

**From:** [Emma Heinichen](#)  
**To:** [Major, Erica \(BOS\)](#); [MelgarStaff \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Peskin, Aaron \(BOS\)](#)  
**Cc:** [Emily Lowther Brough](#); [Andrew Zacks](#)  
**Subject:** FW: San Francisco Ordinance, File No. 211265  
**Date:** Monday, January 10, 2022 11:34:45 AM  
**Attachments:** [BOS LTR 1.10.2022.pdf](#)  
**Importance:** High

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Good morning,

Apologies for the duplicate transmission. I'm re-sending the below/attached with Mr. Peskin's email address corrected.

Thank you,

Emma Heinichen  
Paralegal  
Zacks, Freedman & Patterson, PC  
601 Montgomery Street, Suite 400  
San Francisco, CA 94111  
Telephone: [\(415\) 956-8100](tel:(415)956-8100)  
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**From:** Emma Heinichen  
**Sent:** Monday, January 10, 2022 11:30 AM  
**To:** [Erica.major@sfgov.org](mailto:Erica.major@sfgov.org); [MelgarStaff@sfgov.org](mailto:MelgarStaff@sfgov.org); [Dean.Preston@sfgov.org](mailto:Dean.Preston@sfgov.org); [AaronPeskin@sfgov.org](mailto:AaronPeskin@sfgov.org)  
**Cc:** [Emily Lowther Brough <emily@zfplaw.com>](mailto:emily@zfplaw.com); [Andrew Zacks <az@zfplaw.com>](mailto:az@zfplaw.com); [Angelica Nguyen <angelica@zfplaw.com>](mailto:angelica@zfplaw.com)  
**Subject:** San Francisco Ordinance, File No. 211265  
**Importance:** High

Good morning,

At the request of Emily Brough, I attach a letter which has also been sent to you by First Class Mail.

Sincerely,

Emma Heinichen  
Paralegal  
Zacks, Freedman & Patterson, PC  
601 Montgomery Street, Suite 400  
San Francisco, CA 94111  
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# ZACKS, FREEDMAN & PATTERSON

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January 10, 2022

San Francisco Board of Supervisors  
Supervisors Melgar, Peskin and Preston  
c/o Erica Major, Clerk of the Land Use  
and Transportation Committee  
1390 Market, 7th Floor  
San Francisco, CA 94102  
[Erica.major@sfgov.org](mailto:Erica.major@sfgov.org)  
[MelgarStaff@sfgov.org](mailto:MelgarStaff@sfgov.org)  
[Dean.Preston@sfgov.org](mailto:Dean.Preston@sfgov.org)  
[Aaron.Peskin@sfgov.org](mailto:Aaron.Peskin@sfgov.org)

VIA US MAIL AND EMAIL

Re: San Francisco Ordinance, File No. 211265

Dear Supervisors Melgar, Peskin and Preston and Ms. Major,

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 Land Use and Transportation Committee today, January 10, 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

**From:** [Cindy O'Neill](#)  
**To:** [Major, Erica \(BOS\)](#)  
**Subject:** Dean Preston's eviction legislation  
**Date:** Monday, January 10, 2022 12:13:31 PM

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It is difficult, at this point in my career, for me to be surprised by any legislation this BOS presents. Dean Preston is now proposing a ten day period for a tenant to correct a violation BEFORE we can send a three day notice. It is unbelievable how difficult it is to be a property owner in this city let alone have a good relationship with your tenants given the completely one sided responsibility that landlords here are burdened with. With rights, come responsibilities but it appears that the BOS only feels that property owners have responsibilities, not tenants. Covid has been hard on ALL of us; even property owners whose bills have not decreased or miraculously disappeared even while tenants have stopped paying rent.

Though I am sure this will fall on deaf ears, I feel compelled to at least voice my concerns and hope that this legislation does not pass.

Sincerely,  
Cynthia O'Neill

**From:** [Oliveira, Daniel](#)  
**To:** [Major, Erica \(BOS\)](#)  
**Cc:** [Louie, Matthew \(UCSF\)](#); [Fortney, Reilly \(UCSF\)](#); [Mendoza, Teresa](#); [Bahman, Nina \(UCSF\)](#); [Capistrano, Lianne \(UCSF\)](#)  
**Subject:** Public Comment on 01/10/2022 Meeting  
**Date:** Sunday, January 9, 2022 8:24:50 PM

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Hi Erica,

My classmates and I here at UCSF would like to submit this comment to the following members for tomorrow's Land Use and Transportation Committee Meeting. Please let me know if we should also call in in order to get a response:

Dear Ms. Myrna Melgar (District 7), Mr. Dean Preston (District 5), and Mr. Aaron Peskin (District 3)...

We are pleased to hear your sponsorship for Administrative Code 211265 - Tenant Opportunity To Cure; Eviction Protections that would provide tenants written notice and opportunities to cure in relation to evictions. As PharmD candidates from UCSF, we recognize that the number of individuals experiencing homelessness is rising in San Francisco, therefore we deem it is essential to facilitate access to pregnancy and neonatal resources. In expanding such access to prenatal care and education for homeless individuals who are pregnant, what additional measures can San Francisco implement to provide, in addition to more secure housing, affordable prenatal and newborn care, and supplies to low-income populations?

Cordially,

Daniel Oliveira  
Matthey Louie  
Teresa Mendoza  
Reilly Fortney  
Nina Bahman  
Lianne Capistrano

01/10/2022