

LITIGATION SERVICES

ALERT

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The City of Philadelphia Issues 180-Day Moratorium on Restaurant Evictions

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In early December, Philadelphia City Council unanimously approved Bill No. 200574-A, entitled “Protecting Philadelphia’s Restaurants During the COVID-19 Pandemic.” The new Ordinance imposes a 180-day moratorium on the eviction of certain restaurant tenants, particularly smaller owner-operated establishments, as opposed to chains or national brands.

BACKGROUND

The Ordinance responds to pleas from Philadelphia’s restaurateurs. Throughout the country, government rules for Covid-19 have often focused on the restaurant industry, restricting indoor dining while allowing takeout orders and limited outdoor dining. These restrictions and the overall economic downturn have created hardships for restaurants, with many establishments experiencing a dramatic drop in revenue and over 100,000 restaurants closing permanently nationwide.¹

The intent of Philadelphia’s 180-day eviction moratorium is to help smaller, neighborhood restaurants through the winter months ahead as indoor dining remains shut down and outdoor dining becomes even more difficult.

DETAILS

For a restaurant to qualify for eviction protection under the new Ordinance, the restaurant must: (a) have no more than three locations in the City of Philadelphia using the same name; (b) have fewer than 100 employees at the restaurant location for which the owner/operator seeks protection; and (c)

demonstrate that it meets certain economic hardship criteria. The hardship criteria include the following:

- (1) A 50 percent or more loss of revenue for any two-month period between March 17, 2020 and January 1, 2021 as compared to April 1, 2019 through May 31, 2019; or
- (2) If the restaurant was not in operation between April 1, 2019 through May 31, 2019, it may demonstrate a 50 percent loss of revenue for any two-month period between March 17, 2020 and January 1, 2021 as compared to January 1, 2020 through February 29, 2020, or any portion of that period that the restaurant was in operation.

If a restaurant fulfills these requirements, then the restaurant can present its landlord with a “Food Establishment Certificate of Hardship.” Eviction for the non-payment of rent is then prohibited during the 180-day moratorium, which began on December 3, 2020. The only legal basis for eviction would be to “cease or prevent an imminent threat of harm” by the restaurant.² For example, the landlord could show that the restaurant was a nuisance.

Additionally, a landlord cannot charge late fees on rent payments unless the landlord has evidence that it has incurred costs as a result of the late and/or non-payment of rent and also that the landlord’s property rental business has suffered a loss of revenue meeting the same hardship criteria as restaurants – i.e., if the landlord is in a similar financial condition to its ten-

¹ City of Philadelphia Bill No. 200574-A, § 1(11).

² The Philadelphia Code Title 9, Chapter 9-1800, § 9-1801(3)(a).

ants. In addition, the landlord cannot charge late fees unless it allows the restaurant to repay any past due rent over a twelve-month period.

Moreover, for one year following the expiration of the moratorium, a landlord shall not take any steps to evict the restaurant unless the landlord provides a 30-day notice of intent to evict. Additionally, any restaurant that has provided its landlord with a Food Establishment Certification of Hardship shall be entitled to a repayment agreement from the landlord for past due rent. At a minimum, the landlord must permit the restaurant at least nine months “from the last day of the Covid-19 emergency period”³ to repay past due rent. These provisions are separate from the criteria in the Ordinance restricting the ability of landlords to charge late fees.

ANALYSIS

Prior to this Ordinance, eviction protections in the City of Philadelphia due to Covid-19 generally pertained only to residential tenants. However, Philadelphia is not the first local government to enter and/or extend a moratorium on the eviction of commercial tenants for non-payment of rent due to Covid-19.

In March, California Governor Gavin Newsom issued Executive Order N-28-20 authorizing local governments to ban evictions of commercial tenants for non-payment of rent due to Covid-19. As a result, the City of Los Angeles, Los Angeles County, and the City and County of San Francisco issued various forms of moratoriums on evictions of commercial tenants, all of which remain in effect. Similarly, in October, New York extended its statewide moratorium on commercial evictions for non-payment of rent and on foreclosures of any commercial mortgages through January 1, 2021.⁴

While the Philadelphia Ordinance is seen as a victory by restaurant owners, it may create risks for their landlords. The Ordinance does not address the potential impact on landlords who may be unable to collect rent and are banned from evicting restaurant tenants, but are still obligated to pay mortgage lenders and

others. Similarly, a landlord can charge late fees for rent payments only if the landlord meets the strict criteria summarized above.⁵ It also remains unclear whether the City will propose any responsive protections for the ultimate downstream effects on lenders.

Thus, while the Ordinance gives breathing room to restaurant tenants for rental payments, it leaves landlords with an uncertain revenue stream without immediate recourse. Moreover, while the Ordinance is in effect for 180 days, its effect on landlords may last much longer subject to a repayment agreement for past due rent over a period of at least nine months from the last day of the Covid-19 emergency period, whenever that may be.⁶ ◆

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³ *Id.* at § 9-1801(5).

⁴ New York Governor Anthony Cuomo’s Executive Order No. 202.70.

⁵ The Philadelphia Code Title 9, Chapter 9-1800, § 9-1801(3)(b).

⁶ *Id.* at § 9-1801(5).