

Communication from Public

Name: Hellen Family

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Council File No: 20-0147

Comments for Public Posting: DOWNTOWN MANAGEMENT CO., INC. 541 South Spring Street, Suite 204 Los Angeles, California 90013 (213) 688-1100 ? FAX (213) 688-0820 Dear Council Members: This letter is being submitted on behalf of the Hellen family, commercial landlords in Downtown Los Angeles, to oppose Motion 20-0147-S19 (“Motion”), which seeks to amend Ordinance 186585 to allow commercial tenants six (6) and/or twelve (12) months, depending on the size of the tenant, to repay their past due rent, as opposed to the currently permitted three (3) months period, on the grounds that it (i) is preempted by State Law, (ii) constitutes an unlawful taking without just compensation, (iii) violates the Contracts clause, and (iv) deprives property owners of their substantive due process rights as follows. Preemption First, California state law forbids municipalities from adopting legislation which regulates commercial rents. Prohibited “commercial rental control” includes “any action of a public entity taken ... to establish, continue, implement, or enforce any control or system of controls, on the price at which, or the term for which, commercial real property may be offered for rent, or control or system of controls which would select, mandate, dictate, or otherwise designate a specific tenant or specific person or entity with whom the owner must negotiate on the formation, extension, or renewal of a tenancy, or any other enactment which has such a purpose In that, the Motion if passed would regulate rent repayment terms governing commercial tenancies it is preempted by California legislation. Contracts Clause By permitting repayment over a 6 to 12 months period, the proposed amendment would retroactively and severely upset the contractual expectations of commercial landlords. The ordinance thus substantially impairs the contractual obligations of commercial landlords and tenants and must be justified by a significant and legitimate public purpose. It does not. Specifically, the purported public purpose justifying the ordinance's contractual interference is to help businesses hit by the pandemic, not confer benefit on the public generally. Indeed, the Motion expresses a bald preference for one class of contracting citizens, commercial tenants, over another, landlords. Nor is the proposed amendment narrowly tailored since this type of relief should be borne by the government through vouchers and/or financial assistance, not private parties. By allowing Tenants to repay their rent obligations

over a 12 months period, the Motion unfairly singles out the property owners and requires them to bear the burden that should be borne by the public and/or the government. This kind of favored treatment clearly exceeds the state's police power.

Unlawful Taking and Due Process In addition, the proposed rent deferral constitutes an unlawful taking in that it will force landlords to continue renting their property to non-paying tenants, thereby severely diminishing their rental revenue and significantly impairing their reasonable return on investment without any compensation. The law requires that any rent control ordinance must not only protect tenants, but also ensure a fair rate of return to landlords, ie enable them to generate income, sufficient to cover costs of operation and ensure return of reasonable profit. Under the proposed amendment, landlords will not be able to collect the entirety and/or any of their past due rent for a period of 6 or 12 months, which will substantially curb their ability to manage and/or maintain their properties and pay their employees. Notably, the proposed ordinance provides no procedure to conduct a hearing on the landlord's particular "hardship" application. Similarly the constitutional requirement for due process of law prevents legislation that lacks a reasonable relation to a proper legislative purpose. The law provides that a rent regulation does not bear a reasonable relation to a legislative purpose when it is arbitrary or deprives the owner of a fair and reasonable return. Because as explained above the amendment would deprive commercial landlords of their reasonable return on investment, it does not bear a reasonable relation to its purpose thereby violating substantive due process rights of the commercial landlords. In its express preference for tenant business owners to the detriment of commercial landlords the amendment is further arbitrary and discriminatory. Because the Motion will deprive commercial property owners, who are already facing financial hardships caused by local action intended to assist the tenants affected by COVID-19, of their reasonable return on investment by forcing landlords to bear an outsized portion of the economic burden caused by the pandemic in violation of their contractual expectations and substantive due process rights it must be denied. We therefore respectfully request that the Motion be denied.

Downtown Management Laura Adler Corporate Counsel