

1 [Administrative Code - COVID-19 Tenant Protections For SRO Residents]

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3 **Ordinance amending the Administrative Code to prohibit landlords of residential hotel**
 4 **units (SROs) from evicting tenants for non-payment of rent that was not paid due to the**
 5 **COVID-19 pandemic, and from imposing late fees, penalties, or similar charges on such**
 6 **tenants; to establish a COVID-19 SRO Relief Fund to cover such rent payments; and**
 7 **making findings as required by the California Tenant Protection Act of 2019.**

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

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

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16 Section 1. Purpose and Findings.

17 (a) The City and County of San Francisco is facing an unprecedented public health
 18 and economic crisis due to the COVID-19 pandemic. The Mayor has responded with a series
 19 of emergency orders, including an eviction moratorium that gives tenants who have suffered a
 20 financial impact due to COVID-19 an extension of time to pay their rent (hereafter, the
 21 “Eviction Moratorium”). The Mayor issued the Eviction Moratorium on March 13, 2020 and
 22 updated it most recently on April 30, 2020, to apply to rent payments missed in April, May,
 23 and June 2020. But the Eviction Moratorium will allow tenants to be evicted if they have not
 24 paid their past due rent once the extension of time to pay the rent expires. As of the second
 25 quarter of 2020, many tenants have lost their jobs and many businesses have closed. If these

1 trends worsen or if the emergency continues, many tenants may find themselves in an ever
2 deepening financial hole, with the result that a large wave of evictions for nonpayment of rent
3 is likely to follow once the extension period ends. It is essential to address this looming
4 danger – an impending crisis in its own right. And these trends are particularly worrisome with
5 respect to occupants of residential hotel units (SROs). SROs house some of the City’s most
6 vulnerable residents. Many of these residents will become homeless if displaced from their
7 SRO units, which will put them at even greater risk and undermine the City’s continuing efforts
8 to combat the spread of COVID-19.

9 (b) On March 16, 2020, the Governor issued Executive Order N-28-20 (the “Executive
10 Order”), which found that the COVID-19 pandemic is having severe impacts throughout the
11 State, and recognized that local jurisdictions must take measures based on their particular
12 needs to preserve and increase housing security, and to protect public health and mitigate the
13 economic effects of the pandemic. To encourage such efforts, Paragraph 2 of the Executive
14 Order authorized local governments to impose substantive limitations on residential evictions
15 for tenants who are unable to pay rent through May 31, 2020 due to the pandemic (or a later
16 date if extended by the Governor), and suspended any provisions of state law that would
17 otherwise preempt local governments from enacting such measures.

18 (c) The Board of Supervisors finds it is in the public interest to prevent SRO residents
19 from being displaced due to the COVID-19 pandemic, to the maximum extent permitted by
20 law. The protections of this ordinance will apply only to rent payments that an SRO resident
21 tenant was unable to pay due to the COVID-19 pandemic during the period from March 16,
22 2020 through the date the Governor’s Executive Order will expire (May 31, 2020, or if the
23 Governor extends the May 31 date, through the date of extension). This ordinance shall not
24 apply to rent payments that become due after the May 31 date (or, if the Governor extends
25 the May 31 date, after the date of extension).

1 (d) This ordinance is intended to prevent SRO residents from being evicted due to
2 having suffered a financial impact that arose out of the COVID-19 pandemic. As compared to
3 the just cause protections of the California Tenant Protection Act of 2019 (“AB 1482”), this
4 ordinance further limits the permissible reasons for termination of a residential tenancy and
5 provides additional tenant protections. The Board of Supervisors therefore finds that this
6 ordinance is more protective of tenants than AB 1482, and intends that the Rent Ordinance
7 (as hereby amended) shall apply rather than AB 1482.

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9 Section 2. The Administrative Code is hereby amended by revising Section 37.9, to
10 read as follows:

11 **SEC. 37.9. EVICTIONS.**

12 Notwithstanding Section 37.3, this Section 37.9 shall apply as of August 24, 1980, to all
13 landlords and tenants of rental units as defined in Section 37.2(r).

14 (a) A landlord shall not endeavor to recover possession of a rental unit unless:

15 (1) The tenant:

16 (A) Has failed to pay the rent to which the landlord is lawfully entitled
17 under the oral or written agreement between the tenant and landlord:

18 * * * *

19 (B) Habitually pays the rent late; or

20 (C) Gives checks which are frequently returned because there are
21 insufficient funds in the checking account; ~~or~~

22 (D) Provided, however, that for residential hotel units as defined in
23 Administrative Code Section 41.4, subsection (a)(1) shall not apply with respect to rent payments that
24 initially became due during the time period when paragraph 2 of the Governor’s Executive Order No.
25 N-28-20 (as said time period may be extended by the Governor from time to time) was in effect, and

1 where the tenant's failure to pay (i) arose out of a substantial decrease in household income (including,
2 but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the
3 number of compensable hours of work, or substantial out-of-pocket expenses); (ii) that was caused by
4 the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19; and
5 (iii) is documented. The types of documentation that a tenant may use to show an inability to pay due to
6 COVID-19 may include, without limitation, bank statements, pay stubs, employment termination
7 notices, proof of unemployment insurance claim filings, sworn affidavits, and completed forms
8 prepared by the Rent Board. A tenant shall have the option, but shall not be required, to use third-
9 party documentation such as a letter from an employer to show an inability to pay. The provisions of
10 this subsection (a)(1)(D), being necessary for the welfare of the City and County of San Francisco and
11 its residents, shall be liberally construed to effectuate its purpose, which is to protect tenants from
12 being evicted for missing rent payments due to the COVID-19 pandemic. Nothing in this subsection
13 (a)(1)(D) shall relieve a tenant of the obligation to pay rent, nor restrict a landlord's ability to recover
14 rent due; or

15 (2) The tenant has violated a lawful obligation or covenant of tenancy other
16 than the obligation to surrender possession upon proper notice or other than an obligation to
17 pay a charge prohibited by Police Code Section 919.1, the violation was substantial, and the
18 tenant fails to cure such violation after having received written notice thereof from the
19 landlord.

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21 (D) Before endeavoring to recover possession based on the violation of
22 a lawful obligation or covenant of tenancy regarding subletting or limits on the number of
23 occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation
24 that provides the tenant with an opportunity to cure the violation in 10 or more days. The
25 tenant may cure the violation by making a written request to add occupants referenced in

1 Subsection (A), (B), or (C) of Section 37.9(a)(2) or by using other reasonable means to cure
2 the violation, including, without limitation, the removal of any additional or unapproved
3 occupant. Nothing in this Section 37.9(a)(2)(D) is intended to limit any other rights or remedies
4 that the law otherwise provides to landlords. ~~---~~

5 (E) Notwithstanding any lease provision to the contrary, a landlord of a
6 residential hotel unit as defined in Administrative Code Section 41.4 may not impose late fees,
7 penalties, interest, liquidated damages, or similar charges due to a tenant's non-payment of rent, if the
8 tenant can demonstrate that it missed the rent payment due to the COVID-19 pandemic as set forth in
9 subsection (a)(1)(D). A landlord may not recover possession of the unit due to a tenant's failure to pay
10 late such charges when subsection (a)(1)(D) applies. The foregoing sentence shall not enlarge or
11 diminish a landlord's rights with respect to such charges when subsection (a)(1)(D) does not apply; or

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14 Section 3. Article XIII of Chapter 10 of the Administrative Code is hereby amended by
15 adding Section 10.100-51, to read as follows:

16 **SEC. 10.100-51. COVID-19 SRO RELIEF FUND.**

17 (a) Establishment of Fund. The COVID-19 SRO Relief Fund ("Fund") is hereby established
18 as a category eight fund to provide financial support to owners and occupants of Residential Hotel
19 units as defined in Administrative Code Section 41.4.

20 (b) Use of Fund. The Fund shall be used to provide payments to occupants of Residential
21 Hotel units who have been unable to pay rent due to the financial impacts of the COVID-19 pandemic,
22 or to the landlords of units occupied by such persons.

23 (c) Sources of Funds. The Fund may receive any legally available monies appropriated or
24 donated for the purpose set forth in subsection (b) including, but not limited to, funds appropriated by

1 the Board of Supervisors, funding made available from the federal or State governments, and private
2 donations and grants.

3 (d) Administration of Fund.

4 (1) Responsible Agency. The Mayor’s Office of Housing and Community Development
5 (MOHCD) shall administer the Fund, and may seek assistance of other City agencies including, but not
6 limited to, the Department of Homelessness and Supportive Housing. In consultation with the
7 Controller’s Office, the MOHCD Director or the Director’s designee shall adopt rules for the
8 distribution of monies in the Fund consistent with the purpose set forth in subsection (b) and the
9 criteria set forth in subsection (d)(2). MOHCD shall make these rules available on its website and at
10 its office.

11 (2) Criteria for Disbursement. In consultation with the Controller’s Office, MOHCD’s
12 rules regarding the distribution of monies from the Fund shall incorporate and develop the following
13 criteria:

14 (A) The amount of rent that the occupant’s household owes;

15 (B) The degree to which the occupant’s household has been financially impacted
16 by the COVID-19 pandemic;

17 (C) Whether the occupant’s household does not qualify for funding or payments
18 provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (P.L. 116-136),
19 or other federal or state or local assistance programs specific to the COVID-19 pandemic, due to the
20 occupant or a member of the household’s citizenship or immigration status, lack of a social security
21 number, tax return filing history, or other factor unrelated to need;

22 (D) Whether the occupant is in good standing with the owner, other than with
23 respect to the unpaid rent, and is unlikely to face eviction for reasons unrelated to rent; and

24 (E) The degree to which contributions from the Fund may reduce existing public
25 assistance benefits that would otherwise be available.

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(3) **Outside Consultation.** MOHCD may consult with organizations representing the interests of SRO owners and residents regarding its implementation of this Section 10.100-51.

Section 4. Undertaking for the General Welfare. In enacting and implementing this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

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Section 7. Effective and Operative Dates.

(a) This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the ordinance.

(b) Section 2 of this ordinance, which amends Administrative Code Chapter 37, is not intended to conflict with the ordinance in File No. 200375. Accordingly, Section 2 shall be inoperative if at the time of the effective date of this ordinance, the ordinance in File No. 200375 is in effect, and Section 2 shall remain inoperative so long as the ordinance in File No. 200375 remains in effect. If, at any time after the effective date of this ordinance, the ordinance in File No. 200375 is not in effect, then Section 2 of this ordinance shall become operative.

Section 8. Mayoral Order. Section 2 of this ordinance is intended to supplement the tenant protections in the Mayor’s Eviction Moratorium by prohibiting a landlord of a residential hotel unit from recovering possession due to the non-payment of rent upon expiration of the moratorium period described in Section 1(a). In the event of a conflict between this ordinance and the Eviction Moratorium, the measure that provides greater tenant protections shall apply.

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

By: /s/ _____
MANU PRADHAN
Deputy City Attorney

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