

From: [Board of Supervisors, \(BOS\)](#)
To: [Major, Erica \(BOS\)](#)
Subject: FW: File No. 201059 Opposition Letter
Date: Monday, October 5, 2020 2:04:27 PM
Attachments: [File 201059 BOS Ltr SFAA SFAR SPOSF.pdf](#)

From: Charley Goss <charley@sfaa.org>
Sent: Monday, October 5, 2020 1:30 PM
To: Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Kittler, Sophia (MYR) <sophia.kittler@sfgov.org>; Power, Andres (MYR) <andres.power@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Janan New <janan@sfaa.org>
Subject: File No. 201059 Opposition Letter

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Honorable Members of the Board of Supervisors,

Attached please find a letter of opposition from the San Francisco Apartment Association, the San Francisco Association of Realtors, and the Small Property Owners of San Francisco, regarding File No. 201059, The item will be considered during tomorrow's full Board of Supervisors meeting.

Best,

Charley Goss
Government and Community Affairs Manager
San Francisco Apartment Association
265 Ivy Street
p.415.255.2288 ext.114
f.415.255.1112

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**SAN FRANCISCO
ASSOCIATION of REALTORS®**

October 5, 2020

VIA EMAIL

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102
Board.of.Supervisors@sfgov.org

Re: Proposed Ordinance Limiting Residential Evictions Through March 31, 2021
Ordinance – File No. 201059

Dear Honorable Members of the San Francisco Board of Supervisors:

We write in opposition to the above referenced proposed Ordinance amending the Administrative Code to limit residential evictions through March 31, 2021, unless the eviction is based on the non-payment of rent or is necessary due to violence-related issues or health and safety issues (the “Ordinance”). The Ordinance violates state law, violates the constitution, and would likely lead to more evictions if enacted.

On September 1, 2020 the State of California adopted AB 3088 to address the effect of COVID-19 on residential tenants and stabilize the chaos created by piecemeal and inconsistent emergency orders and regulations streaming out of all branches of government at the state and local level. AB 3088 contains a comprehensive eviction scheme, titled the COVID-19 Tenant Relief Act (“CTRA”), which alters the unlawful detainer statutes. The CTRA contains language explicitly intended to occupy the field of laws adopted by “a city, county, or city and county in response to the COVID-19 pandemic”. (Cal. Code Civ. Proc., §1179.05(a).) Thus, the Ordinance is directly and expressly preempted by the CTRA.

For instance, Mayor Breed’s April 30, 2020 “12th Supplement” imposed restrictions on residential evictions similar to those proposed in the Ordinance. She had been extending them, as needed, every month, including a July 27, 2020 order (extending the 12th supplement through August 31, 2020) and an August 25, 2020 order (extending it through September 30, 2020). However, because CTRA retroactively invalidated any “extension, expansion, renewal, reenactment, or new adoption of a measure” (*Ibid*) after August 19, 2020, the latter extension never took effect. The Mayor understands this, and has since extended *commercial*, but not residential, eviction protections. This is because CTRA preempts these local laws, whether they take the form of emergency orders, regular legislation, or “however delineated” they may be (Cal. Code Civ. Proc., §1179.05(a)(1)).



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With respect to owner and relative-move-in evictions specifically the Ordinance violates the California Elections Code. In enacting Proposition G in 1998, San Francisco voters were asked “Shall the City impose new restrictions on owner move-in evictions and make permanent the existing moratorium on owner. move-in evictions of long-term senior, disabled, or catastrophically ill tenants?”. The voters answered “yes”, and the current version of Section 37.9(a)(8) of the Rent Ordinance took effect. Proposition G thus made permanent the moratorium for eviction of “protected tenants,” while still authorizing certain San Francisco property owners to reside in their own dwellings and to evict certain tenants as necessary to do so for owner and relative occupancy. Because Proposition G was approved by the voters in 1998, the restrictions furthered by the Ordinance also require approval by San Francisco voters.

In *Mobilepark W. Homeowners Assn. v. Escondido Mobilepark W.*, Escondido voters passed Proposition K, adopting rent control for mobile home residents. The city of Escondido adopted an ordinance expanding the group of “tenants” covered by the initiative. However, the California Court of Appeal invalidated it as an improper amendment to a voter initiative. The court noted “the constitutional right of the electorate to initiative, ensuring that successful initiatives will not be undone by subsequent hostile boards of supervisors”. (*Mobilepark W. Homeowners Assn. v. Escondido Mobilepark W.* (1995) 35 Cal. App. 4th 32, 41.) The proposed Ordinance would similarly expand the class of tenants who receive the protections of the Proposition G *qualified* moratorium, in violation of the California Elections Code and would amend City law passed by initiative and without any provision for future legislative amendment. It would therefore violate the Elections Code.

Finally, while San Francisco voters chose the *manner* in which homeowners can evict to live in their property, it is our state and federal constitutions that ultimately dictate the rights of homeowners to live in property that they own. Even when our Rent Ordinance allowed “some economically beneficial use of [the] property” (*Cwynar v. City & Cty. of San Francisco* (2001) 90 Cal. App. 4th 637, 665), it was an unconstitutional taking when it prohibited the right of owners to occupy and enjoy *some* of their property. (See attached order granting summary judgment in *Cwynar v. San Francisco*, dated April 30, 2003.)

The Ordinance goes even further in violating the constitutional rights of property owners. First, the City is already bound by the Judgement and Order in *Cwynar* which requires the City to permit owner occupancy of *all* dwellings in a property. The Ordinance allows none. Second, to the extent that the right to rent (albeit price-controlled rent) cut in the City’s favor in *Cwynar*’s takings analysis, both AB 3088 and the now-preempted Ordinance 93-20 make the tenants’ rent-payment obligations a *suggestion*, not a condition of their continued possession. As the Ordinance will eliminate a property owner’s ability to enjoy *any* benefit of San Francisco



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property ownership, it constitutes an unconstitutional taking in violation of the state and federal constitution.

Finally, by eliminating San Francisco landlords' conventional inroad to occupying their own property, San Francisco would leave its housing providers with a single option to recover possession – the state Ellis Act, which requires termination of the tenancies in all housing accommodations on a parcel. While an owner or relative-move-in eviction are usually limited to one unit, landlords will now be required to avail themselves of a much blunter instrument that will *increase* the number of unnecessary evictions as San Francisco seeks to bar those that are constitutionally required.

We respectfully urge you to oppose this patently illegal proposal, which will ultimately harm both landlords and tenants.

Signed,

SAN FRANCISCO APARTMENT ASSOCIATION

/s/ Janan New
By: Janan New
Its: Director

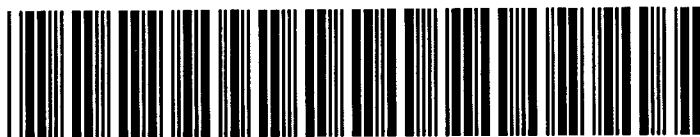
SMALL PROPERTY OWNERS OF SAN FRANCISCO

/s/ Noni Richen
By: Noni Richen
Its: President

SAN FRANCISCO ASSOCIATION OF REALTORS

/s/ Walt Baczkowski
By: Walt Baczkowski
Its: Chief Executive Officer

Attached: Cwynar order



San Francisco Superior Courts
Information Technology Group

Document Scanning Lead Sheet

Apr-30-2003 4:17 pm

Case Number: CGC-99-302014

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ORDER

CWYNAR VS CCSF

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BY: Andrew [Signature]
Deputy Clerk

CALIFORNIA SUPERIOR COURT, UNLIMITED JURISDICTION
COUNTY OF SAN FRANCISCO
DEPARTMENT 301

Case No. 302014

KELI CWYNAR, et al.,

Plaintiffs and Petitioners,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, et al.,

Defendants and Respondents.

**ORDER GRANTING PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

The parties' cross-motions for summary judgment, or in the alternative summary adjudication, came on for hearing on February 13, 2003, in Department 301 of the above Court, the Honorable David A. Garcia presiding. Mr. John E. Mueller of Nielsen, Merksamer, Parrinello, Mueller & Naylor appeared for plaintiffs and petitioners Keli Cwynar *et al.*, and Deputy City Attorney Mr. Andrew W. Schwartz appeared for the City and County of San Francisco. The Court took the matter under submission for further review after oral arguments were presented at the hearing.

Background

This case involves the constitutionality of voter-approved amendments to San Francisco's Rent Stabilization and Arbitration Ordinance. (S.F. Admin. Code, ch. 37, § 37.9 (hereafter Rent Ordinance).) In November, 1998 San Francisco voters approved Proposition

1 G, an amendment to the Rent Ordinance that severely restricts, and in many cases prohibits
2 an owner of residential rental property from evicting tenants to enable the owner or owner's
3 relatives to move into a rental unit. The challenged provisions of Proposition G are
4 summarized as follows:

5 One-Owner-Occupancy Per Building Provision

6 An owner/landlord may recover possession of a rental unit for use as his or her
7 principal residence for at least 3 years, but such evictions are limited to one per building for
8 owners. (S.F. Admin. Code, ch. 37, § 37.9(a)(8)(vi).)

9 Family Occupancy Provision

10 An owner/landlord may conduct unlimited evictions for relatives but only in
11 buildings in which the owner resides (or is seeking an owner move-in). (S.F. Admin. Code,
12 ch. 37, § 37.9(a)(8)(ii).)

13 Tenant Protection Restriction

14 An owner/landlord may not recover a unit for her- or himself, or a relative, if any
15 tenant in the unit is: (a) 60 years of age or older and has lived there for 10 years or more; (b)
16 disabled and lived there for 10 years or more; (c) "catastrophically ill" and has lived there 5
17 years or more. (S.F. Admin. Code, ch. 37, § 37.9(i)(1).)

18 **Disposition**

19 Upon consideration of the papers filed and arguments made in connection with this
20 matter, and in view of the Court of Appeal's holding in *Keli Cwynar v. City and County of*
21 *San Francisco* (2001) 90 Cal.App.4th 637 (hereafter *Cwynar*), this court now rules as
22 follows:

- 23 1. Plaintiffs have standing to challenge Proposition G regardless of whether or not the
24 property in question was voluntarily rented in the past. (*Cwynar* at 659.)
- 25 2. Under Proposition G's One-Owner-Occupancy Provision, one owner's exercise of the
26 right to recovery acts to extinguish that same right with respect to all other current
27 and future owners of the building. (S.F. Admin. Code, ch. 37, § 37.9(a)(8)(vi).)
- 28 3. By creating coerced lifetime tenancies in Plaintiffs' properties, Proposition G
effectuates a permanent invasion of the rights thereto. (Plaintiffs' Statement of

1 Undisputed Facts 3 – 10; *Cwynar* at 655; *Loretto v. Teleprompter Manhattan CATV*
2 *Corp.* (1982) 458 U.S. 419, 426.)

- 3 4. Because Proposition G provides no compensation for affected landlords, it effectuates
4 an unconstitutional per se taking of property as applied to each of the plaintiffs here.
5 (Cal. Const., art. I § 19; U.S. Const., 5th Amend.)
- 6 5. Proposition G's Family Occupancy Provision substantially alters a previously
7 unqualified right – unlimited evictions for relatives – without any showing by the
8 City and County of San Francisco of the benefit to the public at large achieved by
9 imposing this uncompensated obligation on owners who do not live in their own
10 rental property. (Plaintiffs' Statement of Undisputed Facts 14 – 17.)
- 11 6. Plaintiffs' right to withdraw from the rental market entirely does not save the
12 challenged ordinance because plaintiffs do not have the option to cease renting
13 individual units of their own choosing; this so-called "Ellis Act defense" does not
14 alter the Courts analysis under these facts. (See *Cwynar* at 655-58.)

15 IT IS THEREFORE ORDERED THAT:

- 16 1. Plaintiffs' Motion of Summary Judgment is GRANTED. As a matter of law,
17 Proposition G is unconstitutional as applied in this case.
- 18 2. Defendant's Motion for Summary Judgment is DENIED.

19
20 SO ORDERED:

21 Dated: 4/30/03

22 By: 

Hon. David A. Garcia
Judge of the Superior Court

23
24 * 302014

California Superior Court
County of San Francisco
Law & Motion Department • Room 301

KELI CWYNAR, et al.,

Plaintiffs and Petitioners,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, et al.,

Defendants and Respondents.

Case No. 302014

**Certificate of Service by Mail
(CCP § 1013a(4))**

I, Gordon Park-Li, Clerk of the Superior Court of the City and County of San Francisco, certify that:

- 1) I am not a party to the within action;
- 2) On APR 30 2003, I served the attached:

**ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

by placing a copy thereof in a sealed envelope, addressed to the following:

Mr. Andrew W. Schwartz
OFFICE OF CITY ATTORNEY
1 Dr. Carlton B. Goodlett Place, Room 234
San Francisco, CA 94102-4682

John E. Mueller,
NIELSEN, MERKSAMER, PARRINELLO, MUELLER & NAYLOR
591 Redwood Hwy, Suite 4000
Mill Valley, CA 94941

and,

3) I then placed the sealed envelope in the outgoing mail at 400 McAllister St., San Francisco , CA 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practice.

Dated: APR 30 2003

GORDON PARK-LI, Clerk

By: 
Deputy