

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
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MEMORANDUM

LAND USE AND TRANSPORTATION COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Myrna Melgar, Chair, Land Use and Transportation Committee

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

DATE: September 27, 2021

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, September 28, 2021

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, September 28, 2021. This item was acted upon at the Committee Meeting on Monday, September 27, 2021, at 1:30 p.m., by the votes indicated.

Item No. 40 **File No. 210962**

Emergency ordinance to temporarily 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, and which is currently set to expire on September 30, 2021.

RECOMMENDED AS A COMMITTEE REPORT

Vote: Supervisor Myrna Melgar - Aye
Supervisor Dean Preston - Aye
Supervisor Aaron Peskin - Aye

cc: Board of Supervisors
Angela Calvillo, Clerk of the Board
Alisa Somera, Legislative Deputy
Anne Pearson, Deputy City Attorney
Kristen Jensen, Deputy City Attorney

File No. 210962 Committee Item No. 6
 Board Item No. 40

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date September 27, 2021

Board of Supervisors Meeting Date September 28, 2021

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
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| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Presidential Action Memo 091521</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Referral FYI 092221</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Melgar Comm Rpt Memo 092221</u> |
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Completed by: Erica Major Date September 23, 2021
 Completed by: Erica Major Date September 27, 2021

1 [Emergency Ordinance - Extension of Temporary Tenant Protections Due to COVID-19]

2

3 **Emergency ordinance to temporarily extend the COVID-19 based limit on residential**
4 **evictions, which allows evictions only if based on the non-payment of rent or violence**
5 **or health and safety issues, and which is currently set to expire on September 30, 2021.**

6

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 ~~*italics Times New Roman font*~~.
10 **Board amendment additions** are in Arial font.
11 **Board amendment deletions** are in ~~Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

11

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

13

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

15

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

20

(b) The City and County of San Francisco is facing an unprecedented public health
21 and economic crisis due to the COVID-19 pandemic. On February 25, 2020, the Mayor
22 declared a state of emergency due to COVID-19 and the Board of Supervisors concurred in
23 the emergency. On April 30, 2020, the Mayor imposed a moratorium on residential evictions
24 to protect tenants and help contain the spread of the virus, as reflected in the Mayor's Twelfth
25 Supplement to the emergency proclamation, dated April 30, 2020. Paragraph 1(c) of the

1 Twelfth Supplement limited the ability of landlords to recover possession of a rental unit
2 unless necessary due to violence, threats of violence, or health and safety issues. After
3 issuing the Twelfth Supplement, which was originally set to expire at the end of June 2020,
4 the Mayor extended it several times, one month at a time. Due to the ongoing need to keep
5 people safely housed and to avoid the uncertainty of month-to-month extensions, the Board of
6 Supervisors with the Mayor's approval adopted a four-month extension via Ordinance No.
7 216-20, and two subsequent three-month extensions via Ordinance Nos. 029-21 and 083-21,
8 to extend the protections without interruption through September 30, 2021.

9 (c) Although the City has made some progress in returning to normalcy, the
10 continuing crisis, and in particular the sudden and recent spread of variants of the virus and
11 the real possibility of as yet unknown new variants, make it essential to prevent a wave of
12 evictions on October 1. The City has a shortage of affordable rental housing, a significant
13 percentage of its households are renters at risk of permanent displacement should they be
14 forced to leave their current homes, and many potentially impacted renters are essential
15 workers who will be needed immediately if the pandemic takes a turn for the worse. The
16 Board of Supervisors therefore finds it is in the public interest to prevent tenant displacement
17 in San Francisco due to COVID-19 to the maximum extent permitted by law.

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

1 Section 2. Additional Just Cause Requirements Due to COVID-19.

2 (a) No landlord shall endeavor to recover possession of a rental unit unless
3 necessary due to violence, threats of violence, or health and safety issues. This limitation
4 shall be in addition to the just cause requirements set forth in Administrative Code Section
5 37.9(a), and shall apply to all rental units, including those that are otherwise exempt from just
6 cause requirements pursuant to Administrative Code Section 37.9(b). However, this additional
7 limitation shall not apply to evictions due to unpaid rent or any other unpaid financial obligation
8 of a tenant under the tenancy that came due between March 1, 2020 and March 31, 2022,
9 inclusive; or to evictions under Administrative Code Section 37.9(a)(13).

10 (b) The protections in paragraph (1) shall also apply to units where the rent is
11 controlled or regulated by the City, notwithstanding Administrative Code Section 37.2(r)(4),
12 including without limitation privately-operated units controlled or regulated by the Mayor's
13 Office of Housing and Community Development and/or the Department of Homelessness and
14 Supportive Housing.

15 (c) This emergency ordinance is intended to limit evictions as soon as it takes
16 effect, and shall therefore apply to all residential dwelling units described in subsections (a)
17 and (b), including but not limited to those where a notice to vacate or quit was pending as of
18 the date that this emergency ordinance first took effect and regardless whether the notice was
19 served before or after September 14, 2021.

20 (d) The provisions of this emergency ordinance, being necessary for the welfare of
21 the City and its residents, shall be liberally construed to effectuate its purpose.

22
23 Section 3. Effective Date; Sunset Date. Consistent with Charter Section 2.107, this
24 emergency ordinance shall become effective immediately upon enactment. Enactment
25 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or

1 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors
2 overrides the Mayor's veto of the ordinance. Once enacted, it shall remain in effect for 60
3 days, or until such time as the non-emergency ordinance to extend the COVID-19 based
4 eviction protections in Board of Supervisors File No. 210962 may take effect, whichever is
5 sooner. The foregoing sentence shall not prevent future reenactments of this emergency
6 ordinance as provided by Section 2.107.

7

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

16

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

20

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

23

24 By: /s/
25 MANU PRADHAN
Deputy City Attorney
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LEGISLATIVE DIGEST

[Emergency Ordinance - Extension of Temporary Tenant Protections Due to COVID-19]

Emergency ordinance to temporarily 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, and which is currently set to expire on September 30, 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 for another 60 days, or until a non-emergency ordinance extending the protections is adopted, whichever is sooner. 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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President, District 10
BOARD of SUPERVISORS



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Shamann Walton

PRESIDENTIAL ACTION

Date: 9/15/2021

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,

Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No.

210962

Preston

(Primary Sponsor)

Title.

Emergency Ordinance - Extension of Temporary Tenant Protections Due to COVID-19

Transferring (Board Rule No 3.3)

File No.

(Primary Sponsor)

Title.

From:

Committee

To:

Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor:

Replacing Supervisor:

For:

(Date)

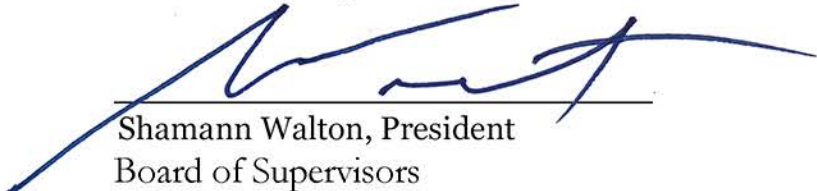
(Committee)

Meeting

Start Time:

End Time:

Temporary Assignment: Partial Full Meeting


Shamann Walton, President
Board of Supervisors



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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.



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Dean Preston, Supervisor
San Francisco Board of Supervisors, District 5
Page 3

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

A handwritten signature in blue ink, appearing to read 'E. P. Madison, Jr.', is written over a light blue circular stamp.

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

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

BOARD of SUPERVISORS



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MEMORANDUM

TO: Robert Collins, Executive Director, Rent Board

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. 210962

Emergency ordinance to temporarily 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, and which is currently set to expire on September 30, 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.



MYRNA MELGAR

DATE: September 22, 2021

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Myrna Melgar, Chair, Land Use and Transportation Committee *MM*

RE: Land Use and Transportation Committee
COMMITTEE REPORTS

Pursuant to Board Rule 4.20, as Chair of the Land Use and Transportation Committee, I have deemed the following matter is of an urgent nature and request it be considered by the full Board on Tuesday, September 28, 2021, as a Committee Report:

File No. 210962 Emergency Ordinance - Extension of Temporary Tenant Protections Due to COVID-19
Sponsors: Preston; Peskin, Walton, Ronen, Chan, Mandelman and Haney

This matter will be heard in the Land Use and Transportation Committee at a Regular Meeting on Monday, September 27, 2021, at 1:30pm.