

BOARD of SUPERVISORS



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MEMORANDUM

TO: Eric D. Shaw, Director, Mayor's Office of Housing and Community Development
Shireen McSpadden, 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: June 1, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Preston on May 25, 2021:

File No. 210602

Emergency ordinance to temporarily restrict landlords from evicting residential tenants for non-payment of rent due to the COVID-19 pandemic, provided the tenant has paid at least 25 percent of the rent owed; 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: Eugene Flannery, Mayor's Office of Housing and Community Development
Dylan Schneider, Department of Homelessness and Supportive Housing
Emily Cohen, Department of Homelessness and Supportive Housing
Greg Wagner, Department of Public Health
Dr. Naveena Bobba, 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]

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3 **Emergency ordinance to temporarily restrict landlords from evicting residential tenants**
 4 **for non-payment of rent due to the COVID-19 pandemic, provided the tenant has paid at**
 5 **least 25 percent of the rent owed; to prohibit landlords from imposing late fees,**
 6 **penalties, or similar charges on such tenants; and making findings as required by the**
 7 **California Tenant Protection Act of 2019.**

8

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

13

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

15

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

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

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

1 orders, and the Board of Supervisors later adopted an ordinance signed by the Mayor
2 (Ordinance No. 093-20), to limit the eviction of tenants unable to pay certain months' rent due
3 to financial impacts resulting from COVID-19. Thereafter, the Legislature adopted the Tenant,
4 Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (hereafter, "SB 91"),
5 which enacted additional protections for tenants who have paid at least 25 percent of the rent
6 but were unable to pay the remainder due to COVID-19. But SB 91 only applies to rent
7 payments that came due between March 1, 2020 and June 30, 2021, and does not protect
8 tenants from being evicted due to rent payments missed on or after July 1, 2021.

9 (c) Regardless of whether the California Legislature extends SB 91, there is an
10 ongoing emergency in San Francisco. The pandemic appears to be slowly coming under
11 control, but the end is not in sight, and the threat of mass evictions starting July 1, 2021 is a
12 looming crisis for tenants who could be directly affected, as well as for the City as a whole.
13 The City has a shortage of affordable rental housing, a significant percentage of its
14 households are renters at risk of permanent displacement should they be forced to leave their
15 current homes, and many potentially impacted renters are also essential workers who will be
16 needed immediately if the pandemic takes a turn for the worse. Meanwhile, state and federal
17 relief programs have been delayed and only began processing San Francisco applications in
18 May 2021, and these funding delays have in turn impacted the City's efforts to administer
19 relief to landlords and tenants. *See, e.g., Los Angeles Times*, "Cash to help California renters
20 goes unspent with eviction protections expiring soon" (May 20, 2021), available at
21 [https://www.latimes.com/california/story/2021-05-20/california-renters-unspent-financial-](https://www.latimes.com/california/story/2021-05-20/california-renters-unspent-financial-assistance-eviction-protections-expiring)
22 [assistance-eviction-protections-expiring](https://www.latimes.com/california/story/2021-05-20/california-renters-unspent-financial-assistance-eviction-protections-expiring)); and *48 Hills*, "Not one dollar of state rent-relief
23 money has arrived in SF" (May 13, 2021, available at [https://48hills.org/2021/05/not-one-](https://48hills.org/2021/05/not-one-dollar-of-state-rent-relief-money-has-arrived-in-sf/)
24 [dollar-of-state-rent-relief-money-has-arrived-in-sf/](https://48hills.org/2021/05/not-one-dollar-of-state-rent-relief-money-has-arrived-in-sf/)). A short-term extension of SB 91's
25 evictions protections is necessary to help tenants during this transitional phase.

1 (d) The Board of Supervisors finds it is in the public interest to prevent tenant
2 displacement in San Francisco due to COVID-19 to the maximum extent permitted by law.
3 Pursuant to the City’s authority to regulate evictions, and consistent with SB 91, this
4 emergency ordinance applies to rent payments that originally came due on or after July 1,
5 2021. Nothing in this ordinance shall affect or impair the application of any other City law or
6 SB 91 with respect to rent payments that came due before July 1, 2021.

7 (e) This emergency ordinance is intended to prevent residential tenants from being
8 evicted due to having suffered an adverse financial impact arising out of the COVID-19
9 pandemic. As compared to the just cause protections of the California Tenant Protection Act
10 of 2019 (“AB 1482”), this ordinance further limits the permissible reasons for termination of a
11 residential tenancy and provides additional tenant protections. The Board of Supervisors
12 therefore finds that this ordinance is more protective of tenants than AB 1482, and intends
13 that this emergency ordinance shall apply rather than AB 1482.

14
15 Section 2. Suspending Evictions and Penalties Due to Non-Payment of Rent.

16 (a) Notwithstanding Administrative Code Section 37.9(a)(1) or any other City law to
17 the contrary, a landlord may not endeavor to recover possession of a residential unit due to
18 the tenant’s non-payment of rent, if the rent payment originally became due on or after July 1,
19 2021, provided that the tenant has paid the landlord an amount equal to at least 25% of all the
20 rental payments that have come due from July 1, 2021 onwards, and that the tenant’s failure
21 to pay the remaining rent (1) arose out of a substantial decrease in household income
22 (including, but not limited to, a substantial decrease in household income caused by layoffs or
23 a reduction in the number of compensable hours of work, or substantial out-of-pocket
24 expenses); (2) that was caused by the COVID-19 pandemic, or by any local, state, or federal
25 government response to COVID-19; and (3) is documented. The types of documentation that

1 a tenant may use to show an inability to pay due to COVID-19 may include, without limitation,
2 bank statements, pay stubs, employment termination notices, proof of unemployment
3 insurance claim filings, sworn affidavits, and completed forms prepared by the Rent Board. A
4 tenant shall have the option, but shall not be required, to use third-party documentation such
5 as a letter from an employer to show an inability to pay.

6 (b) Notwithstanding any lease provision to the contrary, a landlord may not impose
7 late fees, penalties, interest, liquidated damages, or similar charges due to a residential
8 tenant's non-payment of rent that originally became due on or after July 1, 2021, if the tenant
9 has paid the landlord an amount equal to at least 25% of all the rental payments that have
10 come due from July 1, 2021 onwards, and can demonstrate that the tenant could not pay the
11 remaining rent due to the COVID-19 pandemic as set forth in subsection (a). A landlord also
12 may not recover possession of a unit due to a tenant's failure to pay such late charges when
13 subsection (a) applies, notwithstanding Administrative Code Section 37.9(a)(2) or any other
14 City law to the contrary. The foregoing sentence shall not enlarge or diminish a landlord's
15 rights with respect to such charges when subsection (a) does not apply.

16 (c) This emergency ordinance shall apply to all residential units in the City, including
17 without limitation (1) all rental units as defined in Administrative Code Section 37.2(r),
18 including those that are otherwise exempt from just cause protections pursuant to Section
19 37.9(b); (2) all residential units in residential hotels regardless of how long the unit has been
20 occupied; and (3) all units where the rent is controlled or regulated by the City (e.g., privately-
21 operated units controlled or regulated by the Mayor's Office of Housing and Community
22 Development and/or the Department of Homelessness and Supportive Housing).

23 (d) This emergency ordinance is intended to suspend evictions and late penalties
24 as stated in subsections (a) and (b) as soon as it takes effect, and shall therefore apply to all
25 residential units as stated in subsection (c), including those where a notice to vacate or quit

1 was pending as of the date that this ordinance took effect and regardless of whether the
2 notice was served before, on, or after July 1, 2021.

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

8
9 Section 3. Effective Date; Sunset Date. Consistent with Charter Section 2.107, this
10 emergency ordinance shall become effective immediately upon enactment. Enactment
11 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or
12 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors
13 overrides the Mayor's veto of the ordinance. Once enacted, it shall remain in effect for 60
14 days, or until such time as the ordinance regarding evictions for non-payment in Board of
15 Supervisors File No. _____ may take effect, whichever is sooner. The foregoing
16 sentence shall not prevent future reenactments of this emergency ordinance as provided by
17 Section 2.107.

18
19 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word
20 of this emergency ordinance, or any application thereof to any person or circumstance, is held
21 to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such
22 decision shall not affect the validity of the remaining portions or applications of the ordinance.
23 The Board of Supervisors hereby declares that it would have passed this ordinance and each
24 and every section, subsection, sentence, clause, phrase, and word not declared invalid or
25

1 unconstitutional without regard to whether any other portion of this ordinance or application
2 thereof would be subsequently declared invalid or unconstitutional.

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

7
8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10
11 By: /s/
12 MANU PRADHAN
13 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, provided the tenant has paid at least 25 percent of the rent owed; 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, "SB 91") grants certain eviction protections to residential tenants who have paid at least 25% of the rent owed but were unable to pay the remainder due to COVID-19. SB 91 applies to rent payments that came due on or before June 30, 2021, but does not protect tenants from being evicted due to rent payments missed on or after July 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 July 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 pay the landlord at least 25% of all the rental payments that come due from July 1, 2021 onwards, and would need to show with documentation that their failure to pay the remaining rent arose out of the financial impacts of the COVID-19 pandemic. The ordinance would restrict evictions for non-payment of rent but the rent would still be owed. Also, the ordinance would prohibit landlords from imposing late fees or penalties or similar charges on a tenant who missed their post-July rent in these circumstances, and would prohibit landlords from evicting due to these unpaid fees/charges, notwithstanding any local law that may otherwise apply (e.g., Admin. Code § 37.9(a)(2)).

The emergency ordinance would apply to all residential units in the City, including all units subject to the City's Rent Ordinance, residential units in residential hotels regardless of how long the unit has been occupied, and units where the rent is controlled or regulated by the City (e.g., privately-operated units controlled or regulated by the Mayor's Office of Housing and Community Development and/or the Department of Homelessness and Supportive Housing).

Consistent with Charter Section 2.107, the emergency ordinance would become effective immediately upon enactment. If enacted it would remain in effect for up to 60 days, unless overridden by a non-emergency ordinance.

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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