

1 [Administrative Code - COVID-19 Tenant Protections]

2

3 **Ordinance amending the Administrative Code to prohibit landlords from evicting**  
 4 **residential tenants for non-payment of rent that came due between July-October 1,**  
 5 **2021, and December 31, 2021, that was not paid due to the COVID-19 pandemic,**  
 6 **provided the tenant has paid at least 25 percent of the rent owed; to prohibit landlords**  
 7 **from imposing late fees, penalties, or similar charges on such tenants; providing that**  
 8 **such amendments will take effect only to the extent state law is modified accordingly;**  
 9 **and making findings as required by the California Tenant Protection Act of 2019.**

10

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

15

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

17

18 Section 1. Purpose and Findings.

19 (a) The City and County of San Francisco is facing an unprecedented public health  
 20 and economic crisis due to the COVID-19 pandemic. On February 25, 2020, the Mayor  
 21 declared a state of emergency due to COVID-19 and the Board of Supervisors concurred in  
 22 the emergency. On March 13, 2020, the Mayor adopted the first of a series of emergency  
 23 orders to prevent the eviction of tenants who were unable to pay certain months' rent due to  
 24 the financial impacts of COVID-19. The City later adopted an ordinance (Ordinance No. 93-  
 25 20) to protect tenants from being evicted due to an inability to pay rent, if the tenant could not

1 pay due to the financial impacts of COVID-19 and the missed rent payments originally came  
2 due between March 16, 2020, and September 30, 2020. The City also created a COVID-19  
3 Rent Resolution and Relief Fund (Ordinance No. 227-20) to provide support to eligible  
4 landlords whose tenants are unable to pay rent due to the financial impacts of the COVID-19  
5 pandemic.

6 (b) At the state level, the Legislature adopted the Tenant, Homeowner, and Small  
7 Landlord Relief and Stabilization Act of 2020 (hereafter, "~~SB 91~~AB 832"), which enacted  
8 additional eviction protections for tenants who were unable to pay their rent due to COVID-19.  
9 ~~But SB 91 applies only to rent payments that originally came due between March 1, 2020 and~~  
10 ~~June 30, 2021, inclusive, and does not protect tenants from being evicted due to rent~~  
11 ~~payments that originally came due on or after July 1, 2021. AB 832 prohibits evictions based~~  
12 ~~on unpaid rent from March-August 2020, and prohibits evictions based on unpaid rent from~~  
13 ~~September 2020-September 2021 if the tenant has paid at least 25% of the rent that originally~~  
14 ~~came due during that time period ("the Transition Time Period"). But AB 832 also includes~~  
15 ~~language preempting certain local actions to further protect tenants from eviction.~~

16 (c) ~~Regardless of whether the Legislature extends SB 91, there is an ongoing~~  
17 ~~emergency in San Francisco. Even with AB 832 in place, there is a compelling need to~~  
18 ~~provide additional protection to tenants in San Francisco.~~ The pandemic appears to be slowly  
19 coming under control, but the end is not in sight, and the threat that evictions will resume on  
20 October 1, 2021 ~~of mass evictions starting July 1, 2021~~ is a looming crisis for tenants who  
21 could be directly affected, as well as for the City as a whole. The City has a shortage of  
22 affordable rental housing, a significant percentage of its households are renters at risk of  
23 permanent displacement should they be forced to leave their current homes, and many  
24 potentially impacted renters are also essential workers who will be needed immediately if the  
25 pandemic takes a turn for the worse. ~~The Board of Supervisors is considering an emergency~~

1 ordinance to suspend evictions due to the non-payment of rent that originally comes due on or  
2 after July 1, 2021 (File No. 210602), but the emergency ordinance would last only 60 days  
3 unless renewed. The threat of mass evictions starting in July 2021 (or if applicable, 60 days  
4 after the adoption of the emergency ordinance) is a looming crisis for tenants who could be  
5 directly affected, as well as for the City as a whole. State and federal relief programs have  
6 been delayed and only began processing San Francisco applications in May 2021, and  
7 these funding delays have in turn impacted the City's efforts to administer relief to landlords  
8 and tenants. See, e.g., Los Angeles Times, "Cash to help California renters goes unspent  
9 with eviction protections expiring soon" (May 20, 2021), available at  
10 [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)  
11 [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  
12 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/)  
13 [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  
14 evictions protections through the end of the calendar year is necessary to help tenants during  
15 this transitional phase. Meanwhile, requests for rental assistance in San Francisco have  
16 climbed above \$130 million, the number of new requests per week has been steadily  
17 increasing, and approximately two in three applicants for assistance have not yet received  
18 money. The rental assistance program received about \$152 million in funding, some of which  
19 is for administrative costs, and the total residential rent debt in San Francisco may exceed  
20 available funds. See, e.g., San Francisco Public Press, "San Francisco Rent Relief Tracker"  
21 (last accessed on September 20, 2021, at [https://www.sfpublishpress.org/san-francisco-rent-](https://www.sfpublishpress.org/san-francisco-rent-relief-tracker/)  
22 relief-tracker/ ). The Board of Supervisors urges the State of California to modify AB 832 to  
23 allow San Francisco to extend the protections for tenants who can pay at least 25% of their  
24 rent, by extending the end date of the Transition Time Period from September 30, 2021  
25 through the end of the calendar year.

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 in the event AB 832 is modified to  
4 allow the City to do so, this ordinance will apply to ~~consistent with SB 91, this ordinance~~  
5 ~~applies~~ to rent payments that originally came due between ~~July~~ October 1, 2021 and  
6 December 31, 2021, inclusive. Nothing in this ordinance shall affect or impair the application  
7 of any other City law or ~~SB 91~~ AB 832 as it currently stands ~~with respect to rent payments that~~  
8 ~~originally came due before July 1, 2021.~~

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

16  
17 Section 2. 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 all  
21 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  
25 under the 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  
4 insufficient funds in the checking account;

5 (D) Provided, however, that subsection (a)(1) shall not apply with  
6 respect to rent payments that initially became due during the time period when paragraph 2 of  
7 the Governor's Executive Order No. N-28-20 (as said time period may be extended by the  
8 Governor from time to time) was in effect, and where the tenant's failure to pay (i) arose out of  
9 a substantial decrease in household income (including, but not limited to, a substantial  
10 decrease in household income caused by layoffs or a reduction in the number of  
11 compensable hours of work, or substantial out-of-pocket expenses); (ii) that was caused by  
12 the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19;  
13 and (iii) is documented. The types of documentation that a tenant may use to show an inability  
14 to pay due to COVID-19 may include, without limitation, bank statements, pay stubs,  
15 employment termination notices, proof of unemployment insurance claim filings, sworn  
16 affidavits, and completed forms prepared by the Rent Board. A tenant shall have the option,  
17 but shall not be required, to use third-party documentation such as a letter from an employer  
18 to show an inability to pay. The provisions of this subsection (a)(1)(D), being necessary for  
19 the welfare of the City and County of San Francisco and its residents, shall be liberally  
20 construed to effectuate its purpose, which is to protect tenants from being evicted for missing  
21 rent payments due to the COVID-19 pandemic. Nothing in this subsection (a)(1)(D) shall  
22 relieve a tenant of the obligation to pay rent, nor restrict a landlord's ability to recover rent due;

23 ~~or~~

24 (E) Provided, further, that prior to January 1, 2022, subsection (a)(1) also shall  
25 not apply with respect to rent payments that initially became due between July-October 1, 2021 and

1 December 31, 2021, inclusive (hereafter, the “Transition Period”), if the tenant can show they were  
2 unable to pay the rent because of the financial impacts of the COVID-19 pandemic as set forth in  
3 subsection (a)(1)(D). Commencing January 1, 2022, subsection (a)(1) shall not apply with respect to  
4 the non-payment of rent that initially became due during the Transition Period if (i) on or before  
5 December 31, ~~2031~~2021, the tenant tenders one or more payments that, when taken together, are of  
6 an amount equal to or not less than 25% of the total rent that initially became due during the  
7 Transition Period; and (ii) the tenant can show they are unable to pay the remaining rent that initially  
8 became due during the Transition Period because of the financial impacts of the COVID-19 pandemic  
9 as set forth in subsection (a)(1)(D). Nothing in either subsection shall relieve a tenant of the obligation  
10 to pay rent, nor restrict a landlord’s ability to recover rent due.

11 \_\_\_\_\_ (i) This Section 37.9(a)(1)(E) shall not be operative so long as  
12 California Code of Civil Procedure 1179.05 continues to prohibit local governments from  
13 enacting or amending local ordinances that apply to rental payments that came due during the  
14 time period covered by this Section 37.9(a)(1)(E), and so long as Section 1179.05 continues  
15 to prohibit such laws from taking effect before April 1, 2022. If Section 1179.05 is amended or  
16 repealed or suspended to allow local jurisdictions to enact such ordinances and for such  
17 ordinances to take effect before April 1, 2022, then this Section 37.9(a)(1)(E) shall take effect  
18 immediately, to the extent authorized by such amendment or repeal or suspension. The Rent  
19 Board shall publish information on its website to inform the public of any such modification to  
20 Section 1179.05. ; or

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

25 \* \* \* \*

1 (E) Notwithstanding any lease provision to the contrary, a landlord may  
2 not impose late fees, penalties, interest, liquidated damages, or similar charges due to a  
3 tenant's non-payment of rent, if the tenant can demonstrate that it missed the rent payment  
4 due to the COVID-19 pandemic as set forth in subsection (a)(1)(D) and/or (a)(1)(E). A  
5 landlord may not recover possession of the unit due to a tenant's failure to pay late such  
6 charges when subsection (a)(1)(D) and/or (a)(1)(E) applies. The foregoing sentence shall not  
7 enlarge or diminish a landlord's rights with respect to such charges when subsection (a)(1)(D) and/or (a)(1)(E)  
8 does not apply; or

9 \* \* \* \*

10  
11 Section 3. 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 Section 4. Effective and Operative Dates. This ordinance shall become effective 30  
21 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor  
22 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,  
23 or the Board of Supervisors overrides the Mayor's veto of the ordinance. This ordinance shall  
24 become operative only if the State of California has modified Section 1179.05 of the California

1 Code of Civil Procedure, as and to the extent provided above in the portions of Section 2 of  
2 this ordinance that would amend Administrative Code Section 37.9(a)(1)(E)(i).

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 APPROVED AS TO FORM:  
12 DENNIS J. HERRERA, City Attorney

13  
14 By: /s/  
15 MANU PRADHAN  
16 Deputy City Attorney  
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