

BOARD of SUPERVISORS



City Hall
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MEMORANDUM

TO: Robert Collins, Executive Director, Rent Board

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

DATE: March 26, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Peskin on March 23, 2021:

File No. 210305

Ordinance amending the Administrative Code to clarify the rights of landlords and "Tier 1" commercial tenants (certain commercial tenants that employ fewer than 10 full-time equivalent employees as of November 1, 2020) following the tenant's termination of the lease due to COVID-19.

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.

1 [Administrative Code - Termination of Commercial Tenancies Due to COVID-19]

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3 **Ordinance amending the Administrative Code to clarify the rights of landlords and**
4 **“Tier 1” commercial tenants (certain commercial tenants that employ fewer than 10 full-**
5 **time equivalent employees as of November 1, 2020) following the tenant’s termination**
6 **of the lease due to COVID-19.**

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

11

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

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14 Section 1. Chapter 37C of the Administrative Code is hereby amended by revising
15 Sections 37C.1 and 37C.3, to read as follows:

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SEC. 37C.1. PURPOSE AND FINDINGS.

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(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 declared a state of
19 emergency on February 25, 2020, and on March 16, 2020, the Governor issued Executive
20 Order N-28-20 (E.O. N-28-20), which found that the COVID-19 pandemic is having severe
21 impacts throughout the State, and which recognized that local jurisdictions must take
22 measures based on their particular needs to prevent displacements and to protect public
23 health and mitigate the economic effects of the pandemic. Paragraph 2 of E.O. N-28-20
24 initially allowed local governments to enact measures to protect commercial tenants impacted
25 by COVID-19 from being evicted due to non-payment through May 31, 2020. Through a series

1 of follow-up orders (Executive Orders N-66-20, N-70-20, N-80-20, and most recently Executive
2 Order ~~N-80-20~~N-03-21), the Governor has ordered that the protections of paragraph 2 of E.O.
3 N-28-20 will remain in effect through ~~March 31~~June 30, 2021, unless the Governor orders
4 otherwise.

5 * * * *

6 (e) The protections of this Chapter 37C shall only apply to rent payments that came
7 due between March 16, 2020 and ~~March 31~~June 30, 2021, inclusive (or if the Governor extends
8 the effective period of paragraph 2 of E.O. N-28-20 past ~~March 31~~June 30, 2021, through the
9 date of extension).

10
11 **SEC. 37C.3. TEMPORARY EVICTION PROTECTIONS.**

12 * * * *

13 (c) If a Tier 1 Covered Commercial Tenant that is unable to pay the rent due to a
14 Financial Impact Related to COVID-19 and its landlord fail to reach a mutually satisfactory
15 agreement for repayment, the Tier 1 Covered Commercial Tenant shall also have the option
16 to terminate its lease and cease paying any further rent upon ~~thirty~~(30) days' written notice to the
17 landlord, notwithstanding any lease term to the contrary. Termination shall not affect whether
18 the tenant is responsible for any unpaid rent that originally came due prior to the effective date
19 of termination. In addition, if the tenant has terminated during the Moratorium Period, then the
20 tenant shall not be liable for any penalties arising out of the termination, notwithstanding any
21 lease term to the contrary. Nothing in this subsection (c) is intended to or shall affect any rights or
22 remedies a landlord may have under state law with respect to any actual damages that may result from
23 the termination of the lease under this subsection, subject to any legal or equitable defenses the tenant
24 may have with respect to such claims.

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Section 2. Effective Date. 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.

Section 3. 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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1 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word
2 of this ordinance, or any application thereof to any person or circumstance, is held to be
3 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
4 shall not affect the validity of the remaining portions or applications of the ordinance. The
5 Board of Supervisors hereby declares that it would have passed this ordinance and each and
6 every section, subsection, sentence, clause, phrase, and word not declared invalid or
7 unconstitutional without regard to whether any other portion of this ordinance or application
8 thereof would be subsequently declared invalid or unconstitutional.

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

12 By: /s/
13 MANU PRADHAN
14 Deputy City Attorney
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LEGISLATIVE DIGEST

[Administrative Code - Termination of Commercial Tenancies Due to COVID-19]

Ordinance amending the Administrative Code to clarify the rights of landlords and “Tier 1” commercial tenants (certain commercial tenants that employ fewer than 10 full-time equivalent employees as of November 1, 2020) following the tenant’s termination of the lease due to COVID-19.

Existing Law

Chapter 37C of the Administrative Code protects certain commercial tenants from being evicted due to non-payment of certain months’ rent due to COVID-19. Chapter 37C also states that a “tier 1” tenant (a covered commercial tenant with fewer than 10 employees as of November 1, 2020) may terminate their lease on 30 days’ notice, if the tenant could not pay certain months’ rent due to COVID-19 and has not been to agree with the landlord on a repayment plan.

Amendments to Current Law

The proposed ordinance would clarify that a tier 1 tenant who terminates their lease under Chapter 37C need not continue paying rent after the effective date of the termination, that the landlord may not enforce any penalties that may have been provided for in the lease as a result of the termination, and that the ordinance does not affect any rights or remedies that a landlord may have under state law with respect to any actual damages that may result from the termination of the lease, or any legal or equitable defenses that the tenant may have with respect to such claims.

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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