

1 [Emergency Ordinance - Eviction of Commercial Tenants During COVID-19 Pandemic]

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3 **Emergency ordinance to temporarily restrict landlords from evicting commercial**
4 **tenants for non-payment of rent that was not paid due to the COVID-19 pandemic.**

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6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
8 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~strikethrough Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 subsections or parts of tables.

10

11 Be it ordained by the People of the City and County of San Francisco:

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13 Section 1. Declaration of Emergency under Charter Section 2.107.

14 (a) Section 2.107 of the Charter authorizes passage of an emergency ordinance in
15 cases of public emergency affecting life, health, or property, or for the uninterrupted operation
16 of any City or County department or office required to comply with time limitations established
17 by law. The Board of Supervisors hereby finds and declares that an actual emergency exists
18 that requires the passage of this emergency ordinance.

19 (b) The COVID-19 pandemic is having an unprecedented impact on the City. Mayor
20 London Breed proclaimed a state of emergency on February 25, 2020, and the County Health
21 Officer, starting with Order No. C19-07 which was issued on March 16, 2020, has been
22 restricting non-essential operations of businesses at physical locations across the City. Also
23 on March 16, 2020, the Governor issued Executive Order N-28-20, paragraph 2 of which
24 granted local governments additional authority to regulate commercial tenancies. Executive
25 Order N-28-20 found that promoting stability among commercial tenancies will further public

1 health, by allowing businesses to keep paying the residents they employ, and by allowing
2 businesses to decide whether and how to remain open based on public health concerns
3 rather than due to economic pressures, and that it is necessary for local jurisdictions to
4 mitigate those economic pressures. On March 19, 2020, the Mayor issued a Fourth
5 Supplement to the February 25 emergency proclamation (and the Mayor issued an Eighth
6 Supplement to further clarify the Fourth Supplement), to protect certain commercial
7 businesses in the City from eviction, based on the severe financial impacts of the pandemic
8 and the public health risks that may result from such impacts. Finally, on June 30, 2020, the
9 Governor issued Executive Order N-71-20, which extended the provisions of paragraph 2 of
10 Executive Order N-28-20 through September 30, 2020. Copies of these orders and directives
11 are on file with the Clerk in File No. _____.

12 (c) The Board of Supervisors hereby finds that the findings in the orders and directives
13 above remain valid and compelling, and declares that an actual emergency continues to exist
14 that requires the further extension of commercial eviction controls. An extension is necessary
15 to prevent displacements due to the pandemic, mitigate economic harms, and address the
16 public health risks that may otherwise result. The City's economy is gradually reopening but
17 the pandemic is continuing to cause severe and lasting economic effects. As stated in the
18 Governor's Executive Order N-66-20 (issued on May 29, 2020) and in Executive Order N-71-
19 20, many Californians (including San Francisco residents) are continuing to experience
20 substantial losses of income, hindering their ability to keep up with their rent, and there is an
21 ongoing need to promote security and stability in order to reduce the spread of COVID-19.

22 (d) For the foregoing reasons, the Board of Supervisors finds it is essential to prevent
23 the unnecessary displacement of commercial tenants who are unable, due to the financial
24 impacts related to COVID-19, to pay rent that came due while the Governor's Executive Order
25 remains in effect (i.e., rent from March 16, 2020 until September 30, 2020, unless the

1 Governor extends the September 30 date). Preventing evictions will protect local businesses
2 and the people that rely on them.

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4 Section 2. Protections for Commercial Tenants.

5 (a) This ordinance shall only apply to commercial tenants registered to do business
6 in San Francisco under Article 12 of the Business and Tax Regulations Code with combined
7 worldwide gross receipts for tax year 2019 for purposes of Article 12-A-1 of the Business and
8 Taxation Code equal to or below \$25 million. This figure shall be pro-rated in the case of
9 businesses that were not operating for the entire 2019 tax year.

10 (b) If a covered commercial tenant fails to make a rent payment that originally fell
11 due during the time period when paragraph 2 of the Governor's Executive Order No. N-28-20
12 (as said time period may be extended by the Governor from time to time) was in effect, and if
13 the tenant was unable to pay the rent due to financial impacts related to COVID-19, then the
14 landlord may not recover possession of the unit due to the missed or delayed payment.
15 However, if the landlord owns less than 25,000 square feet of rentable square feet in the
16 building, then the eviction for non-payment may proceed, if the landlord can demonstrate that
17 being unable to evict would cause them a significant financial hardship (for example, default
18 on debt or similar enforceable obligation).

19 (c) Subdivision (b) shall also apply to attempts to recover possession of a
20 commercial unit from a tenant who is occupying the unit on a month-to-month periodic
21 tenancy, holdover basis, or similar arrangement, and including where the landlord has the
22 right to terminate or not renew the agreement at the landlord's discretion. In such situations, if
23 a tenant misses a payment due to COVID-19, this prohibition against recovering possession
24 due to non-payment shall apply, unless the landlord can demonstrate an alternative, non-
25 pretextual reason for recovering possession of the unit (e.g., turning the unit over to a new

1 tenant under a previously executed agreement, planned renovations, or previous agreement
2 to turn over the unit vacant to a new owner).

3 (d) For purposes of this Chapter 37C, the term “financial impact” means a
4 substantial decrease in business income or increase in business expenses that arose due to
5 illness or other disruption, reduced open hours, or reduced consumer demand. A financial
6 impact is “related to COVID-19” if caused by the COVID-19 pandemic, or by any local, state,
7 or federal government response to COVID-19, and is documented.

8 (e) The provisions of this ordinance, being necessary for the welfare of the City and
9 County of San Francisco and its residents, shall be liberally construed to effectuate its
10 purpose, which is to protect commercial tenants from being evicted for missing rent payments
11 due to the COVID-19 pandemic. Nothing in this ordinance shall relieve a commercial tenant
12 of the obligation to pay rent, nor restrict a landlord’s ability to recover rent due.

13 (f) This ordinance regulates rent payments and evictions for non-payment during the
14 time period that it remains in effect. Consistent with Charter Section 2.107, this ordinance
15 shall become effective and operative immediately upon enactment. Enactment occurs when
16 the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the
17 ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor’s
18 veto of the ordinance. Once enacted, it shall remain in effect for 60 days, unless reenacted as
19 provided by Section 2.107. If not reenacted, it shall expire on the 61st day after enactment.

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21 Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word
22 of this ordinance, or any application thereof to any person or circumstance, is held to be
23 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
24 shall not affect the validity of the remaining portions or applications of the ordinance. The
25 Board of Supervisors hereby declares that it would have passed this ordinance and each and

1 every section, subsection, sentence, clause, phrase, and word not declared invalid or
2 unconstitutional without regard to whether any other portion of this ordinance or application
3 thereof would be subsequently declared invalid or unconstitutional.

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6 Section 4. Supermajority Vote Required.

7 In accordance with Charter Section 2.107, passage of this emergency ordinance by the
8 Board of Supervisors requires an affirmative vote of two-thirds of the Board of Supervisors.

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10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12
13 By: _____
14 MANU PRADHAN
15 Deputy City Attorney
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