

1 [Administrative Code - Eviction of Commercial Tenants During COVID-19 Pandemic]

2
3 **Ordinance amending the Administrative Code to temporarily restrict landlords from**
4 **evicting commercial tenants for non-payment of rent that was not paid due to the**
5 **COVID-19 pandemic; and to allow certain tenants who are unable to pay rent to**
6 **terminate their leases.**

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.

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

16 Section 1. The Administrative Code is hereby amended by adding Chapter Section
17 37C, consisting of Sections 37C.1 through 37C.5, to read as follows:

18 **CHAPTER 37C:**

19 **EVICTION PROTECTIONS FOR COMMERCIAL TENANTS DURING COVID-19 PANDEMIC**

20 **SEC. 37C.1. PURPOSE AND FINDINGS.**

21 (a) The City and County of San Francisco is facing an unprecedented public health and
22 economic crisis due to the COVID-19 pandemic. The Mayor declared a state of emergency on
23 February 25, 2020, and on March 16, 2020, the Governor issued Executive Order N-28-20 (E.O. N-
24 28-20)(the “Executive Order”), which found that the COVID-19 pandemic is having severe impacts
25 throughout the State, and which recognized that local jurisdictions must take measures based on their
particular needs to prevent displacements and to protect public health and mitigate the economic

1 effects of the pandemic. Paragraph 2 of E.O. N-28-20 initially allowed local governments to
2 enact measures to protect commercial tenants impacted by COVID-19 from being evicted due
3 to non-payment through May 31, 2020. Through a series of follow-up orders (Executive
4 Orders N-66-20, N-70-20, and most recently Executive Order N-80-20), the Governor has
5 ordered that the protections of paragraph 2 of E.O. N-28-20. Accordingly, paragraph 2 of the
6 Executive Order allows local governments to enact measures to protect commercial tenants
7 impacted by COVID-19 from being evicted due to non-payment. Paragraph 2 of the Executive
8 Order will-remains in effect until September 30 through March 31, 20212020, unless the Governor
9 orders otherwise.

10 (b) On March 19, 2020, the Mayor issued a Fourth Supplement to the February 25
11 emergency proclamation (and the Mayor later issued an Eighth Supplement to clarify the intent of the
12 Fourth Supplement), and a Twenty-Eighth Supplement to extend its terms, to protect certain
13 commercial businesses in the City from eviction, based on the severe financial impacts of the pandemic
14 and the public health risks that may result from such impacts. These measures have protected many
15 tenants from being evicted, but would allow some evictions to resume as soon as OctoberDecember 1,
16 2020. As of that date, the City was not yet ready for commercial evictions to occur, and that
17 remained true for some time thereafter. The City's economy is gradually reopening but the
18 pandemic is continuing to cause severe and lasting economic effects, and the public health
19 risks remain high.

20 (c) The Board of Supervisors hereby finds that the findings in the orders and directives
21 referenced in subsections (a) and (b) remain valid and compelling, requiring the further extension of
22 commercial eviction controls for certain commercial tenants who could not pay rent that came due
23 under the Executive Orders. An extension is necessary to prevent businesses from displacement,
24 mitigate broader economic harms, and address the public health risks that may otherwise result. As
25 stated in the Governor's Executive Order N-66-20 (issued on May 29, 2020) and in Executive

1 Order N-71-20, many Californians (including San Francisco residents) are continuing to
2 experience substantial losses of income, and evicting local businesses will hinder residents
3 from keeping up with their rent so that they can stay safely in their homes, and there is an
4 ongoing need to promote security and stability in order to reduce the spread of COVID-19.

5 (d) Mindful that restricting evictions for non-payment may burden landlords, the
6 Board of Supervisors has endeavored to prioritize tenants and landlords most in need of
7 protection. It is reasonable to prioritize tenants based on the number of employees, as a
8 tenant with more employees will, generally speaking, be likely to have greater ability to pay
9 rent and a greater ability to absorb financial losses as compared to a business with fewer
10 employees. It is also reasonable to exclude for-profit tenants occupying office space; the City
11 cannot afford to lose commercial tenants, but as more office employers transition to remote
12 work, and given the resilience of the industries that have typically occupied office space in the
13 City, this exclusion is appropriate. Likewise, it is reasonable to grant a hardship exception to
14 smaller landlords, as larger landlords are relatively more likely to be able to withstand any
15 financial impact that the pandemic and these eviction restrictions may impose on them.

16 (e) The protections of this Chapter 37C shall only apply to rent payments that came due
17 between March 16, 2020 and ~~September 30, 2020~~ March 31, 2021, inclusive (or if the Governor
18 extends the ~~September 30~~ effective period of paragraph 2 of E.O. N-28-20 past March 31,
19 2021 date, through the date of extension). This Chapter shall not apply to rent payments that
20 become due after the September 30 date (or, if the Governor extends that date, after the date
21 of extension).

22
23 **SEC. 37C.2. DEFINITIONS.**

24 “Covered Commercial Tenant” means a tenant (including subtenants) or subtenant
25 registered to do business in San Francisco under Article 12 of the Business and Tax

1 Regulations Code with combined worldwide gross receipts for tax year 2019 for purposes of
2 Article 12-A-1 of the Business and Tax Regulations Code equal to or below \$25 million, which
3 amount shall be prorated in the case of businesses that were not open for the entire 2019 tax
4 year. However, “Covered Commercial Tenant” shall not include a tenant or subtenant that
5 occupies property that is zoned or approved for use as Office Use (as defined in Section 102
6 of the Planning Code), unless such tenant or subtenant has established and maintains valid
7 nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code.
8 “Covered Commercial Tenant” also shall not include a tenant or subtenant leasing property
9 from the City and County of San Francisco.

10 “Effective Date” means the effective date of the ordinance in Board File No. 201282
11 enacting this Chapter 37C.

12 “Financial Impact Related To COVID-19” means a substantial decrease in a Covered
13 Commercial Tenant’s business income or substantial increase in its business expenses that
14 arose due to illness or other disruption, reduced open hours, or reduced consumer demand,
15 related to COVID-19. An example (without limitation) of financial impact would be if the
16 tenant’s profit and loss statement showed that net income decreased by 25% or more in a
17 given month as compared to the same month in 2019. A financial impact is related to COVID-
18 19 if it was caused by the COVID-19 pandemic, or by any local, state, or federal government
19 response to the COVID-19 pandemic, and is documented.

20 “Forbearance Period” means the time period by which a Covered Commercial Tenant
21 that was unable to pay rent due to a Financial Impact Related to COVID-19 must pay the rent,
22 as set forth in Section 37C.3(a)(1)-(4).

23 “Moratorium Period” means the period from March 16, 2020 until the expiration of
24 paragraph 2 of E.O. N-28-20, as extended by Executive Orders N-66-20, N-70-20, and N-80-
25 20, and as may be further extended by the Governor.

1 “Tier 1 Commercial Tenant” means a Covered Commercial Tenant that employs fewer
2 than 10 full-time equivalent (“FTE”) employees as of the Effective Date.

3 “Tier 2 Commercial Tenant” means a Covered Commercial Tenant that employs
4 between 10 and 24 FTE employees, inclusive, as of the Effective Date.

5 “Tier 3 Commercial Tenant” means a Covered Commercial Tenant that employs
6 between 25 and 49 FTE employees, inclusive, as of the Effective Date.

7 “Tier 4 Commercial Tenant” means a Covered Commercial Tenant that employs 50 or
8 more FTE employees as of the Effective Date.

9
10 **SEC. 37C.237C.3. TEMPORARY EVICTION PROTECTIONS.**

11 ~~—(a) This Section 37C.2 shall apply only to commercial tenants registered to do~~
12 ~~business in San Francisco under Article 12 of the Business and Tax Regulations Code with~~
13 ~~combined worldwide gross receipts for tax year 2019 for purposes of Article 12-A-1 of the~~
14 ~~Business and Tax Regulations Code equal to or below \$25 million. This figure shall be~~
15 ~~prorated in the case of businesses that were not operating for the entire 2019 tax year.~~

16 ~~(a)(b) If a covered commercial tenant~~Covered Commercial Tenant (1) fails to make a
17 rent payment that originally fell due during the ~~time period when paragraph 2 of the Governor’s~~
18 ~~Executive Order N-28-20 is or was in effect (including as said time period may be extended by~~
19 ~~the Governor from time to time)~~Moratorium Period, and (2) was unable to pay the rent due to a
20 Financial Impact Related ~~financial impacts related to COVID-19, then the landlord may not~~
21 recover possession of the unit due to the missed or delayed payment unless the rent remains unpaid
22 after the end of the applicable Forbearance Period, which shall be:

23 (1) For Tier 1 Covered Commercial Tenants, 24 months after expiration of
24 the Moratorium Period;

1 (2) For Tier 2 Covered Commercial Tenants, 18 months after the expiration
2 of the Moratorium Period;

3 (3) For Tier 3 Covered Commercial Tenants, 12 months after the expiration
4 of the Moratorium Period;

5 (4) For Tier 4 Covered Commercial Tenants, upon expiration of the
6 Moratorium Period.

7 (b) A Covered Commercial Tenant may pay rent deferred under the conditions
8 stated in subsection (a) in installments or in a lump sum prior to the expiration of the
9 applicable Forbearance Period; provided, however, that any payments made prior to the
10 Forbearance Period by Covered Commercial Tenants in Tiers 1-3 shall first be applied to
11 rents that come due during the Forbearance Period, and then to unpaid rents that originally
12 came due during the Moratorium Period. Landlords and tenants are encouraged to negotiate
13 agreements for repayment plans in good faith. An agreement for repayment must be in
14 writing and may provide for a longer or shorter Forbearance Period than as set forth in
15 subsection (a), subject to the mutual agreement of the parties, in which case the agreement
16 rather than this Chapter 37C shall govern the timing of the tenant's obligation to pay the
17 deferred rent.

18 (c) If a Tier 1 Covered Commercial Tenant that is unable to pay the rent due to a
19 Financial Impact Related to COVID-19 and its landlord fail to reach a mutually satisfactory
20 agreement for repayment, the Tier 1 Covered Commercial Tenant shall also have the option
21 to terminate its lease upon thirty (30) days' written notice to the landlord, notwithstanding any
22 lease term to the contrary. ~~elects to terminate its lease during the Moratorium Period, the~~
23 Termination shall not affect whether the tenant is responsible for any unpaid rent that
24 originally came due prior to the effective date of termination. ~~however~~In addition, if the tenant
25 has terminated during the Moratorium Period, then the tenant shall not be liable for any rent

1 ~~payments that come due following the effective date of the termination or~~ any penalties arising
2 out of the termination, notwithstanding any lease term to the contrary.

3 ~~January 1, 2022, or six months after the time period covered by paragraph 2 of the~~
4 ~~Executive Order (as said time period may be extended by the Governor from time to time) has~~
5 ~~ended, whichever is later (the “Forbearance Period”).~~

6 ~~_(d) However~~Notwithstanding subsections (a) and (b), if the landlord owns less than
7 25,000 square feet of Gross Floor Area (as defined in Section 102 of the Planning Code) in the
8 Cityrentable square feet in the building, then the eviction for non-payment may proceed before the
9 applicable Forbearance Period ends, if the landlord can demonstrate that being unable to evict would
10 create a significant financial hardship (for example, default on debt or similar enforceable obligation)
11 for the landlord. The Office of Economic and Workforce Development (“OEWD”) shall have
12 authority to grant waivers to landlords pursuant to this subsection (d). OEWD may also adopt
13 regulations and develop and publish guidelines consistent with this Chapter 37C, including
14 forms and recommendations of the types of documentation that tenants may use to show
15 Financial Impact Related to COVID-19 or that landlords may use to show significant financial
16 hardship.

17 ~~_(e) No landlord shall assess interest or other charges on a Covered Commercial~~
18 ~~Tenant based on unpaid rents that fell due during the Moratorium Period. If rents remain~~
19 ~~unpaid at the end of the applicable Forbearance Period, interest and penalties may be~~
20 ~~imposed prospectively, to the extent authorized under the lease.~~

21 ~~_(f) A Covered Commercial Tenant’s failure to provide their landlord notice and/or~~
22 ~~documentation regarding their inability to pay at the time of the missed rental payment shall~~
23 ~~not affect the tenant’s ability to claim the protections of this Chapter 37C as an affirmative~~
24 ~~defense in the event the landlord sues to recover possession.~~

1 (g)(e) Subdivision (b) This Section 37C.3 shall also apply in its entirety to attempts to
2 recover possession of a commercial unit from a ~~tenant~~Covered Commercial Tenant that is
3 occupying the unit on a month-to-month periodic tenancy, holdover basis, or similar arrangement, and
4 including where the landlord has the right to terminate or not renew the agreement at the landlord’s
5 discretion. In such situations, if a ~~tenant~~Covered Commercial Tenant misses a rent payment due to
6 COVID-19, the prohibition in subsection (b) against recovering possession due to non-payment shall
7 apply, unless the landlord qualifies for the “significant financial hardship” exception stated in
8 subsection (b)(d), or can demonstrate an alternative, non-pretextual reason (unrelated to the commercial
9 tenant’s failure to make a rental payment) for recovering possession of the unit (for example, turning
10 the unit over to a new tenant under a previously executed agreement; planned renovations; or a
11 previous agreement to turn over the unit vacant to a new owner).

12 (h)(e) The provisions of this ordinanceChapter 37C, being necessary for the welfare of the
13 City and County of San Francisco, its residents, and the health of its economy, shall be liberally
14 construed to effectuate its purpose, which is to protect ~~commercial tenants~~Covered Commercial
15 Tenants from being evicted for missing rent payments due to the COVID-19 pandemic.

16 (i)(f) Nothing in this ordinanceChapter 37C shall relieve a ~~commercial tenant~~Covered
17 Commercial Tenant of the obligation to pay rent, nor restrict a landlord’s ability to recover rent due.
18 In addition, nothing in this ordinance shall affect any legal or equitable defenses that a tenant
19 may have with respect to claims arising out of the unpaid rent.

20
21 **SEC. 37C.337C.4. SEVERABILITY.**

22 If any section, subsection, sentence, clause, phrase, or word of this Chapter 37C, or any
23 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
24 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
25 portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have

1 passed this Chapter 37C and each and every section, subsection, sentence, clause, phrase, and word
2 not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or
3 application thereof would be subsequently declared invalid or unconstitutional.

4
5 **SEC. 37C.437C.5. SUNSET PROVISION.**

6 This Chapter 37C shall expire by operation of law after the Tier 1 Forbearance Period has
7 ended. Upon expiration, the City Attorney shall cause this Chapter 37C to be removed from the
8 Administrative Code.

9
10 Section 2. Deadline to Enact; Effective Date. This ordinance shall take effect only if it
11 is enacted before paragraph 2 of the Governor’s Executive Order N-28-20 expires. If this
12 ordinance is enacted on or after the expiration of said paragraph of said Executive Order, it
13 shall be null and void. If this ordinance is enacted before such date, then it shall become
14 effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance,
15 the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of
16 receiving it, or the Board of Supervisors overrides the Mayor’s veto of the ordinance.

17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By: /s/
21 MANU PRADHAN
22 Deputy City Attorney
23 n:\legana\as2020\2100108\01492412.docx