

File No. 210963 Committee Item No. 5
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date October 18, 2021

Board of Supervisors Meeting Date _____

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Completed by: Erica Major Date October 14, 2021
Completed by: Erica Major Date _____

1 [Administrative Code - Extension Of Temporary Tenant Protections Due To COVID-19]

2
3 **Ordinance amending the Administrative Code to extend the COVID-19 based limit on**
4 **residential evictions, which allows evictions only if based on the non-payment of rent**
5 **or violence or health and safety issues, from September 30, 2021, through December**
6 **31, 2021.**

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

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

15 Section 1. Background, Purpose, and Findings.

16 (a) On February 25, 2020, the Mayor proclaimed a state of emergency due to the
17 COVID-19 crisis, and subsequently imposed a moratorium on residential evictions to protect
18 tenants and help contain the spread of the virus, as reflected in the Twelfth Supplement to the
19 emergency proclamation, which was dated April 30, 2020. Paragraph 1(c) of the Twelfth
20 Supplement limited the ability of landlords to recover possession of a rental unit unless
21 necessary due to violence, threats of violence, or health and safety issues, through two
22 months after its expiration. After issuing the Twelfth Supplement, which was originally set to
23 expire at the end of June 2020, the Mayor extended it several times, one month at a time.

24 (b) Due to the ongoing need to keep people safely housed and to avoid the uncertainty
25 of month-to-month extensions, the Board of Supervisors with the Mayor's approval adopted a
four-month extension via Ordinance No. 216-20, and two subsequent three-month extensions

1 via Ordinance Nos. 29-21 and 83-21, to apply those protections without interruption through
2 September 30, 2021.

3 (c) Although the City has made some progress in returning to normalcy, the
4 continuing crisis, and in particular the sudden and recent spread of variants of the virus and
5 the real possibility of as yet unknown new variants, make it essential to prevent a wave of
6 evictions on October 1. The City has a shortage of affordable rental housing, a significant
7 percentage of its households are renters at risk of permanent displacement should they be
8 forced to leave their current homes, and many potentially impacted renters are essential
9 workers who will be needed immediately if the pandemic takes a turn for the worse. The
10 Board of Supervisors therefore finds it is in the public interest to prevent tenant displacement
11 in San Francisco due to COVID-19 by extending the protections effected by Ordinance No.
12 83-21 for another three months beyond the end date of September 30, 2021, so that its
13 protections last through December 31, 2021. This ordinance is not intended to affect or impair
14 any other existing eviction protections, including state and local protections for tenants who
15 were unable to pay rent or other financial obligations of tenancy that came due between
16 March 1, 2020 and March 31, 2022.

17 (d) As compared to the just cause protections of the California Tenant Protection
18 Act of 2019 (“AB 1482”), this ordinance further limits the permissible reasons for termination of
19 a residential tenancy and provides additional tenant protections. The Board of Supervisors
20 therefore finds that this ordinance is more protective of tenants than AB 1482, and intends
21 that this ordinance shall apply rather than AB 1482.

1 Section 2. Chapter 37 of the Administrative Code is hereby amended by revising
2 Section 37.9, to read as follows:

3
4 **SEC. 37.9. EVICTIONS.**

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

7 * * * *

8
9 **(n) Additional Just Cause Requirements Due to COVID-19.**

10 (1) No landlord shall endeavor to recover possession of a rental unit on or
11 before ~~September 30~~December 31, 2021 unless necessary due to violence, threats of violence,
12 or health and safety issues. This limitation shall be in addition to the just cause requirements
13 set forth in Section 37.9(a), and shall apply to all rental units, including those that are
14 otherwise exempt from just cause requirements pursuant to Section 37.9(b). However, this
15 additional limitation shall not apply to evictions due to unpaid rent or any other unpaid financial
16 obligation of a tenant under the tenancy that came due between March 1, 2020 and ~~June 30,~~
17 ~~2021~~March 31, 2022, inclusive; or to evictions under Section 37.9(a)(13).

18 (2) The protections in subsection (1) shall also apply to units where the rent is
19 controlled or regulated by the City, notwithstanding Section 37.2(r)(4), including without
20 limitation privately-operated units controlled or regulated by the Mayor’s Office of Housing and
21 Community Development and/or the Department of Homelessness and Supportive Housing.

22 (3) This Section 37.9(n) is intended to limit evictions until ~~October 1, 2021~~
23 January 1, 2022, and shall therefore apply to all residential dwelling units described in
24 subsections (1) and (2), including but not limited to those where a notice to vacate or quit was
25

1 pending as of the date that this Section 37.9(n) first took effect and regardless whether the
2 notice was served before or after September 15, 2020.

3 (4) This Section 37.9(n) shall expire by operation of law on ~~October 1, 2021~~
4 January 1, 2022, unless extended by ordinance. Upon expiration, the City Attorney shall cause
5 this Section 37.9(n) to be removed from the Administrative Code.

6
7 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
8 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
9 numbers, letters, punctuation marks, charts, diagrams, or any other constituent parts of the
10 Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board
11 amendment additions, and Board amendment deletions in accordance with the “Note” that
12 appears under the official title of the ordinance.

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

22
23 Section 5. 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 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6

7 By: /s/
8 MANU PRADHAN
9 Deputy City Attorney
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LEGISLATIVE DIGEST

[Administrative Code - Extension Of Temporary Tenant Protections Due To COVID-19]

Ordinance amending the Administrative Code to extend the COVID-19 based limit on residential evictions, which allows evictions only if based on the non-payment of rent or violence or health and safety issues, from September 30, 2021, through December 31, 2021.

Existing Law

In response to the COVID-19 pandemic, the Mayor issued an emergency order in 2020 that prohibited residential evictions unless necessary due to violence, threats of violence, or health and safety issues, or where the eviction is subject to the Ellis Act. The order applied to units covered by the City's just cause rules (Admin. Code Ch. 37), as well as units that are normally exempt from those rules on the basis that the rent is controlled or regulated by the City (e.g., units controlled or regulated by the Mayor's Office of Housing and Community Development and/or the Department of Homelessness and Supportive Housing). The City later adopted Ordinance No. 216-20 to extend these protections through March 31, 2021, and then adopted Ordinance Nos. 29-21 and 083-21 to extend the protections through September 30, 2021.

Amendments to Current Law

The proposed ordinance would extend the protections of Ordinance No. 083-21 through December 31, 2021. The extension does not apply to evictions based on the non-payment of rent that came due between March 1, 2020 and March 31, 2022, as those evictions fall under separate state and local rules.

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September 20, 2021

Dean Preston, Supervisor
San Francisco Board of Supervisors, District 5
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

RE: Proposed Ordinance Regarding COVID-19 Tenant Protections

Dear Supervisor Preston:

On behalf of the members of the California Apartment Association, I write to you to communicate our organization's strong opposition to your proposed ordinance that attempts to impose COVID-19 tenant protections in direct opposition of clear state law.

The Proposed Ordinance

First, in violation of state law, the proposed ordinance would restrict landlords from evicting tenants due to the non-payment of rent (the "Ordinance") that became due between July 1, 2021, and December 31, 2021 (the "Transition Period"). Second, and also in violation of state law, beginning January 1, 2022, the Ordinance would continue to prohibit these evictions if a tenant paid at least 25% of the total rent that accrued during the Transition Period if that tenant can provide documentation showing that they are unable to pay the remainder of rent due to the financial impacts of the COVID-19 pandemic. Finally, the Ordinance would prohibit landlords from imposing late fees or penalties on tenants who missed their Transition Period rent, due to the financial impacts of the COVID-19 pandemic.

Upon even the most cursory review of the Ordinance, it leaves one wondering whether you have reviewed state law because these provisions are in clear contradiction of AB 832 or are already covered by its provisions. With this letter, I would like to inform you of existing law that renders the Ordinance impotent.

The Ordinance's Eviction Provisions Are Preempted by State Law

Regarding any ordinance or administrative action adopted by a "city and county in response to the COVID-19 pandemic to protect tenants from



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Dean Preston, Supervisor
San Francisco Board of Supervisors, District 5
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eviction,” Section 1179.05 of the Code of Civil Procedure (“Section 1179.05”) provides the following:

“Any extension, expansion, renewal, reenactment, or new adoption of a measure, however delineated, that occurs between August 19, 2020, and March 31, 2022, shall have no effect before April 1, 2022.”

Since the Ordinance is being considered during the time period prohibited by Section 1179.05, it has no legal effect. The language of Section 1179.05 is clear and unambiguous. We suspect there will be no shortage of responsible citizens and organizations ready to ensure Section 1179.05 is enforced to the fullest extent of the law.

The Ordinance is Duplicative of AB 832

The Ordinance is duplicative of state law in two areas. First, AB 832, which was an extension of SB 91, continues to ensure that any tenant who pays 25% of the rent due between March 1, 2020, and September 30, 2021, can never be evicted for the non-payment of the remaining rent.

With regard to the post-September 30 unlawful detainer filings and the potential “eviction cliff,” our Legislature and Governor were prepared for this scenario and anticipated the very actions you propose. AB 832 also added the COVID-19 Rental Housing Recovery Act (the “Recovery Act”) that requires detailed procedures for unlawful detainers filed between October 1, 2021, and March 31, 2022. These procedures require a landlord to apply for rental assistance on behalf of a delinquent tenant and prohibits a landlord from evicting a tenant who receives rental assistance. In other words, tenants who need help will receive it even if it takes longer than expected for the money to be dispersed. In sum, no tenant who has been financially impacted from the COVID-19 pandemic will be evicted. Tenants will receive rental assistance, and landlords are required to wait until it is received. To that end, San Francisco Superior Court’s Real Property Court has already implemented procedures to ensure that post-September 30 UD filings strictly comply with these rules.



Dean Preston, Supervisor
San Francisco Board of Supervisors, District 5
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Second, Civil Code section 1942.9 prohibits landlords from specific actions relating to late fees and charges for tenants with a COVID-19 rental debt and who submitted a COVID-19 declaration. Owners cannot:

- Charge that tenant a late fee for the COVID-19 rental debt nor
- Increase fees or charge new fees for services previously provided to that tenant for free.

It is unclear why you would waste taxpayer funds considering an ordinance that is so clearly prohibited by state law and otherwise unnecessary. The residents and taxpayers of the great City and County of San Francisco deserve better. Accordingly, we trust that you will withdraw this proposed legislation.

The California Apartment Association is the largest statewide rental housing trade association in the country, representing over 50,000 single family and multi-family apartment owners and property managers who are responsible for over 2 million affordable and market-rate rental units throughout the State of California.

Sincerely,

CALIFORNIA APARTMENT ASSOCIATION

By
Embert P. Madison, Jr.
State Advocacy and Compliance Counsel

cc: London Breed, Mayor
Dennis J. Herrera, City Attorney

BOARD of SUPERVISORS



City Hall
1 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: Robert Collins, Executive Director, Rent Board
Eric D. Shaw, Director, Mayor's Office of Housing and Community Development
Shireen McSpadden, Executive Director, Department of Homelessness and Supportive Housing

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

DATE: September 22, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Preston on September 14, 2021:

File No. 210963

Ordinance amending the Administrative Code to extend the COVID-19 based limit on residential evictions, which allows evictions only if based on the non-payment of rent or violence or health and safety issues, from September 30, 2021, through December 31, 2021.

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
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
Dylan Schneider, Department of Homelessness and Supportive Housing

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):

Supervisors Preston; Peskin, Walton, Ronen, Chan, Mandelman, Haney

Subject:

Administrative Code - Extension Of Temporary Tenant Protections Due To COVID-19

The text is listed:

Ordinance amending the Administrative Code to extend the COVID-19 based limit on residential evictions, which allows evictions only if based on the non-payment of rent or violence or health and safety issues, from September 30, 2021 through December 31, 2021.

Signature of Sponsoring Supervisor: []

For Clerk's Use Only