AGN. NO.

MOTION BY SUPERVISORS HOLLY J. MITCHELL AND HILDA SOLIS

June 22, 2021

ESTABLISHING A PATHWAY TO ECONOMIC RESILIENCY FOR SMALL AND MICRO EMPLOYERS

Since the economic fallout of the COVID-19 pandemic first became clear, housing experts have warned of a forthcoming residential eviction crisis which could skyrocket and exacerbate an already strained homeless crisis. But another kind of crisis is coming, too: the eviction and shut-down of small businesses, which will put even more strain on our small and micro enterprises, many of which have supported their businesses with personal assets during the pandemic.

Even as Los Angeles County (County) gradually reopens and the overall economy begins to recover, many of our local small and micro businesses—those smallest of small businesses which are essential to the cultural vibrancy and diversity of our neighborhoods—remain in dire situations. These small and micro businesses face many of the same systemic disadvantages as do individuals in their marginalized communities but have not received the same relief and protections afforded to renters and consumers.

As has been widely reported and documented, even well-meaning small business relief programs have not reached, or have been insufficient to help, many small businesses; as the Los Angeles Economic Development Corporation's (LAEDC's) *Pathways to Economic Recovery* report concludes, "[s]upport to small businesses struggling during the pandemic has been flawed, as those with established banking relationships or higher amounts of employees received priority for assistance."

Unable to obtain aid, if at all, until well into a pandemic that has now lasted over a

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year, many now face overwhelming amounts of debt, particularly in commercial rent. Like so many of COVID-19's worst impacts, this burden has fallen disproportionately on marginalized communities, with a January 2021 Small Business Majority reporting that high percentages of Latino (52%), AAPI (55%), and Black (45%) entrepreneurs were struggling to pay rent or mortgages over the next six months.

The economic toll of COVID-19 threatens to cause personal devastation to so many of those entrepreneurs who took the laudable risk of investing in their community. The historic exclusion from access to capital and the financial system has left these entrepreneurs less resilient and more personally exposed to the unforeseeable damage caused by the pandemic. These entrepreneurs are now at risk of having COVID-19 destroy not only their slice of the American Dream, but also the basic financial stability of their families. Additionally, the collateral consequences of such debt are likely to hamper their ability to make a fresh start with a new business, and thus delay the County's economic recovery in those communities where it is most needed.

This commercial rental debt is also a major source of tension between tenants and landlords; in many cases, smaller commercial tenants face pressures and desperation similar to that of residential tenants. While some landlords have cooperated with their struggling tenants by working out a mutually agreeable solution, too many small businesses face the daunting challenge of uncooperative landlords or accumulated back rent which the length of the pandemic has made any reasonable payment plan insurmountable to resolve.

An equitable recovery for the County must address this debt and limit its most devastating consequences for those smallest of small businesses which will otherwise suffer disproportionately. Other jurisdictions, such as the City of New York and the State of Oregon, enacted protections to limit the personal liability of small business owners and provide direct relief to address commercial rental debt. With the pandemic now lasting over a year, the County must act to resolve the accrued debt weighing down our most vulnerable small businesses in order to ensure that our marginalized communities are free to join in and drive our economic recovery. Unless we resolve this debt and help our small business tenants get back on their feet financially, the same communities that were hardest hit by the COVID-19 pandemic will be held back by debt for years to come. Therefore, as the Board of Supervisors considers crucial next steps with respect to the County's eviction moratorium for both residential and commercial landlords and tenants, we must also consider how the County can help our most vulnerable small businesses deal with rapidly mounting rental debt.

WE THEREFORE MOVE THAT THE BOARD OF SUPERVISORS:

1. Direct the Chief Executive Officer (CEO), the Chief Information Officer, the Director of the Department of Consumer and Business Affairs (DCBA), and the Director of the Los Angeles County Development Authority (LACDA), in consultation with County Counsel, to report back in 45 days in writing with the estimated average fair market value of commercial COVID-19 rental debt owed by Los Angeles County (County) Qualifying Small Business Tenants (as defined in 3(a), below), based on typical collection rates, prices paid by those who purchase commercial rental debt, the unique restrictions on collection and resale of COVID-19 rental debt pursuant to applicable law, and any other appropriate data sources.
2. Direct County Counsel, concurrently with its report back on Residential Tenant Rental Debt, as directed on June 8, 2021, to report back with draft language options for an ordinance the County can adopt that would work in tandem with, and not supplant or override, existing protections under the Eviction Moratorium, including the applicable repayment periods for Commercial Tenants under the Eviction Moratorium, to:

   a. Prohibit the enforcement of personal guarantees against any natural person for any commercial rental debt of a Qualifying Small Business Tenant for which default occurred between March 4, 2020 through the expiration or termination of the County's commercial Eviction Moratorium, inclusive, due to financial impacts of COVID-19.
   b. Prohibit the collection of commercial rental debt incurred between March 4, 2020 through the expiration or termination of the Eviction Moratorium, inclusive, due to financial impacts of COVID-19, against Qualifying Small Business Tenants.
3. Direct the CEO, in consultation with the directors of LACDA, DCBA and the administration of the upcoming Economic and Workforce Development Agency, to, within 60 days, establish a COVID-19 Small Business Rent Relief Program (Rent Relief Program), including identifying an appropriate program administrator, that would:
   a. Identify funding and establish a fund of at least $10 million to compensate landlords of Qualifying Small Business Tenants. A "Qualifying Small Business Tenant" shall:
      i. Be a person or entity that operates or has operated in the past 24 months an independently owned and operated business that has its principal place of business in the County.
      ii. Have an annual average number nine or fewer full-time equivalent employees.
      iii. Have annual total gross revenues of no more than $1 million.
      iv. Demonstrate a gross revenue loss of at least 25% over a twelve-month period falling at least in part within the period of the County’s COVID-19 emergency order.

b. Allow landlords to be eligible to apply to receive a portion of the accrued rental debt of Qualifying Small Business Tenants, with priority going to smaller commercial landlords, based on:
    i. Assessed value of all affected commercial rental property owned by that landlord.
    ii. Income of the landlord, as reported on tax filings.
    iii. Equity considerations based on geographical location of the affected small businesses.
    iv. No reported violations of local, state or federal law and administrative procedure by the landlord.
    v. Categories of the affected small businesses in keeping with the priorities of the Board of Supervisors (Board).

c. The Rent Relief Program shall require that participating landlords release their tenants from the accrued COVID-19 rental debt obligation.

d. Delegate authority to the CEO to execute contracts as needed to administer the Rent Relief Program.

4. Direct County Counsel and the Director of DCBA to amend and restate the County's Eviction Moratorium Resolution to:

    a. Require landlords to give commercial tenants with nine employees or fewer notice of their rights under the amended Eviction Moratorium.
    b. Expand affirmative defenses under the Eviction Moratorium to include protection from enforcement of personal guarantees against any natural person for commercial rental debt accrued during the Moratorium Period by commercial tenants with nine employees or fewer.
    c. Specify that holdover and month-to-month commercial tenants are protected by the Eviction Moratorium.

5. Authorize and direct the Chair of the Board to execute the amended and restated Eviction Moratorium Resolution, upon approval as to form by County Counsel.
6. Instruct the Director of DCBA to report back to the Board in 30 days in writing with a support and outreach plan to:
    a. Inform small businesses of updated small business tenant protections with particular attention to language access and digital access.
    b. Provide debt counseling and legal assistance by engaging organizations with established community relationships and demonstrated ability to provide services in-language and with cultural competence.
7. Direct County Counsel, in consultation with the Director of DCBA, to report back in 60 days in writing with actionable steps for the County to help reduce some of the collateral, financial consequences on owners of Qualifying Small Business Tenants as a consequence of commercial rental debt incurred during the pandemic as a result of financial hardship related to COVID-19, including but not limited to:
    a. Preventing any lessor of commercial property, or other entity that evaluates commercial tenants on behalf of such a lessor, from using alleged COVID-19 rental debt as a negative factor for the purpose of evaluating a prospective commercial tenant or as the basis for refusing to rent a commercial unit to an otherwise qualified prospective tenant.
    b. Restricting reporting of small business commercial debts, including rental debt, to credit reporting bureaus.
    c. Drafting an ordinance to permanently extend the anti-harassment and anti-retaliation protections under the current Eviction Moratorium with respect to commercial tenants with nine employees or fewer.
8. Direct the CEO to report back to the Board in 60 days in writing with a proposal for the County to acquire, and/or assist nonprofit organizations to acquire commercial properties in order to:

   a. Ensure long-term affordability of commercial rent for small business in neighborhoods vulnerable to gentrification and displacement, including by providing small landlords in such neighborhoods with an option to sell their property.

9. Direct the CEO to advocate in support of relevant State and Federal legislative proposals that reduce collateral consequences to small business owners resulting from COVID-19, including:
   a. Restricting reporting of small business commercial debts, including rental debt, to credit reporting bureaus.
   b. Limiting aggressive debt collection practices against Qualifying Small Business Tenants, including but not limited to harassment by landlords.
   c. Allowing commercial tenants to terminate their leases early without penalty or obligation to make remaining lease payments

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