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January 24, 2022

San Francisco Board of Supervisors
c/o Angela Calvillo, Clerk of Board
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102
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Catherine.Stefani@sfgov.org
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Gordon.Mar@sfgov.org

VIA US MAIL AND EMAIL

Re: San Francisco Ordinance, File No. 211265

Dear Supervisors Chan, Haney, Mar, Mandelman, Ronan, Stefani, Walton, Safai, Melgar, Peskin and Preston, and Ms. Calvillo,

We write on behalf of the Small Property Owners of San Francisco in opposition to recently proposed San Francisco Ordinance, File No. 211265 (the "Ordinance"), which we understand will be heard before the San Francisco Board of Supervisors on January 25, 2022. The Ordinance purports to eliminate "fault based" grounds for eviction under the San Francisco Rent Ordinance, unless landlords provide defaulting tenants "written warning" that "describes the alleged violation and informs the tenant that a failure to correct such violation within ten days may result in the initiation of eviction proceedings." The Ordinance unlawfully suspends, and restricts landlords from accessing, unlawful detainer ("UD") proceedings and is therefore preempted by state law.

The specific purpose of a UD action is to provide landlords a summary proceeding for recovery of possession of their properties. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 149-151.)

While cities may be authorized to limit *substantive* grounds for eviction, thereby "giving rise to a substantive ground of defense" in a UD proceeding, additional *procedural* requirements imposed by local government that are not found in the UD statutes are preempted by those laws. (*Ibid*.)

The Ordinance does not create a substantive defense to a UD action. Instead, it purports to eliminate permissible just causes for eviction *until* landlords have entertained a procedure entirely of local making. This local procedure places a ten-day block of time between a tenant's violation and a landlord's access to a UD proceeding. It purports to apply to cases of default in rent and breach of lease, as well as to cases of tenant nuisance and waste. In the former scenarios, the California Legislature has clearly stated that three days, excluding weekends and judicial holidays, is the requisite notice period. (CCP §§1161(2), (3).) In the latter scenarios, the lease is "terminated" under state law, and only three *calendar* days' notice, *including* weekends and holidays, and without the opportunity to cure, is required before availing oneself of the UD process. (CCP §1161(4).) While state law permits local government to enact additional tenant protections in certain cases, those protections must not be "prohibited by any other provision of law." (CCP § 1946.2(g)(B)(ii); also see, CCP § 1179.05(e) [reiterating per AB 3088 (2020), that UD statutes are "a matter of statewide concern"].)

The Ordinance's requirement of a 10-day "warning" prior to serving an eviction notice under state law "raises procedural barriers between the landlord and the judicial proceeding," and is therefore precisely what the UD statutes prohibit. (*Birkenfeld, supra*, 17 Cal.3d at pp. 150-151 [Holding Berkeley's requirement that a landlord obtain a "certificate of eviction" from local government prior to initiating UD proceeding in conflict with UD statutes].) The Ordinance's purpose, to reduce tenant hardship and "promote economy in the use of judicial resources" does not save it from preemption; only the state has the authority to govern timing in the UD procedures to meet this objective—and it has. (see, AB 2343 (2018) [extending timeline for curable eviction notices by excluding weekends and judicial holidays from the requisite "three days"]; AB 3088 (2020) [extending timeline to "no shorter than 15 days, excluding Saturdays, Sundays, and other judicial holidays" in the event of Covid-related rent default].)

In closing, our client writes not to question the soundness of the Ordinance's purpose, but to emphasize that San Francisco does not have the authority to implement it. For this reason, we urge the Board to not adopt the Ordinance.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC

/s/ Emily L. Brough
Emily L. Brough

San Francisco Apartment Association

January 13, 2022
Angela Calvillo, Clerk of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, California 94102

Dear Clerk of the Board of Supervisors,

Included with this note, please find a letter from the San Francisco Apartment Association in opposition to SF Ordinance File No. 211265.

Please distribute this letter to all eleven members of the Board of Supervisors prior to their regular meeting on January 25, 2022.

Thank you,

Janan New

San Francisco Apartment Association

265 Ivy Street, San Francisco, California 94102
Telephone: (415) 255-2288 Fax: (415) 255-1112 www.sfaa.org

San Francisco Apartment Association

January 13, 2022
San Francisco Board of Supervisors
c/o Angela Calvillo, Clerk of the Board
1 Dr. Carlton B. Goodlett Place, Room 244

VIA US MAIL AND EMAIL

Re: San Francisco Ordinance, File No. 211265

Dear Members of the Board of Supervisors,

The San Francisco Apartment Association writes to you to oppose San Francisco Ordinance File No. 211265 (the "Ordinance"), which we understand will be heard by the full Board of Supervisors on January 25, 2022. The Ordinance purports to eliminate "fault-based" grounds for eviction under the San Francisco Rent Ordinance, unless landlords provide defaulting tenants "written warning" that "describes the alleged violation and informs the tenant that a failure to correct such violation within ten days may result in the initiation of eviction proceedings." The Ordinance unlawfully suspends and restricts landlords from accessing unlawful detainer ("UD") proceedings, and is therefore preempted by state law.

The specific purpose of a UD action is to provide landlords a summary proceeding for recovery of possession of their properties. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 149-151.) While cities may be authorized to limit *substantive* grounds for eviction, thereby "giving rise to a substantive ground of defense" in a UD proceeding, additional *procedural* requirements imposed by local government that are not found in the UD statutes are preempted by those laws. (*Ibid.*)

Rather than creating a substantive defense to a UD action, the Ordinance purports to eliminate permissible just causes *until* landlords have entertained a procedure entirely of local making. This local procedure places a ten-day block of time between a tenant's violation and a landlord's access to a UD proceeding. It purports to apply to cases of default in rent and breach of lease, as well as to cases of tenant nuisance and waste. In the former scenarios, the California Legislature has clearly stated that three days, excluding weekends and judicial holidays, is the requisite notice period. (Cal. Code Civ. Proc., §§1161(2), (3).) In the latter scenarios, the lease is "terminated" under state law, and only three *calendar* days' notice, *including* weekends and holidays, and without the opportunity to cure, is required before availing oneself of the UD process. (Cal. Code Civ. Proc., §1161(4).) While state law permits local government to enact additional tenant protections in certain cases, those protections must not be "prohibited by any other provision of law." (CCP § 1946.2(g)(B)(ii); also see, CCP § 1179.05(e) [reiterating per AB 3088 (2020), that UD statutes are "a matter of statewide concern"].)

This 10-day "warning" prior to serving an eviction notice under state law, "raises procedural barriers between the landlord and the judicial proceeding," and is therefore precisely what the UD

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statutes prohibit. (*Birkenfeld, supra,* 17 Cal.3d at pp. 150-151 [Holding Berkeley's requirement that a landlord obtain a "certificate of eviction" from local government prior to initiating UD proceeding in conflict with UD statutes].) The Ordinance's purpose, to reduce tenant hardship and "promote economy in the use of judicial resources" does not save it from preemption; only the state has the authority to govern timing in the UD procedures to meet this objective—and it has. (See, AB 2343 (2018) [extending timeline for curable eviction notices by excluding weekends and judicial holidays from the requisite "three days"]; AB 3088 (2020) [extending timeline to "no shorter than 15 days, excluding Saturdays, Sundays, and other judicial holidays" in the event of Covid-related rent default].)

We write to you not to question the soundness of the Ordinance's purpose, but to emphasize that San Francisco does not have the authority to implement it. For this reason, we urge the Board to not adopt the Ordinance.

Cc: Mayor London Breed

Sincerely,

Janan New

San Francisco Apartment Association

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