying small businesses.</li> <li>- The business owner must have a low- or moderate-income (<math>\leq 80\%</math> of the Area Median Income).</li> <li>- The business must have five employees or less.</li> <li>- The business must have a physical establishment.</li> <li>- The business must have experienced a loss of income due to COVID-19.</li> <li>- Businesses that are franchises, chains, or restricted to patrons below the age of 18 will not be eligible for award.</li> <li>- Funding source: Community Development Block Grant (CDBG) funds.</li> <li>- <a href="https://www.seattle.gov/office-of-economic-development/small-business/small-business-programs-/stabilization-fund-">https://www.seattle.gov/office-of-economic-development/small-business/small-business-programs-/stabilization-fund-</a></li> </ul>
City of Sacramento: Small Business Emergency Economic Relief Fund	\$1,000,000	<ul style="list-style-type: none"> <li>- Zero interest secured loans of up to \$25,000 per business.</li> <li>- Initial loan payments must begin within 90 days.</li> <li>- Up to \$1 million available for businesses with 25 or fewer full-time equivalent employees (FTE), part-time employees are included within an FTE calculation.</li> <li>- Of the total amount, a minimum of \$250,000 will be made available for businesses with 5 or fewer FTE.</li> <li>- Applications reviewed on a rolling basis by a committee of city staff and external partners.</li> <li>- Funding decision within 2-3 weeks of receiving a complete application.</li> <li>- Funding anticipated to be released within 2 weeks of approval (pending approval of third-party fiscal intermediary).</li> <li>- Funding source: General Fund.</li> <li>- Due to the overwhelming response, the City is no longer accepting new applications after 3 days of opening the application process.</li> <li>- <a href="https://www.cityofsacramento.org/Economic-Development/Economic-Relief">https://www.cityofsacramento.org/Economic-Development/Economic-Relief</a></li> </ul>
City of Berkeley: Berkeley Relief Fund	\$3,000,000	<ul style="list-style-type: none"> <li>- Emergency grants for businesses and non-profits that can demonstrate a significant drop in revenues or patronage from prior year.</li> <li>- Exact details and application have not yet been released.</li> <li>- Funding source: possibly General Fund and asking for private donations.</li> <li>- <a href="https://berkeleyrelieffund.org/">https://berkeleyrelieffund.org/</a></li> </ul>

Based on the limited details of available programs, sufficient funding and staffing resources are essential in developing and launching a viable program, as well as managing fund disbursements and loan repayments. The City's Economic Development Division does not have existing loan or grant programs from which to replicate processes.

Sustainability Impact

No sustainability impact.

Fiscal Impact

No fiscal impact.

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Approved by: Dianne Thompson, Assistant City Manager

Attachments:

A – SBA California Declaration #16332

B – Small Business Administration (SBA) Fact Sheet on Economic Injury Disaster Loans

C – Employment Development Department (EDD) Guide and Fact Sheets on Work Sharing

D – EDD Rapid Response resources