

File No. 211265 Committee Item No. 3  
Board Item No. 14

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date January 10, 2022

Board of Supervisors

Meeting Date February 1, 2022

#### Cmte Board

- |                                     |                          |  |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Resolution                                   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance                                    |
| <input checked="" type="checkbox"/> | <input 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 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 type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

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

- |                                     |                          |                            |
|-------------------------------------|--------------------------|----------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referral FYI 121521</u> |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                      |

Completed by: Erica Major Date January 6, 2022  
Completed by: Erica Major Date \_\_\_\_\_

1 [Administrative Code - Tenant Opportunity To Cure; Eviction Protections]

2

3 **Ordinance amending the Administrative Code to require landlords pursuing certain**  
 4 **types of evictions to first provide their tenants written notice and an opportunity to**  
 5 **cure, unless the eviction is based on an imminent health or safety issue or the non-**  
 6 **payment of COVID-19 rental debt; and making findings that the eviction protections in**  
 7 **the Rent Ordinance are more protective than those found in State law pursuant to**  
 8 **California Civil Code, Section 1946.2.**

9

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

14

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

16

17 Section 1. Purpose and Findings.

18 The Rent Ordinance recognizes that tenants owe certain obligations to their landlords,  
 19 and that a tenant's failure to meet those obligations may under certain conditions give the  
 20 landlord just cause to evict. But the Rent Ordinance generally does not specify for how long a  
 21 tenant's misconduct must continue before it rises to the level of being a just cause. This  
 22 ambiguity creates confusion, and is particularly harmful to tenants, as some landlords claim  
 23 that a tenant's violation instantly creates just cause to evict even if the tenant just made an  
 24 innocent mistake or is able to correct the issue. A cure period would reduce the undue  
 25 hardship suffered by tenants who face sudden evictions and promote economy in the use of

1 judicial resources, while still protecting the property owners by curing the harm. It is essential  
2 to provide clarity around what constitutes just cause: if a tenant can correct the violation within  
3 a reasonable timeframe, to nevertheless evict the tenant and put them at risk of permanent  
4 displacement from the City is not appropriate.

5  
6 Section 2. The Administrative Code is hereby amended by revising Section 37.1, to  
7 read as follows:

8 **SEC. 37.1. TITLE AND FINDINGS.**

9 \* \* \* \*

10 (d) In accordance with California Civil Code Section 1946.2(g)(1)(B), the Board of  
11 Supervisors finds that this Chapter 37 further limits the permissible reasons for termination of a  
12 residential tenancy and provides additional tenant protections as compared to California Civil Code  
13 Section 1946.2, which the California Legislature adopted as part of the Tenant Protection Act of 2019.  
14 The Board of Supervisors therefore finds that this Chapter 37 is more protective of tenants than Section  
15 1946.2, and intends that this Chapter 37 shall apply rather than Section 1946.2.

16  
17 Section 3. The Administrative Code is hereby amended by revising Section 37.9, to  
18 read as follows:

19 **SEC. 37.9. EVICTIONS.**

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

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

23 (1) The tenant:

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

1                   \* \* \* \*

2                   (B) Habitually pays the rent late; or

3                   (C) Gives checks which are frequently returned because there are insufficient  
4 funds in the checking account;

5                   \* \* \* \*

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

10                  \* \* \* \*

11                  (3) The tenant is committing or permitting to exist a nuisance in, or is causing  
12 substantial damage to, the rental unit, or is creating a substantial interference with the  
13 comfort, safety or enjoyment of the landlord or tenants in the building, the activities are  
14 severe, continuing or recurring in nature, and the nature of such nuisance, damage or  
15 interference is specifically stated by the landlord in writing as required by Section 37.9(c).

16                  \* \* \* \*

17                  (4) The tenant is using or permitting a rental unit to be used for any illegal  
18 purpose, provided however that a landlord shall not endeavor to recover possession of a  
19 rental unit solely:

20                   (A) as a result of a first violation of Chapter 41A that has been cured within 30  
21 days written notice to the tenant; or

22                   (B) because the illegal use is the residential occupancy of a unit not authorized  
23 for residential occupancy by the City. Nothing in this Section 37.9(a)(4)(B) prohibits a landlord  
24 from endeavoring to recover possession of the unit under Section 37.9(a)(8) or (10) of this  
25 Chapter 37.

1 (5) The tenant, who had an oral or written agreement with the landlord which  
2 has terminated, has refused after written request or demand by the landlord to execute a  
3 written extension or renewal thereof for a further term of like duration and under such terms  
4 which are materially the same as in the previous agreement; provided, that such terms do not  
5 conflict with any of the provisions of this Chapter 37; or

6 (6) The tenant has, after written notice to cease, refused the landlord access to  
7 the rental unit as required by State or local law; or

8 \* \* \* \*

9 (c) A landlord shall not endeavor to recover possession of a rental unit unless at  
10 least one of the grounds enumerated in Section 37.9(a) or (b) above is (1) the landlord's  
11 dominant motive for recovering possession and (2) unless the landlord informs the tenant in  
12 writing on or before the date upon which notice to vacate is given of the grounds under which  
13 possession is sought. For notices to vacate under Sections 37.9(a)(1), (2), (3), (4), (5), or (6), the  
14 landlord shall prior to serving the notice to vacate provide the tenant a written warning and an  
15 opportunity to cure as set forth in Section 37.9(o). For ~~and for~~ notices to vacate under Sections  
16 37.9(a)(8), (9), (10), (11), ~~or~~ (14), the landlord shall state in the notice to vacate the lawful  
17 rent for the unit at the time the notice is issued, before endeavoring to recover possession.  
18 The Board shall prepare a written form that (1) states that a tenant's failure to timely act in  
19 response to a notice to vacate may result in a lawsuit by the landlord to evict the tenant, and  
20 that advice regarding the notice to vacate is available from the Board; and (2) includes  
21 information provided by the Mayor's Office of Housing and Community Development  
22 regarding eligibility for affordable housing programs. The Board shall prepare the form in  
23 English, Chinese, Spanish, Vietnamese, Tagalog, and Russian and make the form available  
24 to the public on its website and in its office. A landlord shall attach a copy of the form that is in  
25 the primary language of the tenant to a notice to vacate before serving the notice, except that

1 if the tenant’s primary language is not English, Chinese, Spanish, Vietnamese, Tagalog, or  
2 Russian, the landlord shall attach a copy of the form that is in English to the notice. A copy of  
3 all notices to vacate except three-day notices to pay rent or quit and a copy of any additional  
4 written documents informing the tenant of the grounds under which possession is sought shall  
5 be filed with the Board within 10 days following service of the notice to vacate. In any action to  
6 recover possession of the rental unit under Section 37.9, the landlord must plead and prove  
7 that at least one of the grounds enumerated in Section 37.9(a) or (b) and also stated in the  
8 notice to vacate is the dominant motive for recovering possession. Tenants may rebut the  
9 allegation that any of the grounds stated in the notice to vacate is the dominant motive.

10 \* \* \* \*

11 (o) Notice and Opportunity to Cure. The grounds for recovering possession set forth in  
12 Sections 37.9(a)(1), (2), (3), (4), (5), and (6) shall not apply unless the violation is not cured within ten  
13 days after the landlord has provided the tenant a written warning that describes the alleged violation  
14 and informs the tenant that a failure to correct such violation within ten days may result in the  
15 initiation of eviction proceedings. The Rent Board shall prepare a form that landlords may use for this  
16 purpose. However, this Section 37.9(o) shall not apply if a longer notice and cure period applies (for  
17 example, under the terms of the lease agreement between the parties); or if the landlord is seeking to  
18 recover possession based on the tenant causing or creating an imminent risk of physical harm to  
19 persons or property; or if the landlord is seeking to recover possession based on the non-payment of  
20 rent or any other unpaid financial obligation of a tenant under the tenancy that came due between  
21 March 1, 2020 and March 31, 2022.

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 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
8 additions, and Board amendment deletions in accordance with the "Note" that appears under  
9 the official title of the ordinance.

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

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

22  
23 By: /s/  
24 MANU PRADHAN  
25 Deputy City Attorney  
n:\legana\as2021\2200114\01568918.docx

## LEGISLATIVE DIGEST

[Administrative Code - Tenant Opportunity To Cure; Eviction Protections]

**Ordinance amending the Administrative Code to require landlords pursuing certain types of evictions to first provide their tenants written notice and an opportunity to cure, unless the eviction is based on an imminent health or safety issue or the non-payment of COVID-19 rental debt; and making findings that the eviction protections in the Rent Ordinance are more protective than those found in State law pursuant to California Civil Code, Section 1946.2.**

### Existing Law

The Rent Ordinance (Admin. Code Ch. 37) recognizes various “just causes” for landlords to evict their tenants. Sections 37.9(a)(1)-(6) involve situations that are the fault of the tenant: (1) failure to pay rent; (2) violating a material term of the tenancy; (3) committing or allowing a nuisance that is severe, continuing, or recurring; (4) using or permitting the unit to be used for any illegal purpose; (5) refusal to execute a written extension or renewal of the lease under the same terms as existed previously; and (6) refusal to allow the landlord access to the unit as required by state or local law. If the tenant commits any of these violations, the landlord has just cause to evict. The Rent Ordinance does not generally specify how much time the landlord must give the tenant to cure the violation in these situations.

### Amendments to Current Law

The proposed ordinance would create a 10-day cure period for all evictions under subsections (a)(1)-(6): the landlord would need to send the tenant a written warning notice that describes the alleged violation and informs the tenant that a failure to correct such violation within 10 days may result in the initiation of eviction proceedings. The landlord would have just cause to evict if the tenant had not addressed the violation within the 10-day period. But a 10-day warning period would not be required for evictions based on the tenant creating a serious and imminent risk of injury or property damage, or the nonpayment of COVID-19 rental debt.

The ordinance also adopts a finding pertaining to the Rent Ordinance generally, which states that the Rent Ordinance’s tenant protections are more protective than those found under state law (the Tenant Protection Act of 2019, California Civil Code Section 1946.2).



BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689  
Tel. No. (415) 554-5184  
Fax No. (415) 554-5163  
TDD/TTY No. (415) 554-5227

## MEMORANDUM

TO: Christina Varner, Acting Executive Director, Rent Board  
Eric D. Shaw, Director, Mayor's Office of Housing and Community Development  
Adrienne Pon, Executive Director, Office of Civic Engagement and Immigrant Affairs

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

DATE: December 15, 2021

SUBJECT: LEGISLATION INTRODUCED

---

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Preston on December 7, 2021:

**File No. 211265**

**Ordinance amending the Administrative Code to require landlords pursuing certain types of evictions to first provide their tenants written notice and an opportunity to cure, unless the eviction is based on an imminent health or safety issue or the non-payment of COVID-19 rental debt; and making findings that the eviction protections in the Rent Ordinance are more protective than those found in State law pursuant to California Civil Code, Section 1946.2.**

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: Lydia Ely, Mayor's Office of Housing and Community Development  
Brian Cheu, Mayor's Office of Housing and Community Development  
Maria Benjamin, Mayor's Office of Housing and Community Development

# ZACKS, FREEDMAN & PATTERSON

A PROFESSIONAL CORPORATION

601 Montgomery Street, Suite 400  
San Francisco, California 94111  
Telephone (415) 956-8100  
Facsimile (415) 288-9755  
[www.zfplaw.com](http://www.zfplaw.com)

January 24, 2022

San Francisco Board of Supervisors  
c/o Angela Calvillo, Clerk of Board  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102  
Board.of.Supervisors@sfgov.org  
bos.legislation@sfgov.org  
bos@sfgov.org  
MelgarStaff@sfgov.org  
Dean.Preston@sfgov.org  
Aaron.Peskin@sfgov.org  
ChanStaff@sfgov.org  
Matt.Haney@sfgov.org  
mandelmanstaff@sfgov.org  
Ahsha.Safai@sfgov.org  
Shamann.Walton@sfgov.org  
Catherine.Stefani@sfgov.org  
Hillary.Ronen@sfgov.org  
Gordon.Mar@sfgov.org

VIA US MAIL AND EMAIL

Re: San Francisco Ordinance, File No. 211265

Dear Supervisors Chan, Haney, Mar, Mandelman, Ronan, Stefani, Walton, Safai, Melgar, Peskin and Preston, and Ms. Calvillo,

We write on behalf of the Small Property Owners of San Francisco in opposition to recently proposed San Francisco Ordinance, File No. 211265 (the “Ordinance”), which we understand will be heard before the San Francisco Board of Supervisors on January 25, 2022. The Ordinance purports to eliminate “fault based” grounds for eviction under the San Francisco Rent Ordinance, unless landlords provide defaulting tenants “written warning” that “describes the alleged violation and informs the tenant that a failure to correct such violation within ten days may result in the initiation of eviction proceedings.” The Ordinance unlawfully suspends, and restricts landlords from accessing, unlawful detainer (“UD”) proceedings and is therefore preempted by state law.

The specific purpose of a UD action is to provide landlords a summary proceeding for recovery of possession of their properties. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 149-151.)

While cities may be authorized to limit *substantive* grounds for eviction, thereby “giving rise to a substantive ground of defense” in a UD proceeding, additional *procedural* requirements imposed by local government that are not found in the UD statutes are preempted by those laws. (*Ibid.*)

The Ordinance does not create a substantive defense to a UD action. Instead, it purports to eliminate permissible just causes for eviction *until* landlords have entertained a procedure entirely of local making. This local procedure places a ten-day block of time between a tenant’s violation and a landlord’s access to a UD proceeding. It purports to apply to cases of default in rent and breach of lease, as well as to cases of tenant nuisance and waste. In the former scenarios, the California Legislature has clearly stated that three days, excluding weekends and judicial holidays, is the requisite notice period. (CCP §§1161(2), (3).) In the latter scenarios, the lease is “terminated” under state law, and only three *calendar* days’ notice, *including* weekends and holidays, and without the opportunity to cure, is required before availing oneself of the UD process. (CCP §1161(4).) While state law permits local government to enact additional tenant protections in certain cases, those protections must not be “prohibited by any other provision of law.” (CCP § 1946.2(g)(B)(ii); also see, CCP § 1179.05(e) [reiterating per AB 3088 (2020), that UD statutes are “a matter of statewide concern”].)

The Ordinance’s requirement of a 10-day “warning” prior to serving an eviction notice under state law “raises procedural barriers between the landlord and the judicial proceeding,” and is therefore precisely what the UD statutes prohibit. (*Birkenfeld, supra*, 17 Cal.3d at pp. 150-151 [Holding Berkeley’s requirement that a landlord obtain a “certificate of eviction” from local government prior to initiating UD proceeding in conflict with UD statutes].) The Ordinance’s purpose, to reduce tenant hardship and “promote economy in the use of judicial resources” does not save it from preemption; only the state has the authority to govern timing in the UD procedures to meet this objective—and it has. (see, AB 2343 (2018) [extending timeline for curable eviction notices by excluding weekends and judicial holidays from the requisite “three days”]; AB 3088 (2020) [extending timeline to “no shorter than 15 days, excluding Saturdays, Sundays, and other judicial holidays” in the event of Covid-related rent default].)

In closing, our client writes not to question the soundness of the Ordinance’s purpose, but to emphasize that San Francisco does not have the authority to implement it. For this reason, we urge the Board to not adopt the Ordinance.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC

    /s/ Emily L. Brough      
Emily L. Brough



San Francisco Apartment Association

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2022 JAN 24 PM 12:48

January 13, 2022  
Angela Calvillo, Clerk of the Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, California 94102

BY JA

Dear Clerk of the Board of Supervisors,

Included with this note, please find a letter from the San Francisco Apartment Association in opposition to SF Ordinance File No. 211265.

Please distribute this letter to all eleven members of the Board of Supervisors prior to their regular meeting on January 25, 2022.

Thank you,

Janan New

San Francisco Apartment Association



## San Francisco Apartment Association

January 13, 2022  
San Francisco Board of Supervisors  
c/o Angela Calvillo, Clerk of the Board  
1 Dr. Carlton B. Goodlett Place, Room 244

VIA US MAIL AND EMAIL

Re: San Francisco Ordinance, File No. 211265

Dear Members of the Board of Supervisors,

The San Francisco Apartment Association writes to you to oppose San Francisco Ordinance File No. 211265 (the “Ordinance”), which we understand will be heard by the full Board of Supervisors on January 25, 2022. The Ordinance purports to eliminate “fault-based” grounds for eviction under the San Francisco Rent Ordinance, unless landlords provide defaulting tenants “written warning” that “describes the alleged violation and informs the tenant that a failure to correct such violation within ten days may result in the initiation of eviction proceedings.” The Ordinance unlawfully suspends and restricts landlords from accessing unlawful detainer (“UD”) proceedings, and is therefore preempted by state law.

The specific purpose of a UD action is to provide landlords a summary proceeding for recovery of possession of their properties. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 149-151.) While cities may be authorized to limit *substantive* grounds for eviction, thereby “giving rise to a substantive ground of defense” in a UD proceeding, additional *procedural* requirements imposed by local government that are not found in the UD statutes are preempted by those laws. (*Ibid.*)

Rather than creating a substantive defense to a UD action, the Ordinance purports to eliminate permissible just causes *until* landlords have entertained a procedure entirely of local making. This local procedure places a ten-day block of time between a tenant’s violation and a landlord’s access to a UD proceeding. It purports to apply to cases of default in rent and breach of lease, as well as to cases of tenant nuisance and waste. In the former scenarios, the California Legislature has clearly stated that three days, excluding weekends and judicial holidays, is the requisite notice period. (Cal. Code Civ. Proc., §§1161(2), (3).) In the latter scenarios, the lease is “terminated” under state law, and only three *calendar* days’ notice, *including* weekends and holidays, and without the opportunity to cure, is required before availing oneself of the UD process. (Cal. Code Civ. Proc., §1161(4).) While state law permits local government to enact additional tenant protections in certain cases, those protections must not be “prohibited by any other provision of law.” (CCP § 1946.2(g)(B)(ii); also see, CCP § 1179.05(e) [reiterating per AB 3088 (2020), that UD statutes are “a matter of statewide concern”].)

This 10-day “warning” prior to serving an eviction notice under state law, “raises procedural barriers between the landlord and the judicial proceeding,” and is therefore precisely what the UD



## San Francisco Apartment Association

statutes prohibit. (*Birkenfeld, supra*, 17 Cal.3d at pp. 150-151 [Holding Berkeley’s requirement that a landlord obtain a “certificate of eviction” from local government prior to initiating UD proceeding in conflict with UD statutes].) The Ordinance’s purpose, to reduce tenant hardship and “promote economy in the use of judicial resources” does not save it from preemption; only the state has the authority to govern timing in the UD procedures to meet this objective—and it has. (See, AB 2343 (2018) [extending timeline for curable eviction notices by excluding weekends and judicial holidays from the requisite “three days”]; AB 3088 (2020) [extending timeline to “no shorter than 15 days, excluding Saturdays, Sundays, and other judicial holidays” in the event of Covid-related rent default].)

We write to you not to question the soundness of the Ordinance’s purpose, but to emphasize that San Francisco does not have the authority to implement it. For this reason, we urge the Board to not adopt the Ordinance.

**Cc: Mayor London Breed**

Sincerely,

A handwritten signature in blue ink, appearing to read "Janan New".

Janan New

San Francisco Apartment Association

**From:** [Emma Heinichen](#)  
**To:** [Major, Erica \(BOS\)](#); [MelgarStaff \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Peskin, Aaron \(BOS\)](#)  
**Cc:** [Emily Lowther Brough](#); [Andrew Zacks](#)  
**Subject:** FW: San Francisco Ordinance, File No. 211265  
**Date:** Monday, January 10, 2022 11:34:45 AM  
**Attachments:** [BOS LTR 1.10.2022.pdf](#)  
**Importance:** High

---

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

Good morning,

Apologies for the duplicate transmission. I'm re-sending the below/attached with Mr. Peskin's email address corrected.

Thank you,

Emma Heinichen  
Paralegal  
Zacks, Freedman & Patterson, PC  
601 Montgomery Street, Suite 400  
San Francisco, CA 94111  
Telephone: [\(415\) 956-8100](tel:(415)956-8100)  
Facsimile: [\(415\) 288-9755](tel:(415)288-9755)  
[www.zfplaw.com](http://www.zfplaw.com)

This communication and its contents may contain confidential and/or privileged material for the sole use of the intended recipient. Any review or distribution by others is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies. Unless expressly stated, nothing in this communication should be regarded as tax advice.

---

**From:** Emma Heinichen  
**Sent:** Monday, January 10, 2022 11:30 AM  
**To:** [Erica.major@sfgov.org](mailto:Erica.major@sfgov.org); [MelgarStaff@sfgov.org](mailto:MelgarStaff@sfgov.org); [Dean.Preston@sfgov.org](mailto:Dean.Preston@sfgov.org); [AaronPeskin@sfgov.org](mailto:AaronPeskin@sfgov.org)  
**Cc:** [Emily Lowther Brough <emily@zfplaw.com>](mailto:emily@zfplaw.com); [Andrew Zacks <az@zfplaw.com>](mailto:az@zfplaw.com); [Angelica Nguyen <angelica@zfplaw.com>](mailto:angelica@zfplaw.com)  
**Subject:** San Francisco Ordinance, File No. 211265  
**Importance:** High

Good morning,

At the request of Emily Brough, I attach a letter which has also been sent to you by First Class Mail.

Sincerely,

Emma Heinichen  
Paralegal  
Zacks, Freedman & Patterson, PC  
601 Montgomery Street, Suite 400  
San Francisco, CA 94111  
Telephone: [\(415\) 956-8100](tel:(415)956-8100)  
Facsimile: [\(415\) 288-9755](tel:(415)288-9755)  
[www.zfplaw.com](http://www.zfplaw.com)

This communication and its contents may contain confidential and/or privileged material for the sole use of the intended recipient. Any review or distribution by others is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies. Unless expressly stated, nothing in this communication should be regarded as tax advice.



# ZACKS, FREEDMAN & PATTERSON

A PROFESSIONAL CORPORATION

601 Montgomery Street, Suite 400  
San Francisco, California 94111  
Telephone (415) 956-8100  
Facsimile (415) 288-9755  
[www.zfplaw.com](http://www.zfplaw.com)

January 10, 2022

San Francisco Board of Supervisors  
Supervisors Melgar, Peskin and Preston  
c/o Erica Major, Clerk of the Land Use  
and Transportation Committee  
1390 Market, 7th Floor  
San Francisco, CA 94102  
[Erica.major@sfgov.org](mailto:Erica.major@sfgov.org)  
[MelgarStaff@sfgov.org](mailto:MelgarStaff@sfgov.org)  
[Dean.Preston@sfgov.org](mailto:Dean.Preston@sfgov.org)  
[Aaron.Peskin@sfgov.org](mailto:Aaron.Peskin@sfgov.org)

VIA US MAIL AND EMAIL

Re: San Francisco Ordinance, File No. 211265

Dear Supervisors Melgar, Peskin and Preston and Ms. Major,

We write on behalf of the Small Property Owners of San Francisco in opposition to recently proposed San Francisco Ordinance, File No. 211265 (the “Ordinance”), which we understand will be heard before the San Francisco Land Use and Transportation Committee today, January 10, 2022. The Ordinance purports to eliminate “fault based” grounds for eviction under the San Francisco Rent Ordinance, unless landlords provide defaulting tenants “written warning” that “describes the alleged violation and informs the tenant that a failure to correct such violation within ten days may result in the initiation of eviction proceedings.” The Ordinance unlawfully suspends, and restricts landlords from accessing, unlawful detainer (“UD”) proceedings and is therefore preempted by state law.

The specific purpose of a UD action is to provide landlords a summary proceeding for recovery of possession of their properties. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 149-151.) While cities may be authorized to limit *substantive* grounds for eviction, thereby “giving rise to a substantive ground of defense” in a UD proceeding, additional *procedural* requirements imposed by local government that are not found in the UD statutes are preempted by those laws. (*Ibid.*)

The Ordinance does not create a substantive defense to a UD action. Instead, it purports to eliminate permissible just causes for eviction *until* landlords have entertained a procedure entirely of local making. This local procedure places a ten-day block of time between a tenant’s violation and a landlord’s access to a UD proceeding. It purports to apply to cases of default in rent and

breach of lease, as well as to cases of tenant nuisance and waste. In the former scenarios, the California Legislature has clearly stated that three days, excluding weekends and judicial holidays, is the requisite notice period. (CCP §§1161(2), (3).) In the latter scenarios, the lease is “terminated” under state law, and only three *calendar days*’ notice, *including* weekends and holidays, and without the opportunity to cure, is required before availing oneself of the UD process. (CCP §1161(4).) While state law permits local government to enact additional tenant protections in certain cases, those protections must not be “prohibited by any other provision of law.” (CCP § 1946.2(g)(B)(ii); also see, CCP § 1179.05(e) [reiterating per AB 3088 (2020), that UD statutes are “a matter of statewide concern”].)

The Ordinance’s requirement of a 10-day “warning” prior to serving an eviction notice under state law “raises procedural barriers between the landlord and the judicial proceeding,” and is therefore precisely what the UD statutes prohibit. (*Birkenfeld, supra*, 17 Cal.3d at pp. 150-151 [Holding Berkeley’s requirement that a landlord obtain a “certificate of eviction” from local government prior to initiating UD proceeding in conflict with UD statutes].) The Ordinance’s purpose, to reduce tenant hardship and “promote economy in the use of judicial resources” does not save it from preemption; only the state has the authority to govern timing in the UD procedures to meet this objective—and it has. (see, AB 2343 (2018) [extending timeline for curable eviction notices by excluding weekends and judicial holidays from the requisite “three days”]; AB 3088 (2020) [extending timeline to “no shorter than 15 days, excluding Saturdays, Sundays, and other judicial holidays” in the event of Covid-related rent default].)

In closing, our client writes not to question the soundness of the Ordinance’s purpose, but to emphasize that San Francisco does not have the authority to implement it. For this reason, we urge the Board to not adopt the Ordinance.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC

/s/ Emily L. Brough  
Emily L. Brough

**From:** [Cindy O'Neill](#)  
**To:** [Major, Erica \(BOS\)](#)  
**Subject:** Dean Preston's eviction legislation  
**Date:** Monday, January 10, 2022 12:13:31 PM

---

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

It is difficult, at this point in my career, for me to be surprised by any legislation this BOS presents. Dean Preston is now proposing a ten day period for a tenant to correct a violation BEFORE we can send a three day notice. It is unbelievable how difficult it is to be a property owner in this city let alone have a good relationship with your tenants given the completely one sided responsibility that landlords here are burdened with. With rights, come responsibilities but it appears that the BOS only feels that property owners have responsibilities, not tenants. Covid has been hard on ALL of us; even property owners whose bills have not decreased or miraculously disappeared even while tenants have stopped paying rent.

Though I am sure this will fall on deaf ears, I feel compelled to at least voice my concerns and hope that this legislation does not pass.

Sincerely,  
Cynthia O'Neill

**From:** [Oliveira, Daniel](#)  
**To:** [Major, Erica \(BOS\)](#)  
**Cc:** [Louie, Matthew \(UCSF\)](#); [Fortney, Reilly \(UCSF\)](#); [Mendoza, Teresa](#); [Bahman, Nina \(UCSF\)](#); [Capistrano, Lianne \(UCSF\)](#)  
**Subject:** Public Comment on 01/10/2022 Meeting  
**Date:** Sunday, January 9, 2022 8:24:50 PM

---

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

Hi Erica,

My classmates and I here at UCSF would like to submit this comment to the following members for tomorrow's Land Use and Transportation Committee Meeting. Please let me know if we should also call in in order to get a response:

Dear Ms. Myrna Melgar (District 7), Mr. Dean Preston (District 5), and Mr. Aaron Peskin (District 3)...

We are pleased to hear your sponsorship for Administrative Code 211265 - Tenant Opportunity To Cure; Eviction Protections that would provide tenants written notice and opportunities to cure in relation to evictions. As PharmD candidates from UCSF, we recognize that the number of individuals experiencing homelessness is rising in San Francisco, therefore we deem it is essential to facilitate access to pregnancy and neonatal resources. In expanding such access to prenatal care and education for homeless individuals who are pregnant, what additional measures can San Francisco implement to provide, in addition to more secure housing, affordable prenatal and newborn care, and supplies to low-income populations?

Cordially,

Daniel Oliveira  
Matthey Louie  
Teresa Mendoza  
Reilly Fortney  
Nina Bahman  
Lianne Capistrano

01/10/2022

# 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):


Supervisor Preston; Walton, Chan, Peskin, Ronen, Haney

Subject:

Administrative Code - Tenant Opportunity To Cure; Eviction Protections

The text is listed:

Ordinance amending the Administrative Code to require landlords pursuing certain types of evictions to first provide their tenants written notice and an opportunity to cure, unless the eviction is based on an imminent health or safety issue or the non-payment of COVID-19 rental debt; and making findings that the eviction protections in the Rent Ordinance are more protective than those found in State law pursuant to California Civil Code Section 1946.2.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only