

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: Abigail Stewart-Kahn, Interim Director, Department of Homelessness and Supportive Housing
Dr. Grant Colfax, Director, Department of Public Health
Robert Collins, Executive Director, Rent Board

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

DATE: January 22, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Preston on January 19, 2021:

File No. 210053

Emergency ordinance to temporarily restrict landlords from evicting residential tenants for non-payment of rent due to the COVID-19 pandemic; to prohibit landlords from imposing late fees, penalties, or similar charges on such tenants; and making findings as required by the California Tenant Protection Act of 2019.

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.

cc: Dylan Schneider, Department of Homelessness and Supportive Housing
Emily Cohen, Department of Homelessness and Supportive Housing
Greg Wagner, Department of Public Health
Dr. Naveena Bobb, Department of Public Health
Sneha Patil, Department of Public Health
Arielle Fleisher, Department of Public Health

1 [Emergency Ordinance - Eviction Protection for Tenants Unable to Pay Rent]

2

3 **Emergency ordinance to temporarily restrict landlords from evicting residential tenants**
4 **for non-payment of rent due to the COVID-19 pandemic; to prohibit landlords from**
5 **imposing late fees, penalties, or similar charges on such tenants; and making findings**
6 **as required by the California Tenant Protection Act of 2019.**

7

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

12

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

14

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

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

21 (b) The City and County of San Francisco is facing an unprecedented public health
22 and economic crisis due to the COVID-19 pandemic. On February 25, 2020, the Mayor
23 declared a state of emergency due to COVID-19 and the Board of Supervisors concurred in
24 the emergency. On March 13, 2020, the Mayor adopted the first of a series of emergency
25 orders, and the Board of Supervisors later adopted an ordinance signed by the Mayor

1 (Ordinance No. 093-20), to limit the eviction of tenants who had been unable to pay certain
2 months' rent due to financial impacts resulting from COVID-19. Thereafter, the Legislature
3 adopted the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020
4 (hereafter, "AB 3088"), which enacted additional protections for tenants who were unable to
5 pay their rent due to COVID-19. But AB 3088 only applies to rent payments that came due
6 between March 1, 2020 and January 31, 2021, and does not protect tenants from being
7 evicted due to rent payments missed on or after February 1, 2021.

8 (c) Regardless whether the California Legislature extends AB 3088, there is an
9 ongoing, dire emergency in San Francisco. The pandemic is surging, hospital resources are
10 stretched thin, the City has had to abruptly shutter businesses across the City, and many
11 residents are out of work entirely or have otherwise suffered a loss of income due to the
12 pandemic. And the threat of mass evictions starting February 1, 2021 is a looming housing
13 crisis for tenants who could be directly affected, as well as for the City as a whole. The City
14 has a shortage of affordable rental housing, and a significant percentage of its households are
15 renters and at risk of permanent displacement should they be forced to leave their current
16 homes. Many potentially impacted renters are also essential workers, and the City could be
17 at even greater risk in the event of a future pandemic if they are displaced.

18 (d) The Board of Supervisors finds it is in the public interest to prevent tenant
19 displacement in San Francisco due to COVID-19 to the maximum extent permitted by law.
20 Pursuant to the City's authority to regulate evictions, and consistent with AB 3088, this
21 emergency ordinance applies to rent payments that originally came due on or after February
22 1, 2021. Nothing in this ordinance shall affect or impair the application of any other City law or
23 AB 3088 with respect to rent payments that came due before February 1, 2021.

24 (e) This emergency ordinance is intended to prevent residential tenants from being
25 evicted due to having suffered an adverse financial impact arising out of the COVID-19

1 pandemic. As compared to the just cause protections of the California Tenant Protection Act
2 of 2019 (“AB 1482”), this ordinance further limits the permissible reasons for termination of a
3 residential tenancy and provides additional tenant protections. The Board of Supervisors
4 therefore finds that this ordinance is more protective of tenants than AB 1482, and intends
5 that this emergency ordinance shall apply rather than AB 1482.

6
7 Section 2. Suspending Evictions and Penalties Due to Non-Payment of Rent.

8 (a) Notwithstanding Administrative Code Section 37.9(a)(1) or any other City law to
9 the contrary, a landlord may not endeavor to recover possession of a residential unit due to
10 the tenant’s non-payment of rent, if the rent payment originally became due on or after
11 February 1, 2021, provided that the tenant’s failure to pay (1) arose out of a substantial
12 decrease in household income (including, but not limited to, a substantial decrease in
13 household income caused by layoffs or a reduction in the number of compensable hours of
14 work, or substantial out-of-pocket expenses); (2) that was caused by the COVID-19
15 pandemic, or by any local, state, or federal government response to COVID-19; and (3) is
16 documented. The types of documentation that a tenant may use to show an inability to pay
17 due to COVID-19 may include, without limitation, bank statements, pay stubs, employment
18 termination notices, proof of unemployment insurance claim filings, sworn affidavits, and
19 completed forms prepared by the Rent Board. A tenant shall have the option, but shall not be
20 required, to use third-party documentation such as a letter from an employer to show an
21 inability to pay.

22 (b) Notwithstanding any lease provision to the contrary, a landlord may not impose
23 late fees, penalties, interest, liquidated damages, or similar charges due to a residential
24 tenant’s non-payment of rent that originally became due on or after February 1, 2021, if the
25 tenant can demonstrate that it missed the rent payment due to the COVID-19 pandemic, as

1 set forth in subsection (a). A landlord also may not recover possession of a unit due to a
2 tenant's failure to pay such late charges when subsection (a) applies, notwithstanding
3 Administrative Code Section 37.9(a)(2) or any other City law to the contrary. The foregoing
4 sentence shall not enlarge or diminish a landlord's rights with respect to such charges when
5 subsection (a) does not apply.

6 (c) This emergency ordinance shall apply to all residential units in the City, including
7 without limitation (1) all rental units as defined in Administrative Code Section 37.2(r),
8 including those that are otherwise exempt from just cause protections pursuant to Section
9 37.9(b); (2) all residential units in residential hotels regardless of how long the unit has been
10 occupied; and (3) all units where the rent is controlled or regulated by the City (e.g., privately-
11 operated units controlled or regulated by the Mayor's Office of Housing and Community
12 Development and/or the Department of Homelessness and Supportive Housing).

13 (d) This emergency ordinance is intended to suspend evictions and late penalties
14 as stated in subsections (a) and (b) as soon as it takes effect, and shall therefore apply to all
15 residential units as stated in subsection (c), including those where a notice to vacate or quit
16 was pending as of the date that this ordinance took effect and regardless whether the notice
17 was served before, on, or after February 1, 2021.

18 (e) The provisions of this emergency ordinance, being necessary for the welfare of
19 the City and its residents, shall be liberally construed to effectuate its purpose, which is to
20 protect tenants from being evicted or incurring penalties due to missing rent payments
21 because of the COVID-19 pandemic. However, nothing in this ordinance shall relieve a
22 tenant of the obligation to pay rent, nor restrict a landlord's ability to recover rent due.

23
24 Section 3. Effective Date. Consistent with Charter Section 2.107, this emergency
25 ordinance shall become effective immediately upon enactment. Enactment occurs when the

1 Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the
2 ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's
3 veto of the ordinance. Once enacted, it shall remain in effect for 60 days, unless reenacted as
4 provided by Section 2.107. If not reenacted, it shall expire on the 61st day after enactment.

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

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15 Section 5. Supermajority Vote Required. In accordance with Charter Section 2.107,
16 passage of this emergency ordinance by the Board of Supervisors requires an affirmative vote
17 of two-thirds of the Board of Supervisors.

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19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By: /s/
23 MANU PRADHAN
24 Deputy City Attorney
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LEGISLATIVE DIGEST

[Emergency Ordinance - Eviction Protection for Tenants Unable to Pay Rent]

Emergency ordinance to temporarily restrict landlords from evicting residential tenants for non-payment of rent due to the COVID-19 pandemic; to prohibit landlords from imposing late fees, penalties, or similar charges on such tenants; and making findings as required by the California Tenant Protection Act of 2019.

Existing Law

The Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (hereafter, "AB 3088") limits when a landlord may evict a residential tenant for non-payment of rent that came due between March 1, 2020 and January 31, 2021, but does not protect tenants from being evicted due to rent payments missed on or after February 1, 2021.

Amendments to Current Law

The emergency ordinance would restrict landlords from evicting tenants due to the non-payment of rent that originally came due on or after February 1, 2021, notwithstanding any City law (e.g., Admin. Code § 37.9(a)(1)) that might otherwise allow the eviction to go forward. To be protected from an eviction, the tenant would need to show with documentation that their failure to pay (1) arose out of a substantial decrease in household income or increase in out-of-pocket expenses, and (2) was caused by the COVID-19 pandemic. The ordinance would also prohibit landlords from imposing late fees or penalties or similar charges on a tenant who missed their post-January rent in these circumstances, and would prohibit landlords from evicting their tenants due to these unpaid fees/charges, notwithstanding any local law that may otherwise apply (e.g., Admin. Code § 37.9(a)(2)).

Consistent with Charter Section 2.107, the emergency ordinance would become effective immediately upon enactment but would remain in effect for only 60 days, unless reenacted.

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