

File No. 201059 Committee Item No. 3  
Board Item No. 5

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date October 5, 2020

Board of Supervisors Meeting Date October 20, 2020

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Resolution                                   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance                                    |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Public Correspondence                        |

#### OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Presidential Action Memo 092120</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Referral FYI 092220</u>             |
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Completed by: Erica Major Date October 1, 2020

Completed by: Erica Major Date October 6, 2020

1 [Administrative Code - Temporary Tenant Protections Due To COVID-19]

2

3 **Ordinance amending the Administrative Code to limit residential evictions through**  
4 **March 31, 2021, unless the eviction is based on the non-payment of rent or is**  
5 **necessary due to violence-related issues or health and safety issues.**

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 ~~*italics Times New Roman font*~~.  
9 **Board amendment additions** are in Arial font.  
10 **Board amendment deletions** are in ~~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:

12

13 Section 1. Purpose and Findings.

14 (a) On February 25, 2020, the Mayor proclaimed a state of emergency due to the  
15 COVID-19 crisis, and subsequently imposed a moratorium on residential evictions to protect  
16 tenants and help contain the spread of the virus. The terms of the moratorium are reflected in  
17 the Twelfth Supplement to the emergency proclamation, which is dated April 30, 2020. Of  
18 relevance here, paragraph 1(c) of the Twelfth Supplement provides that no landlord may  
19 recover possession of a rental unit unless necessary due to violence, threats of violence, or  
20 health and safety issues, for two months after paragraph 1(c) expires. Paragraph 1(c)  
21 originally was set to expire at the end of June 2020, but the Mayor has extended it on a  
22 month-by-month basis so that, as of September 15, the date of introduction of this ordinance,  
23 it will expire at the end of September 2020, meaning that its restrictions on evictions that are  
24 not necessary due to violence or health and safety shall continue to apply at least until the  
25 end of November 2020, because of the two-month grace period following expiration.

1 (b) The Board of Supervisors finds it is essential, with respect to evictions not based  
2 on the non-payment of rent, to extend the additional protections set forth in paragraph 1(c) of  
3 the Twelfth Supplement beyond the November 2020 end date. To provide greater certainty  
4 and assurance to the public, the Board of Supervisors intends that these protections shall last  
5 through March 31, 2021.

6 (c) This ordinance shall not have any effect on the Twelfth Supplement, or on any  
7 subsequent renewals of the Twelfth Supplement. This ordinance also shall not have any  
8 effect on any other existing eviction protection for tenants who are unable to pay rent due to  
9 COVID-19.

10  
11 Section 2. Chapter 37 of the Administrative Code is hereby amended by adding  
12 Section 37.9(n), to read as follows:

13 **SEC. 37.9. EVICTIONS.**

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

16 \* \* \* \*

17 (n) Additional Just Cause Requirements Due to COVID-19.

18 (1) No landlord shall recover possession of a rental unit on or before March 31, 2021  
19 unless necessary due to violence, threats of violence, or health and safety issues. This limitation shall  
20 be in addition to the just cause requirements set forth in Section 37.9(a), and shall apply to all rental  
21 units, including those that are otherwise exempt from just cause pursuant to Section 37.9(b). However,  
22 this additional limitation shall not apply to evictions due to unpaid rent or any other unpaid financial  
23 obligation of a tenant under the tenancy that came due between March 1, 2020 and January 31, 2021,  
24 inclusive; or to evictions under Section 37.9(a)(13).

1                   (2) The protections in subsection (1) shall also apply to units where the rent is  
2 controlled or regulated by the City, notwithstanding Section 37.2(r)(4), including without limitation  
3 privately-operated units controlled or regulated by the Mayor’s Office of Housing and Community  
4 Development and/or the Department of Homelessness and Supportive Housing.

5                   (3) This Section 37.9(n) is intended to limit evictions until March 31, 2021, and  
6 shall therefore apply to all residential dwelling units described in subsections (1) and (2),  
7 including but not limited to those where a notice to vacate or quit was pending as of the date  
8 that this Section 37.9(n) took effect and regardless whether the notice was served before or  
9 after September 15, 2020.

10                   4) This Section 37.9(n) shall expire by operation of law on April 1, 2021, unless  
11 extended by ordinance. Upon expiration, the City Attorney shall cause this Section 37.9(n) to be  
12 removed from the Administrative Code.

13  
14                   Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word  
15 of this ordinance, or any application thereof to any person or circumstance, is held to be  
16 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision  
17 shall not affect the validity of the remaining portions or applications of the ordinance. The  
18 Board of Supervisors hereby declares that it would have passed this ordinance and each and  
19 every section, subsection, sentence, clause, phrase, and word not declared invalid or  
20 unconstitutional without regard to whether any other portion of this ordinance or application  
21 thereof would be subsequently declared invalid or unconstitutional.

22  
23                   Section 4. Effective Date. This ordinance shall become effective 30 days after  
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
25

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
2 of Supervisors overrides the Mayor's veto of the ordinance.

3  
4 APPROVED AS TO FORM:  
5 DENNIS J. HERRERA, City Attorney

6 By: /s/  
7 MANU PRADHAN  
8 Deputy City Attorney  
9 n:\govern\as2020\2100098\01483130.docx

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**REVISED LEGISLATIVE DIGEST**  
(Amended in Committee, 10/05/2020)

[Administrative Code - Temporary Tenant Protections Due to COVID-19]

**Ordinance amending the Administrative Code to limit residential evictions through March 31, 2021, unless the eviction is based on the non-payment of rent or is necessary due to violence-related issues or health and safety issues.**

Existing Law

In response to the COVID-19 pandemic, the Mayor issued an emergency order prohibiting residential evictions unless necessary due to violence, threats of violence, or health and safety issues, or where the eviction is subject to the Ellis Act. This limitation applies to units covered by the City's just cause rules (Admin. Code Ch. 37), as well as units that are normally exempt from those rules on the basis that the rent is controlled or regulated by the City (e.g., units controlled or regulated by the Mayor's Office of Housing and Community Development and/or the Department of Homelessness and Supportive Housing). The Mayor originally imposed this limitation for a three-month period, but has been extending it month-by-month and it currently remains in effect through November 2020.

Amendments to Current Law

The proposed ordinance would extend these limitations through March 31, 2021, except that the extension would not apply to evictions based on the non-payment of rent that originally came due between March 1, 2020 and January 31, 2021.

Background Information

The proposed limitations imposed by this ordinance would be in addition to any other just cause rules that may apply.

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**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Major, Erica \(BOS\)](#)  
**Subject:** FW: Written Comment in Opposition to Ordinance File #201059 (Preston)  
**Date:** Tuesday, October 6, 2020 11:28:29 AM

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**From:** Brett Davies <davies.brett@gmail.com>  
**Sent:** Tuesday, October 6, 2020 11:22 AM  
**To:** BOS Legislation, (BOS) <bos.legislation@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** Written Comment in Opposition to Ordinance File #201059 (Preston)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

RE: Ordinance File #201059 (Administrative Code - Temporary Tenant Protections Due to COVID-19)  
Subj: Written Comment in Opposition to Ordinance #201059 (Preston)

Dear SF Board of Supervisors,

I write regarding the proposed legislation (file #201059) by Supervisor Preston banning no-fault evictions until March 2021 and respectfully request that you reject this proposal in its current form and amend the proposal to allow for OMI evictions of non-protected tenants by non-corporate single-unit owners.

The proposed legislation is a blanket ban on all no-fault evictions, even those where tenants are not impacted by COVID. This is unfair and surely inconsistent with state-based legislation which is targeted to those in most need.

I do not exaggerate when I say that this proposed legislation, if passed, will destroy us financially.

My husband and I poured our life savings into buying our first home at the start of this year. We commenced the Owner Move-In eviction process in January, serving the tenant with a 60 day notice period. The tenant was due to move out at the end of March but has refused to do so. Due to the closure of the courts, we have only recently been able to commence legal proceedings to move into our home.

The tenant is gainfully employed and has not claimed protected tenant status or any COVID protections. They have lived in our home without paying rent since April. Due to the rules governing OMI evictions, we are unable to collect rent.

My husband and I are newly married and trying to start our family. During the pandemic, he has been made redundant twice and my small business has been hammered. As you would be aware TIC apartments are ineligible for mortgages from the major banking institutions - a quirk of SF property. Mortgage relief is therefore at the discretion of the lender. We have drawn heavily upon the

generosity of family to get us to this point but these funds are running out.

There seems to be a focus on tenants and very little support or acknowledgment of the hardship caused to landlords during this pandemic. Mr. Preston's legislation would deny us access to our home until next year and will cause us financial ruin. We literally have no money left and are already at our wit's end.

Please do not permit this legislation in its current form to proceed. We simply cannot afford it.

Sincerely,  
Brett



October 6, 2020

President Norman Yee and Members of the Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
board.of.supervisors@sfgov.org

RE: Agenda Item 62. Support for COVID-19 Temporary Tenant Protections

Dear President Yee and Board Members:

As community and tenant based organizations from across the city we join together to urge your support for this essential proposal to prevent the displacement of hundreds of families, seniors, and workers in the coming winter months of this pandemic.

Since March San Francisco tenants have been protected by two emergency moratoriums preventing most evictions in the City, halting evictions for non-payment of rent arising out of pandemic related financial distress and evictions for other alleged justifications unrelated to a threat to health or safety. These two moratoriums have played an important part in limiting a broader spread of the coronavirus

Both moratoriums are now expiring. San Francisco's moratorium on evictions for nonpayment of rent has now been replaced by state law, AB3088. The city's moratorium on most other evictions effectively expires at the end of November unless it is extended by the ordinance now before you.

While it was in effect, the moratorium on non-rent related evictions had a major impact on preventing displacement. According to data from the Rent Board, for the four month period between April 1 to July 31, the number of notices of evictions for non-rent related reasons fell 69% from the same period a year ago -- a reduction of over 400 evictions. Given that the Rent Board's reporting system covers only a portion of the units protected by the expiring order, we believe an even greater number of evictions have been and need to be prevented.

Thus unless the Board acts by approving the proposed ordinance to extend the Mayor's moratorium a wave of preventable evictions will occur in the coming

winter months – a period that DPH advises poses a heightened risk of a surge in illnesses because residents will be confined indoors exposed to both the flu and the coronavirus.

To address these impending threats to public health we urge the board to approve this urgently needed ordinance.

Respectfully,

AFFORDABLE HOUSING ALLIANCE  
ANTI-EVICTION MAPPING PROJECT  
ASIAN AMERICANS ADVANCING JUSTICE - ASIAN LAW CAUCUS  
CAUSA JUSTA :: JUST CAUSE  
CENTRAL CITY SRO COLLABORATIVE  
CHINATOWN COMMUNITY DEVELOPMENT CENTER  
CHINESE PROGRESSIVE ASSOCIATION  
COMMUNITY TENANTS ASSOCIATION  
DOLORES STREET COMMUNITY SERVICES  
EVICTION DEFENSE COLLABORATIVE  
HOUSING RIGHTS COMMITTEE OF SAN FRANCISCO  
LA VOZ LATINA  
PEOPLE POWER MEDIA  
SENIOR DISABILITY ACTION  
SAN FRANCISCO TENANTS UNION  
SOUTH OF MARKET COMMUNITY ACTION NETWORK  
TENDERLOIN NEIGHBORHOOD DEVELOPMENT CENTER

**From:** Mchugh, Eileen (BOS) <[eileen.e.mchugh@sfgov.org](mailto:eileen.e.mchugh@sfgov.org)>  
**Sent:** Monday, October 5, 2020 12:54 PM  
**To:** BOS Legislation, (BOS) <[bos.legislation@sfgov.org](mailto:bos.legislation@sfgov.org)>  
**Subject:** FW: Ordinance to extend temporary tenant protections due to COVID-19.

**From:** anastasia Yovanopoulos <[shashacooks@yahoo.com](mailto:shashacooks@yahoo.com)>  
**Sent:** Sunday, October 4, 2020 12:20 PM  
**To:** Mandelman, Rafael (BOS) <[rafael.mandelman@sfgov.org](mailto:rafael.mandelman@sfgov.org)>  
**Cc:** Ronen, Hillary <[hillary.ronen@sfgov.org](mailto:hillary.ronen@sfgov.org)>; Preston, Dean (BOS) <[dean.preston@sfgov.org](mailto:dean.preston@sfgov.org)>; Mar, Gordon (BOS) <[gordon.mar@sfgov.org](mailto:gordon.mar@sfgov.org)>; Peskin, Aaron (BOS) <[aaron.peskin@sfgov.org](mailto:aaron.peskin@sfgov.org)>; Yee, Norman (BOS) <[norman.yee@sfgov.org](mailto:norman.yee@sfgov.org)>; Walton, Shamann (BOS) <[shamann.walton@sfgov.org](mailto:shamann.walton@sfgov.org)>; Haney, Matt (BOS) <[matt.haney@sfgov.org](mailto:matt.haney@sfgov.org)>; Stefani, Catherine (BOS) <[catherine.stefani@sfgov.org](mailto:catherine.stefani@sfgov.org)>; Fewer, Sandra (BOS) <[sandra.fewer@sfgov.org](mailto:sandra.fewer@sfgov.org)>; Safai, Ahsha (BOS) <[ahsha.safai@sfgov.org](mailto:ahsha.safai@sfgov.org)>  
**Subject:** Ordinance to extend temporary tenant protections due to COVID-19.

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Dear Supervisor Rafael Mandelman,

As a tenant in District #8, I want to to thank you for joining Supervisors Peskin, Ronen, Haney, and Walton as a co-sponsor of Supervisors Preston's **Ordinance** that puts into law an increased time period for tenants to be protected against "no fault evictions".

This ordinance will limit residential evictions through March 31, 2021, unless the eviction is based on the non-payment of rent or is necessary due to violence-related issues or health and safety issues. No one should fear losing their home during a pandemic!

- I hope Supervisors Sandra Lee Fewer, Catherine Stefani, Gordon Mar, Norman Yee and Ahsha Safai can also see the wisdom in supporting this ordinance that will extend temporary tenant protections due to COVID-19.

As San Franciscans get on the path to recovery, this legislation provides certainty and clarity for tenants that they will not be evicted through no fault of their own for at least the next six months.

Once again, thanks for your support Supervisor Mandelman.

Yours truly,  
Anastasia Yovanopoulos  
District#8 tenant

Yours truly,  
Anastasia Yovanopoulos  
District #8 tenant

- . Supervisor Preston's ordinance simply
- 

Feel free to use those suggested points as you see fit, and of course, to put them in your own words.

Given that this item is scheduled to be heard as a Committee Report at the full Board of Supervisors on Tuesday, **it is important that we contact the Board members who have not yet co-sponsored**. As of today, the item has six co-sponsors: Between now and Tuesday, we will need your help in contacting the following offices to ask for their support:

- Supervisor Preston's ordinance simply puts into law an increased time period for tenants to be protected against no fault evictions.
- No one should fear losing their home during a pandemic. This provides certainty and clarity as San Franciscans get on the path to recovery.

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [Major, Erica \(BOS\)](#)  
**Subject:** FW: File No. 201059 Opposition Letter  
**Date:** Monday, October 5, 2020 2:04:27 PM  
**Attachments:** [File 201059 BOS Ltr SFAA SFAR SPOSF.pdf](#)

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**From:** Charley Goss <charley@sfaa.org>  
**Sent:** Monday, October 5, 2020 1:30 PM  
**To:** Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Kittler, Sophia (MYR) <sophia.kittler@sfgov.org>; Power, Andres (MYR) <andres.power@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Cc:** Janan New <janan@sfaa.org>  
**Subject:** File No. 201059 Opposition Letter

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Honorable Members of the Board of Supervisors,

Attached please find a letter of opposition from the San Francisco Apartment Association, the San Francisco Association of Realtors, and the Small Property Owners of San Francisco, regarding File No. 201059, The item will be considered during tomorrow's full Board of Supervisors meeting.

Best,

Charley Goss  
Government and Community Affairs Manager  
San Francisco Apartment Association  
265 Ivy Street  
p.415.255.2288 ext.114  
f.415.255.1112

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**SAN FRANCISCO  
ASSOCIATION of REALTORS®**

October 5, 2020

**VIA EMAIL**

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102  
[Board.of.Supervisors@sfgov.org](mailto:Board.of.Supervisors@sfgov.org)

Re: Proposed Ordinance Limiting Residential Evictions Through March 31, 2021  
Ordinance – File No. 201059

Dear Honorable Members of the San Francisco Board of Supervisors:

We write in opposition to the above referenced proposed Ordinance amending the Administrative Code to limit residential evictions through March 31, 2021, unless the eviction is based on the non-payment of rent or is necessary due to violence-related issues or health and safety issues (the “Ordinance”). The Ordinance violates state law, violates the constitution, and would likely lead to more evictions if enacted.

On September 1, 2020 the State of California adopted AB 3088 to address the effect of COVID-19 on residential tenants and stabilize the chaos created by piecemeal and inconsistent emergency orders and regulations streaming out of all branches of government at the state and local level. AB 3088 contains a comprehensive eviction scheme, titled the COVID-19 Tenant Relief Act (“CTRA”), which alters the unlawful detainer statutes. The CTRA contains language explicitly intended to occupy the field of laws adopted by “a city, county, or city and county in response to the COVID-19 pandemic”. (Cal. Code Civ. Proc., §1179.05(a).) Thus, the Ordinance is directly and expressly preempted by the CTRA.

For instance, Mayor Breed’s April 30, 2020 “12<sup>th</sup> Supplement” imposed restrictions on residential evictions similar to those proposed in the Ordinance. She had been extending them, as needed, every month, including a July 27, 2020 order (extending the 12<sup>th</sup> supplement through August 31, 2020) and an August 25, 2020 order (extending it through September 30, 2020). However, because CTRA retroactively invalidated any “extension, expansion, renewal, reenactment, or new adoption of a measure” (*Ibid*) after August 19, 2020, the latter extension never took effect. The Mayor understands this, and has since extended *commercial*, but not residential, eviction protections. This is because CTRA preempts these local laws, whether they take the form of emergency orders, regular legislation, or “however delineated” they may be (Cal. Code Civ. Proc., §1179.05(a)(1)).



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ASSOCIATION of REALTORS®

With respect to owner and relative-move-in evictions specifically the Ordinance violates the California Elections Code. In enacting Proposition G in 1998, San Francisco voters were asked “Shall the City impose new restrictions on owner move-in evictions and make permanent the existing moratorium on owner. move-in evictions of long-term senior, disabled, or catastrophically ill tenants?”. The voters answered “yes”, and the current version of Section 37.9(a)(8) of the Rent Ordinance took effect. Proposition G thus made permanent the moratorium for eviction of “protected tenants,” while still authorizing certain San Francisco property owners to reside in their own dwellings and to evict certain tenants as necessary to do so for owner and relative occupancy. Because Proposition G was approved by the voters in 1998, the restrictions furthered by the Ordinance also require approval by San Francisco voters.

In *Mobilepark W. Homeowners Assn. v. Escondido Mobilepark W.*, Escondido voters passed Proposition K, adopting rent control for mobile home residents. The city of Escondido adopted an ordinance expanding the group of “tenants” covered by the initiative. However, the California Court of Appeal invalidated it as an improper amendment to a voter initiative. The court noted “the constitutional right of the electorate to initiative, ensuring that successful initiatives will not be undone by subsequent hostile boards of supervisors”. (*Mobilepark W. Homeowners Assn. v. Escondido Mobilepark W.* (1995) 35 Cal. App. 4th 32, 41.) The proposed Ordinance would similarly expand the class of tenants who receive the protections of the Proposition G *qualified* moratorium, in violation of the California Elections Code and would amend City law passed by initiative and without any provision for future legislative amendment. It would therefore violate the Elections Code.

Finally, while San Francisco voters chose the *manner* in which homeowners can evict to live in their property, it is our state and federal constitutions that ultimately dictate the rights of homeowners to live in property that they own. Even when our Rent Ordinance allowed “some economically beneficial use of [the] property” (*Cwynar v. City & Cty. of San Francisco* (2001) 90 Cal. App. 4th 637, 665), it was an unconstitutional taking when it prohibited the right of owners to occupy and enjoy *some* of their property. (See attached order granting summary judgment in *Cwynar v. San Francisco*, dated April 30, 2003.)

The Ordinance goes even further in violating the constitutional rights of property owners. First, the City is already bound by the Judgement and Order in *Cwynar* which requires the City to permit owner occupancy of *all* dwellings in a property. The Ordinance allows none. Second, to the extent that the right to rent (albeit price-controlled rent) cut in the City’s favor in *Cwynar*’s takings analysis, both AB 3088 and the now-preempted Ordinance 93-20 make the tenants’ rent-payment obligations a *suggestion*, not a condition of their continued possession. As the Ordinance will eliminate a property owner’s ability to enjoy *any* benefit of San Francisco



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property ownership, it constitutes an unconstitutional taking in violation of the state and federal constitution.

Finally, by eliminating San Francisco landlords' conventional inroad to occupying their own property, San Francisco would leave its housing providers with a single option to recover possession – the state Ellis Act, which requires termination of the tenancies in all housing accommodations on a parcel. While an owner or relative-move-in eviction are usually limited to one unit, landlords will now be required to avail themselves of a much blunter instrument that will *increase* the number of unnecessary evictions as San Francisco seeks to bar those that are constitutionally required.

We respectfully urge you to oppose this patently illegal proposal, which will ultimately harm both landlords and tenants.

Signed,

SAN FRANCISCO APARTMENT ASSOCIATION

/s/ Janan New  
By: Janan New  
Its: Director

SMALL PROPERTY OWNERS OF SAN FRANCISCO

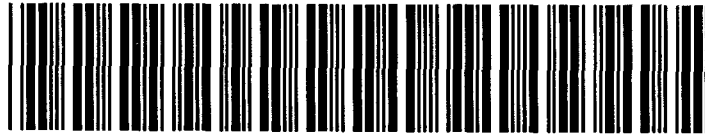
/s/ Noni Richen  
By: Noni Richen  
Its: President

SAN FRANCISCO ASSOCIATION OF REALTORS

/s/ Walt Baczkowski  
By: Walt Baczkowski  
Its: Chief Executive Officer

Attached: Cwynar order





San Francisco Superior Courts  
Information Technology Group

## Document Scanning Lead Sheet

Apr-30-2003 4:17 pm

Case Number: CGC-99-302014

Filing Date: Apr-30-2003 4:16

Juke Box: 001 Image: 00676216

ORDER

CWYNAR VS CCSF

001C00676216

**Instructions:**

Please place this sheet on top of the document to be scanned.

**FILED**  
San Francisco County Superior Court

APR 30 2003

GORDON PARK-LI, Clerk  
BY: Andrew W. Schwartz  
Deputy Clerk

CALIFORNIA SUPERIOR COURT, UNLIMITED JURISDICTION  
COUNTY OF SAN FRANCISCO  
DEPARTMENT 301

Case No. 302014

KELI CWYNAR, et al.,

Plaintiffs and Petitioners,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, et al.,

Defendants and Respondents.

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

The parties' cross-motions for summary judgment, or in the alternative summary adjudication, came on for hearing on February 13, 2003, in Department 301 of the above Court, the Honorable David A. Garcia presiding. Mr. John E. Mueller of Nielsen, Merksamer, Parrinello, Mueller & Naylor appeared for plaintiffs and petitioners Keli Cwynar *et al.*, and Deputy City Attorney Mr. Andrew W. Schwartz appeared for the City and County of San Francisco. The Court took the matter under submission for further review after oral arguments were presented at the hearing.

**Background**

This case involves the constitutionality of voter-approved amendments to San Francisco's Rent Stabilization and Arbitration Ordinance. (S.F. Admin. Code, ch. 37, § 37.9 (hereafter Rent Ordinance).) In November, 1998 San Francisco voters approved Proposition

1 G, an amendment to the Rent Ordinance that severely restricts, and in many cases prohibits  
2 an owner of residential rental property from evicting tenants to enable the owner or owner's  
3 relatives to move into a rental unit. The challenged provisions of Proposition G are  
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6 An owner/landlord may recover possession of a rental unit for use as his or her  
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9 Family Occupancy Provision

10 An owner/landlord may conduct unlimited evictions for relatives but only in  
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12 ch. 37, § 37.9(a)(8)(ii).)

13 Tenant Protection Restriction

14 An owner/landlord may not recover a unit for her- or himself, or a relative, if any  
15 tenant in the unit is: (a) 60 years of age or older and has lived there for 10 years or more; (b)  
16 disabled and lived there for 10 years or more; (c) "catastrophically ill" and has lived there 5  
17 years or more. (S.F. Admin. Code, ch. 37, § 37.9(i)(1).)

18 **Disposition**

19 Upon consideration of the papers filed and arguments made in connection with this  
20 matter, and in view of the Court of Appeal's holding in *Keli Cwynar v. City and County of*  
21 *San Francisco* (2001) 90 Cal.App.4th 637 (hereafter *Cwynar*), this court now rules as  
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- 23 1. Plaintiffs have standing to challenge Proposition G regardless of whether or not the  
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- 25 2. Under Proposition G's One-Owner-Occupancy Provision, one owner's exercise of the  
26 right to recovery acts to extinguish that same right with respect to all other current  
27 and future owners of the building. (S.F. Admin. Code, ch. 37, § 37.9(a)(8)(vi).)
- 28 3. By creating coerced lifetime tenancies in Plaintiffs' properties, Proposition G  
effectuates a permanent invasion of the rights thereto. (Plaintiffs' Statement of

1 Undisputed Facts 3 – 10; *Cwynar* at 655; *Loretto v. Teleprompter Manhattan CATV*  
2 *Corp.* (1982) 458 U.S. 419, 426.)

- 3 4. Because Proposition G provides no compensation for affected landlords, it effectuates  
4 an unconstitutional per se taking of property as applied to each of the plaintiffs here.  
5 (Cal. Const., art. I § 19; U.S. Const., 5th Amend.)
- 6 5. Proposition G’s Family Occupancy Provision substantially alters a previously  
7 unqualified right – unlimited evictions for relatives – without any showing by the  
8 City and County of San Francisco of the benefit to the public at large achieved by  
9 imposing this uncompensated obligation on owners who do not live in their own  
10 rental property. (Plaintiffs’ Statement of Undisputed Facts 14 – 17.)
- 11 6. Plaintiffs’ right to withdraw from the rental market entirely does not save the  
12 challenged ordinance because plaintiffs do not have the option to cease renting  
13 individual units of their own choosing; this so-called “Ellis Act defense” does not  
14 alter the Courts analysis under these facts. (See *Cwynar* at 655-58.)

15 IT IS THEREFORE ORDERED THAT:

- 16 1. Plaintiffs’ Motion of Summary Judgment is GRANTED. As a matter of law,  
17 Proposition G is unconstitutional as applied in this case.
- 18 2. Defendant’s Motion for Summary Judgment is DENIED.

19  
20 SO ORDERED:

21 Dated: 4/30/03

22 By: 

Hon. David A. Garcia  
Judge of the Superior Court

23  
24 \* 302014

California Superior Court  
County of San Francisco  
Law & Motion Department • Room 301

KELI CWYNAR, et al.,

Plaintiffs and Petitioners,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, et al.,

Defendants and Respondents.

Case No. 302014

**Certificate of Service by Mail  
(CCP § 1013a(4))**

I, Gordon Park-Li, Clerk of the Superior Court of the City and County of San Francisco, certify that:

- 1) I am not a party to the within action;
- 2) On APR 30 2003, I served the attached:

**ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND  
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

by placing a copy thereof in a sealed envelope, addressed to the following:

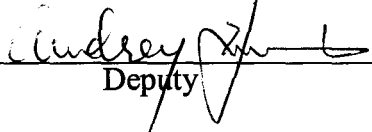
Mr. Andrew W. Schwartz  
OFFICE OF CITY ATTORNEY  
1 Dr. Carlton B. Goodlett Place, Room 234  
San Francisco, CA 94102-4682

John E. Mueller,  
NIELSEN, MERKSAMER, PARRINELLO, MUELLER & NAYLOR  
591 Redwood Hwy, Suite 4000  
Mill Valley, CA 94941

and,

3) I then placed the sealed envelope in the outgoing mail at 400 McAllister St., San Francisco , CA 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practice.

Dated: APR 30 2003

GORDON PARK-LI, Clerk  
By:   
Deputy

**From:** [Charley Goss](#)  
**To:** [Major, Erica \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Safai, Ahsha \(BOS\)](#)  
**Cc:** [Janan New](#)  
**Subject:** File No. 201059 Opposition Letter  
**Date:** Monday, October 5, 2020 1:16:13 PM  
**Attachments:** [File No 201059 SFAA SFAR SPOSF Letter.pdf](#)

---

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi Honorable Members of the Land Use Committee,

Attached please find a joint letter from the San Francisco Apartment Association, the San Francisco Association of Realtors, and the Small Property Owners of San Francisco opposing File Number 201059, which appears on your Land Use Committee agenda today.

Best,

Charley Goss  
Government and Community Affairs Manager  
San Francisco Apartment Association  
265 Ivy Street  
p.415.255.2288 ext.114  
f.415.255.1112

Information and opinions provided by SFAA staff is not legal advice and may not be construed as such. SFAA staff members are not legal advisors or attorneys. No legal advice is conveyed by this email or through any telephone conversation between you and SFAA staff. Transmitted information and opinions are derived from industry customs and practices but are not to be construed or relied upon as representations of law or legal advice. You should confirm all information and opinions with your own attorney.



SAN FRANCISCO  
ASSOCIATION of REALTORS®

October 5, 2020

**VIA EMAIL**

Land Use Committee  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102  
[Erica.Major@sfgov.org](mailto:Erica.Major@sfgov.org)

Re: Proposed Ordinance Limiting Residential Evictions Through March 31, 2021  
Ordinance – File No. 201059

Dear Chair Peskin and Honorable Members of the Land Use Committee:

We write in opposition to the above referenced proposed Ordinance amending the Administrative Code to limit residential evictions through March 31, 2021, unless the eviction is based on the non-payment of rent or is necessary due to violence-related issues or health and safety issues (the “Ordinance”). The Ordinance violates state law, violates the constitution, and would likely lead to more evictions if enacted.

On September 1, 2020 the State of California adopted AB 3088 to address the effect of COVID-19 on residential tenants and stabilize the chaos created by piecemeal and inconsistent emergency orders and regulations streaming out of all branches of government at the state and local level. AB 3088 contains a comprehensive eviction scheme, titled the COVID-19 Tenant Relief Act (“CTRA”), which alters the unlawful detainer statutes. The CTRA contains language explicitly intended to occupy the field of laws adopted by “a city, county, or city and county in response to the COVID-19 pandemic”. (Cal. Code Civ. Proc., §1179.05(a).) Thus, the Ordinance is directly and expressly preempted by the CTRA.

For instance, Mayor Breed’s April 30, 2020 “12<sup>th</sup> Supplement” imposed restrictions on residential evictions similar to those proposed in the Ordinance. She had been extending them, as needed, every month, including a July 27, 2020 order (extending the 12<sup>th</sup> supplement through August 31, 2020) and an August 25, 2020 order (extending it through September 30, 2020). However, because CTRA retroactively invalidated any “extension, expansion, renewal, reenactment, or new adoption of a measure” (*Ibid*) after August 19, 2020, the latter extension never took effect. The Mayor understands this, and has since extended *commercial*, but not residential, eviction protections. This is because CTRA preempts these local laws, whether they





take the form of emergency orders, regular legislation, or “however delineated” they may be (Cal. Code Civ. Proc., §1179.05(a)(1)).

With respect to owner and relative-move-in evictions specifically the Ordinance violates the California Elections Code. In enacting Proposition G in 1998, San Francisco voters were asked “Shall the City impose new restrictions on owner move-in evictions and make permanent the existing moratorium on owner. move-in evictions of long-term senior, disabled, or catastrophically ill tenants?”. The voters answered “yes”, and the current version of Section 37.9(a)(8) of the Rent Ordinance took effect. Proposition G thus made permanent the moratorium for eviction of “protected tenants,” while still authorizing certain San Francisco property owners to reside in their own dwellings and to evict certain tenants as necessary to do so for owner and relative occupancy. Because Proposition G was approved by the voters in 1998, the restrictions furthered by the Ordinance also require approval by San Francisco voters.

In *Mobilepark W. Homeowners Assn. v. Escondido Mobilepark W.*, Escondido voters passed Proposition K, adopting rent control for mobile home residents. The city of Escondido adopted an ordinance expanding the group of “tenants” covered by the initiative. However, the California Court of Appeal invalidated it as an improper amendment to a voter initiative. The court noted “the constitutional right of the electorate to initiative, ensuring that successful initiatives will not be undone by subsequent hostile boards of supervisors”. (*Mobilepark W. Homeowners Assn. v. Escondido Mobilepark W.* (1995) 35 Cal. App. 4th 32, 41.) The proposed Ordinance would similarly expand the class of tenants who receive the protections of the Proposition G *qualified* moratorium, in violation of the California Elections Code and would amend City law passed by initiative and without any provision for future legislative amendment. It would therefore violate the Elections Code.

Finally, while San Francisco voters chose the *manner* in which homeowners can evict to live in their property, it is our state and federal constitutions that ultimately dictate the rights of homeowners to live in property that they own. Even when our Rent Ordinance allowed “some economically beneficial use of [the] property” (*Cwynar v. City & Cty. of San Francisco* (2001) 90 Cal. App. 4th 637, 665), it was an unconstitutional taking when it prohibited the right of owners to occupy and enjoy *some* of their property. (See attached order granting summary judgment in *Cwynar v. San Francisco*, dated April 30, 2003.)

The Ordinance goes even further in violating the constitutional rights of property owners. First, the City is already bound by the Judgement and Order in *Cwynar* which requires the City to permit owner occupancy of *all* dwellings in a property. The Ordinance allows none. Second, to the extent that the right to rent (albeit price-controlled rent) cut in the City’s favor in *Cwynar*’s takings analysis, both AB 3088 and the now-preempted Ordinance 93-20 make the tenants’ rent-payment obligations a *suggestion*, not a condition of their continued possession. As the



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Ordinance will eliminate a property owner's ability to enjoy *any* benefit of San Francisco property ownership, it constitutes an unconstitutional taking in violation of the state and federal constitution.

Finally, by eliminating San Francisco landlords' conventional inroad to occupying their own property, San Francisco would leave its housing providers with a single option to recover possession – the state Ellis Act, which requires termination of the tenancies in all housing accommodations on a parcel. While an owner or relative-move-in eviction are usually limited to one unit, landlords will now be required to avail themselves of a much blunter instrument that will *increase* the number of unnecessary evictions as San Francisco seeks to bar those that are constitutionally required.

We respectfully urge you to oppose this patently illegal proposal, which will ultimately harm both landlords and tenants.

Signed,

SAN FRANCISCO APARTMENT ASSOCIATION

/s/ Janan New

By: Janan New

Its: Director

SMALL PROPERTY OWNERS OF SAN FRANCISCO

/s/ Noni Richen

By: Noni Richen

Its: President

SAN FRANCISCO ASSOCIATION OF REALTORS

/s/ Walt Baczkowski

By: Walt Baczkowski

Its: Chief Executive Officer

Attached: Cwynar order



San Francisco Superior Courts  
Information Technology Group

## Document Scanning Lead Sheet

Apr-30-2003 4:17 pm

Case Number: CGC-99-302014

Filing Date: Apr-30-2003 4:16

Juke Box: 001 Image: 00676216

ORDER

CWYNAR VS CCSF

001C00676216

### Instructions:

Please place this sheet on top of the document to be scanned.

**FILED**  
San Francisco County Superior Court

APR 30 2003

GORDON PARK-LI, Clerk  
BY: Andrew W. Schwartz  
Deputy Clerk

CALIFORNIA SUPERIOR COURT, UNLIMITED JURISDICTION  
COUNTY OF SAN FRANCISCO  
DEPARTMENT 301

Case No. 302014

KELI CWYNAR, et al.,

Plaintiffs and Petitioners,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, et al.,

Defendants and Respondents.

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
DEFENDANT'S MOTION FOR  
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8 City and County of San Francisco of the benefit to the public at large achieved by  
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21 Dated: 4/30/03

22 By: 

Hon. David A. Garcia  
Judge of the Superior Court

23  
24 \* 302014

California Superior Court  
County of San Francisco  
Law & Motion Department • Room 301

KELI CWYNAR, et al.,

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vs.

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FRANCISCO, et al.,

Defendants and Respondents.

Case No. 302014

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(CCP § 1013a(4))**

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**ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND  
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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Mr. Andrew W. Schwartz  
OFFICE OF CITY ATTORNEY  
1 Dr. Carlton B. Goodlett Place, Room 234  
San Francisco, CA 94102-4682

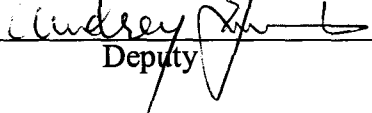
John E. Mueller,  
NIELSEN, MERKSAMER, PARRINELLO, MUELLER & NAYLOR  
591 Redwood Hwy, Suite 4000  
Mill Valley, CA 94941

and,

3) I then placed the sealed envelope in the outgoing mail at 400 McAllister St., San Francisco , CA 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practice.

Dated: APR 30 2003

GORDON PARK-LI, Clerk

By:   
Deputy



President, District 7  
BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689  
Tel. No. 554-6516  
Fax No. 554-7674  
TDD/TTY No. 544-6546

**Norman Yee**

---

---

**PRESIDENTIAL ACTION**

Date:

To: Angela Calvillo, Clerk of the Board of Supervisors

---

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Madam Clerk,

Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No.

(Primary Sponsor)

Title.

Transferring (Board Rule No 3.3)

File No.

(Primary Sponsor)

Title.

From:

Committee

To:

Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor:

Replacing Supervisor:

For:

Meeting

(Date)

(Committee)

Start Time:

End Time:

Temporary Assignment: Partial

Full Meeting

---

Norman Yee, President  
Board of Supervisors

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

### LAND USE AND TRANSPORTATION COMMITTEE SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Aaron Peskin, Chair, Land Use and Transportation Committee

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: October 6, 2020

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**  
Tuesday, October 6, 2020

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, October 6, 2020. This item was acted upon at the Committee Meeting on Monday, October 5, 2020, at 1:30 p.m., by the votes indicated.

**Item No. 62**                      **File No. 201059**

Ordinance amending the Administrative Code to limit residential evictions through March 31, 2021, unless the eviction is based on the non-payment of rent or is necessary due to violence-related issues or health and safety issues.

#### **AMENDED, AMENDMENT OF THE WHOLE BEARING SAME TITLE**

Vote: Supervisor Aaron Peskin - Excused  
Supervisor Ahsha Safai - Aye  
Supervisor Dean Preston - Aye

#### **RECOMMENDED AS AMENDED AS A COMMITTEE REPORT**

Vote: Supervisor Aaron Peskin - Excused  
Supervisor Ahsha Safai - Aye  
Supervisor Dean Preston - Aye

c: Board of Supervisors  
Angela Calvillo, Clerk of the Board  
Alisa Somera, Legislative Deputy  
Anne Pearson, Deputy City Attorney  
Kristen Jensen, Deputy City Attorney

Member, Board of Supervisors  
District 3



City and County of San Francisco

**AARON PESKIN**

---

DATE: October 1, 2020

TO: Angela Calvillo  
Clerk of the Board of Supervisors

FROM: Supervisor Aaron Peskin, Chair, Land Use and Transportation  
Committee

RE: Land Use and Transportation Committee  
COMMITTEE REPORT

---

Pursuant to Board Rule 4.20, as Chair of the Land Use and Transportation Committee, I have deemed the following matter is of an urgent nature and request it be considered by the full Board on Tuesday, October 6, 2020, as a Committee Report:

**201059      Administrative Code – Temporary Tenant Protections Due to  
COVID-19**

**Ordinance amending the Administrative Code to limit residential evictions through March 31, 2021, unless the eviction is based on the non-payment of rent or is necessary due to violence-related issues or health and safety issues.**

This matter will be heard in the Land Use and Transportation Committee at a Regular Meeting on Monday, October 5, 2020, at 1:30 p.m.

*/s/ Aaron Peskin*

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Robert Collins, Rent Board  
Eric D. Shaw, Director, Mayor's Office of Housing and Community Development  
Abigail Stewart-Kahn, Interim Director, Department of Homelessness and Supportive Housing

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: September 22, 2020

SUBJECT: LEGISLATION INTRODUCED

---

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Preston on September 15, 2020:

**File No. 201059**

**Ordinance amending the Administrative Code to limit residential evictions through March 31, 2021, unless the eviction is based on the non-payment of rent or is necessary due to violence-related issues or health and safety issues.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [erica.major@sfgov.org](mailto:erica.major@sfgov.org).

cc: Eugene Flannery, Mayor's Office of Housing and Community Development  
Amy Chan, Mayor's Office of Housing and Community Development  
Dylan Schneider, Department of Homelessness and Supportive Housing  
Emily Cohen, Department of Homelessness and Supportive Housing

# Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor  inquiries"
- 5. City Attorney Request.
- 6. Call File No.  from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only