

File No. 200681

Committee Item No. \_\_\_\_\_

Board Item No. 32

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Committee: \_\_\_\_\_

Date: \_\_\_\_\_

Board of Supervisors Meeting

Date: June 30, 2020

### Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

### OTHER

- California State Assembly Bill No. 1436 - 06/10/20
- \_\_\_\_\_
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Prepared by: Lisa Lew

Date: June 26, 2020

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Supporting California State Assembly Bill No. 1436 (Chiu) - Protecting Tenants from Rental  
2 Default During the COVID-19 State of Emergency]

3 **Resolution supporting California State Assembly Bill No. 1436, authored by Assembly**  
4 **Member David Chiu, and co-authored by Assembly Members Rob Bonta, Lorena**  
5 **Gonzalez, Miguel Santiago, and Buffy Wicks, to protect tenants from rental payment**  
6 **default during the COVID-19 State of Emergency.**

7  
8 WHEREAS, On March 4, 2020, Governor Gavin Newsom declared a State of  
9 Emergency to help California prepare for the COVID-19 pandemic by making additional  
10 resources available, formalize emergency actions underway across multiple state agencies  
11 and departments and to help the state prepare for a broader spread of COVID-19; and

12 WHEREAS, On March 27, 2020, Governor Gavin Newsom issued an executive order  
13 banning the enforcement of eviction orders for renters affected by COVID-19 through May 31,  
14 2020, prohibiting landlords from evicting tenants for nonpayment of rent and prohibiting  
15 enforcement of evictions by law enforcement or courts and requiring tenants to declare in  
16 writing, no more than seven days after the rent comes due, that the tenant cannot pay all or  
17 part of their rent due to COVID-19; and

18 WHEREAS, On May 29, 2020, Governor Gavin Newsom issued an executive order  
19 extending authorization for local governments to halt evictions for renters impacted by the  
20 COVID-19 pandemic, through July 28, 2020; and

21 WHEREAS, The Judicial Council of California in April put a hold on evictions and  
22 foreclosures as part of a response to the pandemic, which is scheduled to expire on August 3,  
23 2020; and

24 WHEREAS, California has nearly 17 million renters, and San Francisco has nearly  
25 600,000 renters; and

1           WHEREAS, Over half of the state’s renters, and over 80% of low-income renters, are  
2 rent-burdened, meaning they pay over 30% of their income towards rent and therefore have  
3 less money to spend on other necessities like food, healthcare, transportation, and education;  
4 and

5           WHEREAS, Many Californians were already struggling to afford high rents even before  
6 the COVID-19 pandemic and now risk becoming homeless adding to the to the surging  
7 unhoused population in the state; and

8           WHEREAS, The COVID-19 pandemic has pushed nearly 6 million Californians into  
9 unemployment since March; and

10           WHEREAS, While it is unknown how many tenants have been unable to meet their rent  
11 obligations for the past three months of rent that have come due so far, a recent U.S. Census  
12 Bureau survey found that nearly 14% of California tenants did not pay or deferred their rent  
13 last month, and more than 31% had no or only slight confidence that they would be able to  
14 pay in June; and

15           WHEREAS, A wave of mass evictions following the COVID-19 pandemic will be  
16 catastrophic to California; and

17           WHEREAS, On June 10, 2020, Assembly Member David Chiu introduced California  
18 State Assembly Bill No. 1436 (AB 1436) to prevent a possible wave of evictions once  
19 temporary protections are lifted for millions of Californians who have lost their jobs in recent  
20 months due to the COVID-19 pandemic; and

21           WHEREAS, AB 1436 will extend expiring tenant protections from Governor Gavin  
22 Newsom’s executive order; and

23           WHEREAS, While AB 1436 will not provide tenants with direct financial aid, it will  
24 provide tenants fifteen months to pay back rent, prevent credit or default actions against  
25 tenants for failure to pay rent during the State of Emergency, and will disallow the use of the

1 unlawful detainer clause, which defines “continuing to possess the property without  
2 permission of the landlord after defaulting on rent” as illegal and subject to court proceedings  
3 in the case of a tenant who cannot pay rent during COVID-19; and

4 WHEREAS, AB 1436 will remove the threat of mass evictions during and after the  
5 COVID-19 pandemic; and

6 WHEREAS, On June 16, 2020, the San Francisco Board of Supervisors passed similar  
7 legislation, File No. 200375, an ordinance amending the Administrative Code permanently to  
8 prohibit landlords from evicting residential tenants for non-payment of rent that was not paid  
9 due to the COVID-19 pandemic and to prohibit landlords from imposing late fees, penalties, or  
10 similar charges on such tenants; and making findings as required by the California Tenant  
11 Protection Act of 2019; now, therefore, be it

12 RESOLVED, That the San Francisco Board of Supervisors urges the California State  
13 Legislature to adopt a preemptive clause in the California Assembly Bill 1436 so that it does  
14 not affect local government laws that are stronger than the state law; and, be it

15 FURTHER RESOLVED, That the San Francisco Board of Supervisors support the  
16 California Assembly Bill 1436 and urges the State Assembly and Senate to pass the bill if  
17 amended to include the preemptive clause allowing stronger local government laws on tenant  
18 protections relating to the COVID-19 pandemic; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors hereby directs the Clerk of the  
20 Board to transmit a copy of this Resolution to the California State Assembly and the California  
21 State Senate as well as the Bill’s primary sponsor, Assembly Member David Chiu.

22  
23  
24  
25

AMENDED IN SENATE JUNE 10, 2020

AMENDED IN ASSEMBLY MAY 16, 2019

AMENDED IN ASSEMBLY APRIL 25, 2019

AMENDED IN ASSEMBLY MARCH 27, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1436**

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**Introduced by Assembly Member ~~Mark Stone~~ Members *Chiu, Bonta, Gonzalez, Santiago, and Wicks*  
(Coauthors: Assembly Members *Kalra, Nazarian, Quirk-Silva, and Luz Rivas*)  
(Coauthors: Senators *Allen, Durazo, Wieckowski, and Wiener*)**

February 22, 2019

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~~An act to amend Section 11451.5 of the Welfare and Institutions Code, relating to CalWORKs.~~ *An act to add Sections 1947.01, 1947.02, and 1947.03 to the Civil Code, and to add Section 1161.6 to the Code of Civil Procedure, relating to tenancy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1436, as amended, ~~Mark Stone~~ *Chiu*. ~~CalWORKs: eligibility: income exemptions.~~ *Tenancy: rental payment default: state of emergency: COVID-19.*

*Existing law regulates specified terms and conditions of tenancies. Existing law authorizes a landlord to demand security at the beginning of a tenancy for residential property and specifies the purposes for which the security may be used, including, among others, compensating the landlord for the tenant's default in payment of rent.*

*This bill would prohibit a landlord from applying a security deposit or monthly rental payment for the satisfaction of an obligation other than the prospective month's rent if the obligation accrued during or within 90 days after the termination of a state of emergency related to COVID-19, except as specified. The bill would provide that a tenant who failed to pay rent that accrued during that period shall not be deemed to be in default and would prohibit any action for recovery of unpaid rent until 15 months after the state of emergency is terminated. The bill would prohibit certain entities, including a housing provider, from using an alleged default in rent that accrued during that period as a negative factor for the purpose of evaluating creditworthiness or for other specified purposes.*

*Existing law provides that a tenant is guilty of unlawful detainer if the tenant continues to possess the property without permission of the landlord after the tenant defaults on rent, among other reasons.*

*This bill would provide that a tenant is not guilty of unlawful detainer if the alleged default in payment of rent accrued during, or within 90 days after the termination of, a state of emergency related to COVID-19. The bill would require a landlord, in an action to recover a debt arising from an alleged default in rent accrued during that period to submit in the verified complaint or other document submitted under penalty of perjury the amount of any payments, mortgage forbearance, mortgage forgiveness, or property tax reduction obtained from the lender or local, state, or federal entities to offset, replace, or compensate the creditor for lost rental income, and would require a court to offset the amount of rental payments as specified.*

~~Existing federal law provides for allocation of federal funds through the federal Temporary Assistance for Needy Families (TANF) block grant program to eligible states. Existing law provides for the California Work Opportunity and Responsibility to Kids (CalWORKs) program, under which, through a combination of state and county funds and federal funds received through the TANF program, each county provides cash assistance and other benefits to qualified low-income families. Existing law continuously appropriates money from the General Fund to pay for a share of aid grant costs under the CalWORKs program. Existing law exempts certain income from the calculation of the family's income for purposes of determining eligibility for the CalWORKs program, including disability-based unearned income, in accordance with specified provisions, depending upon whether or not that income exceeds \$225.~~

~~This bill would incrementally increase the above amounts of exempted income on an annual basis, commencing on January 1, 2020. The bill would declare that no appropriation would be made for purposes of the bill pursuant to the provision continuously appropriating funds for the CalWORKs program. Because the bill would result in an increase in CalWORKs eligibility, thus increasing the duties of counties administering the CalWORKs program, the bill would impose a state-mandated local program. The bill also would delete an obsolete provision of existing law.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes-no. State-mandated local program: yes-no.~~

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 1947.01 is added to the Civil Code,
- 2     immediately following Section 1947, to read:
- 3     1947.01. (a) Notwithstanding Sections 1947, 1950.5, or any
- 4     other law, a landlord shall not apply a security deposit or monthly
- 5     rental payment tendered by that tenant to a satisfaction of an
- 6     obligation other than the prospective month’s rent if the obligation
- 7     accrued during, or within 90 days after the termination of, a state
- 8     of emergency related to COVID-19, unless the payment or security
- 9     is specifically designated by the tenant in writing to be in
- 10    satisfaction of the obligation.
- 11    (b) Any stipulation, settlement agreement, or other agreement,
- 12    including a lease agreement, that conflicts with or purports to
- 13    waive the provisions of this section is prohibited and is void as
- 14    contrary to public policy.
- 15    (c) For purposes of this section, “state of emergency” means
- 16    a state of emergency officially declared by the state, including,
- 17    but not limited to, the state of emergency proclamation issued by
- 18    the Governor on March 4, 2020, or a local emergency declared
- 19    in the jurisdiction in which the property is located.

1     *SEC. 2. Section 1947.02 is added to the Civil Code, immediately*  
2 *following Section 1947.01, to read:*

3     *1947.02. (a) (1) A tenant who failed to perform an obligation*  
4 *to pay rent that accrued during, or within 90 days after the*  
5 *termination of, a state of emergency related to COVID-19 shall*  
6 *not be deemed to be in default of the obligation, and no action to*  
7 *recover unpaid rent may be pursued, until 15 months after the*  
8 *state or local state of emergency is lifted.*

9     *(2) For purposes of this section, “state of emergency” means*  
10 *a state of emergency officially declared by the state, including,*  
11 *but not limited to, the state of emergency proclamation issued by*  
12 *the Governor on March 4, 2020, or a local emergency declared*  
13 *in the jurisdiction in which the property is located.*

14     *(b) (1) Nothing in this section shall prohibit a landlord from*  
15 *recovering unpaid rent by written agreement with the tenant,*  
16 *provided that the agreement does not exceed the actual amount of*  
17 *the debt, does not attorney’s fees or costs, late fees, penalties, or*  
18 *interest related to the unpaid rent, and the debt is offset by the*  
19 *amount of any payments, mortgage forbearance, mortgage*  
20 *forgiveness, or property tax reduction obtained from local, state,*  
21 *or federal entities that were provided to the landlord to offset,*  
22 *replace, or compensate the landlord for decreased rental income*  
23 *or provided as financial assistance intended to avoid foreclosure*  
24 *of the subject property.*

25     *(2) The agreement shall not require the tenant to vacate the*  
26 *premises as a condition of satisfying the unpaid rent obligation.*

27     *(3) A landlord shall notify the tenant in writing of their rights*  
28 *under this section before the agreement is signed.*

29     *(4) Any agreement with a tenant regarding the payment of rent*  
30 *shall be in writing and shall adhere to the requirements of Section*  
31 *1632.*

32     *(c) A landlord shall not charge a tenant fees assessed for late*  
33 *payment of rent that accrued during the state of emergency or*  
34 *within 90 days thereafter, nor may the landlord charge fees to a*  
35 *tenant for services previously provided by the landlord, as*  
36 *compensation for purported damages for late payment of rent that*  
37 *accrued during the state of emergency or within 90 days thereafter.*  
38 *A landlord shall not provide different terms or conditions of*  
39 *tenancy or withhold a service or amenity based on whether a tenant*  
40 *repays or agrees to repay all or any portion of unpaid rent.*



1 (d) A landlord shall not harass, threaten, or seek to intimidate  
2 a tenant in order to obtain a tenant's payment or agreement to  
3 pay any portion of unpaid rent or to obtain a tenant's vacation of  
4 the property because of a tenant's failure to pay rent.

5 (e) Any stipulation, settlement agreement, or other agreement,  
6 including a lease agreement, that conflicts with or purports to  
7 waive the provisions of this section is prohibited and is void as  
8 contrary to public policy.

9 SEC. 3. Section 1947.03 is added to the Civil Code, immediately  
10 following Section 1947.02, to read:

11 1947.03. (a) A housing provider, credit reporting agency,  
12 tenant screening company, or other entity that evaluates tenants  
13 on behalf of a housing provider shall not use an alleged default  
14 in rent that accrued during, or within 90 days after the termination  
15 of, a state of emergency related to COVID-19 as a negative factor  
16 for the purpose of evaluating creditworthiness or as the basis for  
17 a negative reference to a prospective housing provider, regardless  
18 of whether a report is received alleging default in the payment of  
19 rent.

20 (b) For purposes of this section, "state of emergency" means  
21 a state of emergency officially declared by the state, including,  
22 but not limited to, the state of emergency proclamation issued by  
23 the Governor on March 4, 2020, or a local emergency declared  
24 in the jurisdiction in which the property is located.

25 SEC. 4. Section 1161.6 is added to the Code of Civil Procedure,  
26 immediately following Section 1161.5, to read:

27 1161.6. (a) Notwithstanding paragraph (2) of Section 1161,  
28 a tenant is not guilty of unlawful detainer if the alleged default in  
29 payment of rent accrued during, or within 90 days after the  
30 termination of, a state of emergency related to COVID-19. Nothing  
31 in this section shall prohibit a landlord from seeking to recover  
32 unpaid rent through other civil remedies or by written agreement  
33 with the tenant. It shall be unlawful to terminate a tenancy in  
34 retaliation for a default in rent that is subject to this subdivision.  
35 Any stipulation, settlement agreement, or other agreement,  
36 including a lease agreement, that conflicts with or purports to  
37 waive the provisions of this subdivision is prohibited and is void  
38 as contrary to public policy.

39 (b) (1) In any action to recover a debt arising from an alleged  
40 default in rent that accrued during, or within 90 days after the

1 termination of, a state of emergency related to COVID-19, the  
2 creditor shall set forth in the verified complaint or other document  
3 submitted under penalty of perjury the amount of any payments,  
4 mortgage forbearance, mortgage forgiveness, or property tax  
5 reduction during the relevant time period obtained from any local,  
6 state, or federal entity that were provided to the landlord to offset,  
7 replace, or compensate the landlord for decreased rental income  
8 or provided as financial assistance intended to avoid foreclosure  
9 of the subject property. In any judgment on the debt, the court  
10 shall offset the amount of these payments by the portion of the  
11 financial assistance fairly attributable to the rental unit in question.  
12 The defendant may present evidence that the creditor received  
13 relief designed to offset debt related to the rental unit in question,  
14 and any agreement in satisfaction of such a debt shall be void if  
15 it fails to account for receipt of payments described in this section.

16 (2) In any action described in subdivision (a), the creditor shall  
17 not be entitled to recover fees assessed against a tenant for late  
18 payment of rent.

19 (c) For purposes of this section, “state of emergency” means  
20 a state of emergency officially declared by the state, including,  
21 but not limited to, the state of emergency proclamation issued by  
22 the Governor on March 4, 2020, or a local emergency declared  
23 in the jurisdiction in which the property is located.

24 SEC. 5. The provisions of this bill are severable. If any  
25 provision of this bill or its application is held invalid, that invalidity  
26 shall not affect other provisions or applications that can be given  
27 effect without the invalid provision or application.

28 SECTION 1. ~~Section 11451.5 of the Welfare and Institutions~~  
29 ~~Code is amended to read:~~

30 ~~11451.5. (a) Except as provided in subdivision (c), the~~  
31 ~~following income shall be exempt from the calculation of the~~  
32 ~~income of the family for purposes of subdivision (a) of Section~~  
33 ~~11450:~~

34 ~~(1) If disability-based unearned income does not exceed two~~  
35 ~~hundred twenty-five dollars (\$225), both of the following amounts:~~

36 ~~(A) All disability-based unearned income, plus any amount of~~  
37 ~~not otherwise exempt earned income equal to the amount of the~~  
38 ~~difference between the amount of disability-based unearned income~~  
39 ~~and two hundred twenty-five dollars (\$225).~~

1     ~~(B) Fifty percent of all not otherwise exempt earned income in~~  
2 ~~excess of the amount applied to meet the differential applied in~~  
3 ~~subparagraph (A).~~  
4     ~~(2) If disability-based unearned income exceeds two hundred~~  
5 ~~twenty-five dollars (\$225), both of the following amounts:~~  
6     ~~(A) All of the first two hundred twenty-five dollars (\$225) in~~  
7 ~~disability-based unearned income.~~  
8     ~~(B) Fifty percent of all earned income.~~  
9     ~~(b) For purposes of this section:~~  
10     ~~(1) Earned income means gross income received as wages,~~  
11 ~~salary, employer-provided sick leave benefits, commissions, or~~  
12 ~~profits from activities such as a business enterprise or farming in~~  
13 ~~which the recipient is engaged as a self-employed individual or as~~  
14 ~~an employee.~~  
15     ~~(2) Disability-based unearned income means state disability~~  
16 ~~insurance benefits, private disability insurance benefits, temporary~~  
17 ~~workers' compensation benefits, social security disability benefits,~~  
18 ~~and any veteran's disability compensation.~~  
19     ~~(3) Unearned income means any income not described in~~  
20 ~~paragraph (1) or (2).~~  
21     ~~(c) Each two-hundred-twenty-five-dollar (\$225) amount~~  
22 ~~specified in paragraphs (1) and (2) of, and subparagraphs (A) of~~  
23 ~~paragraphs (1) and (2) of, subdivision (a), shall be increased as~~  
24 ~~follows:~~  
25     ~~(1) Effective January 1, 2020, to five hundred dollars (\$500).~~  
26     ~~(2) Effective January 1, 2021, to five hundred fifty dollars~~  
27 ~~(\$550).~~  
28     ~~(3) Effective January 1, 2022, and annually thereafter, to six~~  
29 ~~hundred dollars (\$600). The amount of exempted income shall be~~  
30 ~~increased on January 1 of each subsequent year by an amount equal~~  
31 ~~to the increase in the California Necessities Index for the most~~  
32 ~~recent fiscal year.~~  
33     ~~SEC. 2. No appropriation pursuant to Section 15200 of the~~  
34 ~~Welfare and Institutions Code shall be made for the purposes of~~  
35 ~~this act.~~  
36     ~~SEC. 3. If the Commission on State Mandates determines that~~  
37 ~~this act contains costs mandated by the state, reimbursement to~~  
38 ~~local agencies and school districts for those costs shall be made~~

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O

# 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):

Walton, Preston

Subject:

Supporting California State Assembly Bill No. 1436 (Chiu) – Protecting Tenants from Rental Default During the COVID-19 State of Emergency

The text is listed:

Resolution supporting California Assembly Bill No. 1436, authored by Assembly Member David Chiu, and co-authored by Assembly Members Rob Bonta, Lorena Gonzalez, Miguel Santiago, and Buffy Wicks, to protect tenants from rental payment default during the COVID-19 State of Emergency.

Signature of Sponsoring Supervisor: /s/ Shamann Walton

For Clerk's Use Only