



City of Palo Alto

City Council Staff Report

(ID # 12234)

Report Type: Consent Calendar

Meeting Date: 6/7/2021

Summary Title: Policy and Service Committee Recommends Approval of Rent Forgiveness Program & Budget Amendment

Title: Policy and Service Committee Recommends Approval of Rent Forgiveness Program for Tenants in City Buildings and Approve a Budget Amendment in the General Fund

From: City Manager

Lead Department: Administrative Services

Recommendation

The Policy and Services Committee recommends that the City Council

- 1) Approve the expansion of a rent forgiveness program using a COVID-19 impact approach for City tenants for up to three months forgiveness and not to exceed \$50,000 per tenant as outlined in this report; and
- 2) Amend the FY 2021 Budget Appropriation for the General Fund by:
 - a. Decreasing the Non-Departmental COVID-19 Council Reserve appropriation by \$744,000, and
 - b. Establishing a Non-Departmental, City Tenant COVID-19 Rent Relief appropriation for \$744,000. (simple majority approval)

Background

At the March 1, 2021 City Council meeting, staff presented and discussed with City Council options for a potential rent forgiveness program for City tenants including nonprofit and for-profit (CMR [11872](#)). City Council approved to forgive three months of rent for active non-profit tenants. Council also approved the eight program qualifications and funding to come from the City Council COVID-19 Council Reserve. Council approve the following qualifications for tenants to participant in this program:

1. The rent forgiveness program is available to those tenants that have satisfied all responsibilities under their existing agreement, have no outstanding delinquencies for any payments due prior to April 1, 2020, and is a current tenant as the date of the application.

2. Tenant must cite section(s) of the County ordinance that restricted tenant's operations.
3. Rent over \$100 per month including operating expenses.
4. Tenants will be required to complete a form describing their impact from the COVID-19 pandemic and provide financial statements demonstrating the amount of reduced business revenue.
5. The business must have had gross revenues of less than \$2.5 million in 2019.
6. The business must provide an income statement demonstrating a decline in gross revenue during 1st half of 2020 of at least 50% from 1st half of 2019.
7. If a qualified tenant paid rent during the forgiveness period instead of deferring, it may qualify for rent credits to be used for rent owed in the following three months after the parties agree to an amendment.
8. Tenants that meet all qualifications will be required to enter into an amendment, subject to City Manager approval.

The Council approved option had an estimated cost of up to \$203,000 (Option C from CMR 11872). City Council also directed the Policy and Services Committee to review a rent forgiveness program for other qualified City tenants (for-profit tenants) with program costs not-to-exceed the \$744,000 available in the COVID-19 Council Reserve including the \$203,000 already approved from the March 1, 2021 Council action.

California Governor Gavin Newsom signed an [executive order N-80-20](#) on September 23, 2020 that protected commercial tenants from being evicted until March 31, 2021. Santa Clara County passed an ordinance [NS-9.293](#) on November 3, 2020 extending the temporary moratorium on evictions in Santa Clara County for non-payment of rent by small business tenants through the date of Governor Newsom's Executive Order N-80- 20 or April 30, 2021, whichever is earlier. California Governor Gavin Newsom signed legislation on March 4, 2021 that extended eviction moratorium through June 30, 2021 for commercial tenants. Under the County's moratorium, small business tenants have up to six months after the moratorium expires or terminates to repay at least 50% of the past-due rent, and up to 12 months after the moratorium expires or terminates to repay in full the past-due rent.

Discussion

At the April 13, 2021 Policy and Services (P&S) Committee meeting, staff presented to and discussed with the P&S Committee options for a rent forgiveness program for City tenants beyond those already eligible under the initial program ([CMR 12078](#)).

The Committee reviewed three different options for the structure, allocation methodology, and amount of rent forgiveness that this extended program could offer.

The rent forgiveness program options in this report for the Committees consideration included:

- Option 1 – Rent Forgiveness using a pro rata share approach
- Option 2 – Rent Forgiveness using a COVID-19 impact approach

- Option 3 – No Rent Forgiveness

Further, staff recommended consideration of the following eight qualifications for the establishment of a rent forgiveness program, with some variations to those qualifications approved by the Council on March 1, 2021. To simplify the qualification process staff eliminated the requirement that gross revenue be less than \$2.5 million in 2019. Staff also added the requirement that applicants have an active Business Registry account.

Tenant statistics were provided as context when considering the program:

- The average rent per square foot is approximately \$1.50
- The rent per square foot ranges from \$0.27 to \$5.47
- Over 75% of the City's for-profit tenants pay less than \$2.00 per square foot
- 60% of the City's for-profit tenants rent space at Cubberley Community Center
- Over 90% of tenants' rent is less than \$50,000 per month

Unanimously the Committee recommends that the City Council approve an expansion of the rent forgiveness program in alignment with Option 2 in [CMR 12078 \(motion\)](#). Option 2 outlined an expanded program that would allow City tenants, not eligible for forgiveness in the initial program guidelines, including for profit organizations, submit for rent forgiveness using a COVID-19 impact approach for up to three months' rent and not to exceed \$50,000 per tenant. This option will require analysis of financial statements from tenants to demonstrate a minimum of 50% loss in revenue between 2019 to 2020. Tenants would need to provide financials for 2019 and 2020 in their application for staff to determine whether there was a loss revenue greater than 50%. Tenants will be required to complete a form describing their impact from the COVID-19 pandemic and provide financial statements demonstrating the amount of reduced business revenue. Staff provided to the Committee a list of proposed tenants that may be eligible which excludes tenants that already received rent forgiveness from the Council adopted March 1, 2021 program and operational tenants who were not impacted by closures related to the Public Health Order such as cell towers and ground lease tenants.

The following qualifications would be required as recommended by the Committee:

1. The rent forgiveness program is available to tenants that have satisfied all responsibilities under their existing rental agreement, have no outstanding delinquencies for any payments due prior to April 1, 2020, and are current tenants as of the date of the application.
2. Tenants must be active in the City of Palo Alto Business Registry.
3. Tenants must cite section(s) of the County's Public Health Orders that restricted tenant's operations.
4. Rent must be over \$100 per month including operating expenses.

5. Tenants will be required to complete a form describing their impact from the COVID-19 pandemic and provide financial statements demonstrating the amount of reduced business revenue.
6. The business must provide an income statement demonstrating a decline in gross revenue during the first half of 2020 of at least 50% compared to the same period in 2019.
7. If a qualified tenant paid rent during the forgiveness period instead of deferring, the rent may qualify as credits to be used for rent owed in the following three months subject to an approved lease amendment.
8. Tenants that meet all qualifications will be required to enter into a lease amendment to the lease, subject to City Manager approval.

Resource Impact

The FY 2021 Adopted Operating Budget includes a COVID-19 Council Reserve in the amount of \$744,000. On March 1, 2021, as part of CMR #11872, Council approved the use of up to \$203,000 to forgive three months of rent for non-profit organizations. This additional for-profit program is estimated to cost \$541,000 for a total cost of \$744,000 for City tenant rent forgiveness. Actions to allocate the COVID-19 Council Reserve are recommended to provide funding for this rent forgiveness. Depending on implementation, the City may need to reappropriate any remaining unspent funds in FY 2021 to FY 2022 to the completion of this program. The final cost of the program will depend on the number of tenants that apply and qualify for the program.

Stakeholder Engagement

Staff has reassured tenants who've reached out about the rent forgiveness program that they will be contacted with more information once the application is made available on the City's website. Staff is working diligently with internal departments and expects to launch the rent forgiveness program for qualified City tenants (for-profit and non-profit) by July 1, 2021. Staff has continued to engage with tenants via telephone and email related to rent forgiveness. Tenants expect to resume business operations per the County's Public Health Order.

Environmental Review

The rent reduction programs as proposed are not a project under CEQA per CEQA Guidelines 15061(b)(3).