

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

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

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

DATE: March 24, 2020

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 200295

Emergency ordinance to regulate evictions of commercial tenants due to non-payment of rent, when the tenant was unable to pay due to financial impacts related to the COVID-19 pandemic.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Dominica Donovan, Senior Policy Analyst/Commission Secretary

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

_____ **No Comment**

_____ **Recommendation Attached**

Chairperson, Small Business Commission

1 [Emergency Ordinance - Commercial Evictions for Non-Payment During COVID-19
2 Pandemic]

3 **Emergency ordinance to regulate evictions of commercial tenants due to non-payment**
4 **of rent, when the tenant was unable to pay due to financial impacts related to the**
5 **COVID-19 pandemic.**

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.

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

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

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

20 (b) On February 25, 2020, Mayor London Breed proclaimed a state of emergency
21 based on coronavirus (COVID-19) (hereinafter referred to as “the state of emergency”). On
22 March 3, 2020, the Board of Supervisors concurred in the February 25 Proclamation and in
23 the actions taken by the Mayor to meet the emergency. On March 13, 2020, the Mayor
24 issued a Second Supplement to the February 25 Proclamation, finding that the emergency is
25 causing severe financial impacts in the City, and providing certain protections to residential
tenants who will be unable to pay their rent on time due to the emergency, to avoid the further

1 risks and contamination that will result if they are displaced from their homes. On March 16,
2 2020, the County Health Officer issued Order No. C19-07 directing people to stay in their
3 homes and requiring businesses to cease all non-essential operations at physical locations in
4 the County. Also on March 16, 2020, the Governor issued Executive Order N-28-20, finding
5 that promoting stability among commercial tenancies will further public health by allowing
6 businesses to keep paying the residents they employ, and by allowing businesses to decide
7 whether and how to remain open based on public health concerns rather than due to
8 economic pressures, and that the emergency may make it necessary for local jurisdictions to
9 mitigate those economic pressures. Copies of these orders and directives are on file with the
10 Clerk in File No. _____.

11 (b) For the foregoing reasons, the Board of Supervisors finds it is essential to prevent
12 the unnecessary displacement of commercial tenants who are unable to pay their rent due to
13 financial impacts related to COVID-19. Preventing evictions will protect local businesses and
14 the people that rely on them.

15

16 Section 2. Protections for Commercial Tenants.

17 (a) If a commercial tenant fails to make a rent payment that was due on or after March
18 17, 2020, the landlord may not recover possession of the unit due to the missed or delayed
19 payment, without first providing the tenant written notice of the violation and an opportunity to
20 cure the violation, as set forth herein. This ordinance shall apply to all commercial tenants in
21 the City with fewer than 100 employees. A commercial tenant with multiple locations is
22 treated as a single entity for purposes of this rule.

23 (b) The written notice from the landlord shall specify a cure period of at least 30 days
24 from the date the tenant receives the notice, but may specify a longer period. Upon receipt of
25 the notice, the tenant shall have the full cure period to either pay the rent, or provide

1 documentation to the landlord showing that the tenant is unable to pay the rent due to a
2 financial impact related to COVID-19. For purposes of this ordinance, the term “financial
3 impact” means a substantial decrease in business income due to illness or other disruption,
4 reduced open hours, or reduced consumer demand. A financial impact is “related to COVID-
5 19” if caused by the COVID-19 pandemic, or by any local, state, or federal government
6 response to COVID-19, and is documented.

7 (c) If the tenant provides the landlord documentation of the tenant’s inability to pay
8 rent due to a financial impact related to COVID-19, the landlord and tenant shall discuss the
9 matter in good faith and attempt to develop a payment plan for the tenant to pay the missed
10 rent. If the landlord and tenant cannot agree to a payment plan, the tenant shall have one
11 more month from the date it provided the documentation under subdivision (b). At the one-
12 month mark, the tenant shall either pay the rent, or provide additional documentation of its
13 continuing inability to pay, in which case the tenant shall have an additional month to pay.
14 The tenant may obtain additional extensions by following the same cure procedure each
15 month, but under no circumstances shall the landlord be prohibited from evicting for non-
16 payment for more than six months after the date the rent was originally due. If the tenant has
17 not paid all outstanding rent at the end of the applicable cure period, the landlord may
18 proceed with the eviction for non-payment.

19 (d) Nothing in this ordinance shall relieve a tenant of the obligation to pay rent, nor
20 restrict a landlord’s ability to recover the rent due through means other than an eviction for
21 non-payment.

22 (e) This ordinance regulates rent payments and evictions for non-payment during the
23 time period that it remains in effect. Consistent with Charter Section 2.107, this ordinance
24 shall become effective and operative immediately upon enactment. Enactment occurs when
25 the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the

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

5 Section 3. Implementation. The Office of Economic and Workforce Development is
6 authorized to develop rules, regulations, guidance, forms, and procedures as necessary to
7 effectuate the purposes of this ordinance.
8

9 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word
10 of this ordinance, or any application thereof to any person or circumstance, is held to be
11 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
12 shall not affect the validity of the remaining portions or applications of the ordinance. The
13 Board of Supervisors hereby declares that it would have passed this ordinance and each and
14 every section, subsection, sentence, clause, phrase, and word not declared invalid or
15 unconstitutional without regard to whether any other portion of this ordinance or application
16 thereof would be subsequently declared invalid or unconstitutional.
17

18 Section 5. Supermajority Vote Required.

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

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

23 By: _____
24 MANU PRADHAN
25 Deputy City Attorney
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LEGISLATIVE DIGEST

[Emergency Ordinance - Commercial Evictions for Non-Payment During COVID-19 Pandemic]

Emergency ordinance to regulate evictions of commercial tenants due to non-payment of rent, when the tenant was unable to pay due to financial impacts related to the COVID-19 pandemic.

Existing Law

The City does not currently regulate commercial evictions due to non-payment of rent.

Amendments to Current Law

The ordinance covers commercial tenants in the City with fewer than 100 employees. If a covered tenant failed to make a rent payment due on or after March 17, 2020, the landlord could not evict for non-payment without first providing the tenant notice and an opportunity to cure. The cure process would consist of the landlord giving the tenant a certain amount of time to either pay the rent, or provide documentation that the tenant is unable to pay due to a financial impact related to COVID-19. If the tenant gives the landlord such documentation, the landlord and tenant would then have one month to discuss a payment plan in good faith, and if unable to agree to one, the tenant would have until the end of the one-month period to cure the violation. At the end of that period, the tenant would need to either pay the outstanding rent, or provide additional documentation of its ongoing inability to pay. The tenant with an inability to pay could extend the cure period to up to six months beyond the original due date, under this procedure. At the end of the cure period, if the tenant still had not paid, the landlord could evict for non-payment.

The ordinance only regulates when a landlord may evict a covered tenant due to non-payment of rent. It does not relieve a tenant of the obligation to pay rent, nor restrict a landlord's ability to recover the rent due through means other than an eviction for non-payment.

The ordinance is an emergency ordinance, so under Charter section 2.107, it will take effect immediately upon enactment and will remain in effect for 60 days, unless reenacted. If not reenacted, it will expire on the 61st day.

Background Information

The ordinance is necessary to address the COVID-19 emergency, and follows the Governor's March 16, 2020 Executive Order (No. N-28-20).