

**From:** [soul fist](#)  
**To:** [Carroll, John \(BOS\)](#)  
**Subject:** Re: Public Comment on Lease matters for Government Audit and Oversight Committee March 18, 2021  
**Date:** Thursday, March 18, 2021 1:54:28 PM  
**Attachments:** [image001.png](#)

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That is fantastic, as with apologies I did not realize that the comment period was so short.

Thanks once again for your assistance following the hearing rules, establishing good public comment records, and just generally helping folks out here - very much appreciated.

One other quick question - is there perhaps a deck or other set of materials from the meeting that is made publicly available? There was some helpful information provided about legal support networks, but I am a bit unclear how/whether to access the public record for this meeting (or whether I should just ask my supervisor's office directly?). No problem if you don't know or can't provide - but if there is a public link to materials please consider sending.

Thanks John !!

On Thursday, March 18, 2021, 01:32:10 PM PDT, Carroll, John (BOS) <[john.carroll@sfgov.org](mailto:john.carroll@sfgov.org)> wrote:

Thank you for your messages and for following up. I have already forwarded your first message to the committee, and I will do the same with this message as well.

Regards,

**John Carroll**

**Assistant Clerk**

Board of Supervisors

San Francisco City Hall, Room 244

San Francisco, CA 94102

(415) 554-4445

**(VIRTUAL APPOINTMENTS)** To schedule a virtual meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

*Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services.*



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**From:** soul fist <soulfistication@yahoo.com>

**Sent:** Thursday, March 18, 2021 1:05 PM

**To:** Carroll, John (BOS) <john.carroll@sfgov.org>

**Subject:** Re: Public Comment on Lease matters for Government Audit and Oversight Committee March 18, 2021

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Hi John, my public comment period on the call was cut-off, and I have amended my written comment - would you please kindly consider entering the following comment into the record, as a replacement to my initial email?

Thank you!!!!

Thank you to those Board members, city employees, and public servants who have been working actively to protect small SF businesses during this difficult time. I can tell you as a small business owner that your careful and thoughtful work has provided a lifeline to those of us who are struggling to survive, employee local citizens, provide services and goods to the community, and enhance the cultural, economic and tax revenue base for the city through successful operations. The public policy considerations at stake are unquestionably immense for our blighted neighborhoods and our fellow citizens. Many small business owners need no additional data entered into the public record at this time to reach the fundamental and common-sense conclusion that they are on the verge of personal financial ruin due to the pandemic, and more support is critical please.

I would like to address the recent commercial lease ordinance that has provided an opportunity for tier one covered tenants and landlords to address, renegotiate, or even terminate leases. While the ordinance is welcome and I believe designed to encourage active and holistic renegotiation of lease terms, I am hoping to respectfully encourage further review and consideration to continue to refine this ordinance for clarity. In particular, my direct experience, and additional anecdotal evidence indicates that many landlords are refusing to even recognize the ordinance, and continue to threaten to take legal action against tenants for FUTURE rent, attorneys fees, and contract penalties despite the clear and recent guidance with respect to the lease termination framework stated directly in the ordinance. Landlords also continue to assert that full pre-pandemic market value is due for back rent and future rent despite clear and common-sense conclusions that the pandemic has fundamentally shifted the property rental values in the city through no fault of tenants. So, my comments are directed towards three potential legislative considerations.

First, to address numerous comments about possible limits under the state statutory regime, and the argument that new legislation cannot look backwards, nor reform or reshape existing rent terms or contracts. I ask the Board of Supervisors to please immediately enact additional ordinance or legislation which states in simple terms that the city's legislative intent is to be consistent with Section 1511 of the California Civil Code with respect to force majeure events. This statute – which was in effect at the state level prior to the pandemic, and is therefore immune to temporal or jurisdictional challenges - provides a direct and legitimate excuse from contract performance for certain force majeure events. There is no barrier to enacting new legislation that is consistent with the state's own law that completely excuses contract performance in certain conditions, and is therefore not a local rent control provision but rather a pure contract rescission mechanism under state law. Specifically, the updated city legislation should indicate that the pandemic is a (quote) “irresistible superhuman event” consistent with section 1511 of the state's civil code. There need be no legal conclusion enacted that such event actually caused a contract breach for a particular tenant (which is a question of fact). Rather, the local law should indicate that in any future administrative proceedings or legal proceedings within city jurisdiction there will be a presumption that a tier one covered tenant did not assume the risk of the pandemic at the time that they entered into the lease, and that the landlord, and not the tenant, shall have the burden of proof to demonstrate that the lease terms clearly, expressly, and unequivocally override subsection (2) of Section 1511 of the California Civil Code. Additionally, evidentiary and remedy provisions should limit damages claims to a cap related to a landlord's demonstrable interim mortgage payments and building expenses rather than pre-pandemic property rental values, and provided that the landlord has introduced evidence demonstrating that they took reasonable steps to secure tenant safety and facilitate the tenant's use of the property for its intended purpose. Finally, as part of this presumption, any attorney fees or penalties as applied to a tenant should be expressly limited unless the landlord has not only met their burden of proof but has also demonstrated bad faith negotiation activities by the tenant. I believe that underscoring the force majeure framework alongside future evidentiary process considerations and damages limits would frame the constitutionality of the ordinance and the clear legislative intent behind our city rules. I encourage the board to consult with the city attorney regarding this legal framework – not only with respect to force majeure and contract concepts but also the basic and fundamental value to everyone – the city included - provided by certainty rather than ongoing multi-year litigation.

Second, I ask the Board to please consider the legal obligations of realty agents in this framework. Many brokerages are representing tenants and landlords without full transparency

or recognition of the standard of care obligations that they have to their clients. This is particularly true with respect to those brokers who have entered into a dual-agency relationship for both parties to a lease, yet are not properly facilitating the resolution of outstanding lease disputes, and in some cases may be favoring their commercial landlord clients to the detriment of small business tenants. Accordingly, I ask the Board to consider legislation that underscores basic standard of care owed to small business tenants. Such legislation should have no bearing upon those realty agents who are already properly facilitating negotiation and handling of outstanding leases, and should otherwise provide for penalties consistent with state law concepts for those brokers who are not honoring their duties.

Third and finally, I ask the Board to please consider the most appropriate **enforcement** mechanisms for willful violations of the ordinance. It is a law. Compliance is required, not optional. It needs to be enforced by the appropriate city department(s) when landlords are not playing along. It is unclear in the ordinance language where tenants can report the possibility of non-compliance, and what, if anything, would even be done with such an allegation.

Please give this ordinance some teeth so that alleged violators are investigated, and actual violators are penalized. The city should have the legal authority to provide for penalties, prohibit grants or incentives, or take other actions if its rules are not followed. Tenants should have a mechanism for reporting alleged violations, and landlords should have a mechanism for defending their actions amidst such allegations so that there is city follow-up to determine the nature and extent of any possible violations. Citizens and small business owners would like to see that proverbial and actual broken windows are being identified and repaired, not left unattended, and there is a strong belief that enforcement mechanisms need to be revisited and strengthened please.

Thank you once again for the opportunity to express my opinions on possible steps forward.

On Thursday, March 18, 2021, 10:00:24 AM PDT, soul fist <[soulfistication@yahoo.com](mailto:soulfistication@yahoo.com)> wrote:

I would like to submit a public comment related to the discussion of future legislation for landlord and tenant rules and interactions.

I appreciate all the work that is being done to help small businesses address critical rent issues.

I have two comments, which are both related to the ongoing resistance in the commercial landlord community whereby landlords are refusing to acknowledge the validity of the new ordinance which allows tier one tenants to terminate their lease if they cannot reach a satisfactory resolution of issues. I am hoping that the Board of Supervisors will enact additional legislation to provide legal certainty.

First, some landlords are arguing that the ordinance is not constitutional - their position is that legislation cannot look backwards, nor reform or reshape existing contracts. I ask the Board of Supervisors to

please enact additional ordinance or legislation which states that their relief measures are consistent with Section 1511 of the California Civil Code with respect to force majeure events. Specifically, the updated legislation should indicate that the pandemic is an irresistible superhuman event. The law should also indicate that in any future legal proceedings in SF courts there will be a presumption that a tier one covered tenant did not assume the risk of the pandemic at the the time they entered into the lease, and that the landlord, and not the tenant, shall have the burden of proof in a future proceeding to demonstrate that lease terms clearly, expressly, and unequivocally override subsection (2) of Section 1511 of the California Civil Code.

Second, I ask the Board to please consider the enforcement mechanism for willful violations of the ordinance. It is a law. It needs to be enforced when landlords are not playing along. It is unclear where tenants can report non-compliance. Please give this some teeth so that violators are penalized. The city should have the legal authority to provide for penalties or other actions if a law is not followed. Tenants should have a mechanism for reporting alleged violations, for city follow-up.

Thank you,

Geoff

**From:** [Diane Matsuda](#)  
**To:** [Preston, Dean \(BOS\)](#); [Connie Chan](#); [Ronen, Hillary](#); [MandelmanStaff, \[BOS\]](#); [Dean Ito Taylor](#); [Carroll, John \(BOS\)](#); [Smeallie, Kyle \(BOS\)](#)  
**Subject:** Public Comment on Small Business  
**Date:** Thursday, March 18, 2021 1:50:06 PM

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Dear Supervisors:

I have been listening to your Hearing since 10a this morning and was prepared to make public comment but for some reason, was not put through.

Please allow me to provide my comments via this email message:

I am a Staff Attorney with the Asian Pacific Islander Legal Outreach (APILO). We have been working very closely with the law firm of Perkins Coie over the past year to represent over 40 small businesses located in the Japan Center Malls in Japantown. The Malls are owned by two corporate landlords. The tenants made many requests to talk to them about a rent reduction or negotiation. However, because of the lack of response, APILO was contacted to provide legal representation and thus partnered with Perkins Coie to offer legal advice.

APILO and Perkins Coie also made many attempts to talk with the landlords and also reached a dead end of no response. We therefore requested the assistance of Supervisors Peskin and Preston who co-authored the Ordinance to help small businesses create a specific plan of rent repayment.

This Ordinance gave us the foundation to start to initiate a conversation with one of the corporate landlords. We are still a long way away to finalize the negotiations but it is a good start.

Moving forward, we would like to respectfully request considering the following:

1. SF Relief Grant-Please consider including Japantown as a high need neighborhood in this grant program and to consider raising the level of grants available for small businesses, particularly in the Tier 1 level. Please also inform us when this grant program will be available. We need SUFFICIENT time to work with our clients to be a competitive applicant as language services are required.
2. Provide further language and outreach assistance in Asian languages so that they will have equal access to all of the information and programs that may be available including but not limited to ongoing legal services, translation services and public safety services.
3. The rise of ANTI ASIAN HATE is a very scary and real thing that we in the API community are faced with. There is a need for further services to provide public safety measures for our businesses particularly since many of the owners located in the Kinokuniya Mall are older and many are owned by women.
4. Ancillary programs such as Picnic at the Plaza will also enhance the interest of guests to buy food from the restaurants and safely eat their meals. Making the Peace Plaza a venue of a combined shared space on weekends and providing the funding to administer the program

would bring a much needed economic boost to Japantown.

5. As Supervisor Preston stated, SF Japantown is the oldest Japantown in the US. The merchants here are considered "more than a business". They provide the cultural goods and services for individuals to understand, appreciate and promote the Japanese and Japanese American culture.

I am happy to provide further information for you at your convenience and am very sorry that I was not able to share this information during the public comment period but would like to respectfully request that this be included as part of the public record.

Sincerely,  
Diane Matsuda  
Staff Attorney  
Asian Pacific Islander Legal Outreach

**From:** [Valerie Luu](#)  
**To:** [Carroll, John \(BOS\)](#)  
**Cc:** [Beinart, Amy \(BOS\)](#)  
**Subject:** Public comments for Small Business Rent hearing  
**Date:** Thursday, March 18, 2021 7:01:39 AM

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Hi John,

My name is Valerie Luu and I work as a Corridor Manager for San Bruno Avenue. I spoke to a few merchants today who shared their stories about rent renegotiations to add to public comment for the Small Business Rent hearing (Board file 201078).

Please let us know if you have any questions.

Best,

Valerie

### **Nail salon owner in the Portola - wanted to remain anonymous**

I talked to my landlord but he will not offer a discount. Business is down but he said "I still run a business." He knows we need him. I know of other nail salons that have received a 50% discount in rent. For example, we opened at 9:30am today and so far, we've only had two customers [note: it was 1pm when I talked to the business owner]. The landlord comes by once a week but avoid me -- I know he doesn't want to talk to me. We tried to talk to him on the phone and in person but he will not change his mind.

### **Massage parlor owner in the Portola, wanted to remain anonymous**

In my lease, it said I didn't have to pay rent until I got my massage parlor permit. I didn't get my permit for a year because of COVID. Once I got my permit in February, my landlord required me to pay rent right away and said she would collect rent every month. People told me she is very tough. Before COVID, I used to have 4-5 customers a day -- it allowed me to pay my rent, I never had to ask for help and I was able to save some money to help my family. During the pandemic, I might get a few customers a week. I recently went three days without a customer.

It would help if the landlord could reduce the rent by 35%. I know she needs the rent income so I don't ask her to discount too much. I will wait one more month and if business isn't good I will ask the landlord for a discount. I hired six part-time workers — they all quit because there were no customers. I close sometimes because I am too stressed. Maybe next year will be better once more people get vaccinated.

I'm scared of my landlord. I worry that if I try to negotiate with my landlord she won't



renew my lease. I already spent so much money building out the space. For the past two months, I had to borrow from my sister-in-law to pay rent. I have other expenses too -- my apartment and the rent at the shop -- it comes out to \$10,000 a month.

### **Long Nguyen, owner of Lily Nails, a nail salon in the Portola**

I wanted a 30-50% discount but only got \$200 off (6% discount.) I still owe my landlord five months of back rent. She is tough. I've written her two times [read letter [here](#) -- Mr. Nguyen wrote the letter in Vietnamese, which was then translated by the landlord's friend to Chinese.] I am the only one without landlord assistance. My other friends in the nail salon businesses got six months free rent or 50% reduction. While SF nail salons had to close, I went to work in San Mateo to make enough money to pay rent.

### **Translation of the letter ([original](#))**

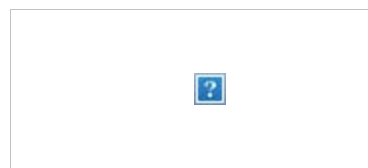
Hello Lillian Choy,

My name is Long Nguyen. Because of COVID 19, we had to close our business. I owe you the rent from April 2020 to August of 2020 -- a total of five months. Each month my rent is \$2,800. You have only discounted \$200 per month, which means I have to pay you \$2,600 per month. Whenever I have more customers, I will pay you back slowly. Most of my friends run nail salons like me. They are very lucky -- their landlords have discounted their rent by 50%. You have only discounted \$200 -- it's very little. Therefore, I do not have money to pay because I had to close for six months. My family is having a difficult time, which is why I wrote this letter to try and get your understanding.

Thank you for your consideration.

Long Nguyen

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**Valerie Luu, Corridor Manager**

*providing support for San Bruno Avenue  
businesses and residents*

cell: 415-506-7608

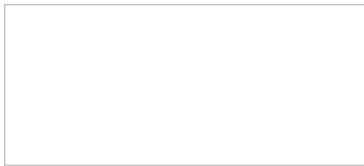
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**Valerie Luu, Corridor Manager**

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**From:** [Kilgore, Preston \(BOS\)](#)  
**To:** [Laura Callahan](#)  
**Cc:** [Carroll, John \(BOS\)](#)  
**Subject:** Re: Hearing on Small Business Rent - Action needed  
**Date:** Wednesday, March 17, 2021 2:04:56 PM

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Thank you Laura for reaching out and sharing this with our office, it is very helpful. We truly appreciate it!

I am adding our clerk of GAO, John Carroll to add this to the record and meeting notes.

Thank you again!

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**From:** Laura Callahan <laurabethcallahan@gmail.com>  
**Date:** Friday, March 12, 2021 at 5:19 PM  
**To:** "Kilgore, Preston (BOS)" <preston.kilgore@sfgov.org>  
**Subject:** Re: Hearing on Small Business Rent - Action needed

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Kilgore -

Thank you for contacting me - I can never call in because I am a solo parent of a preschooler with no safe childcare, and calling in has not worked out.

At my business in the Lower Haight, my partner and I also are the sole owners of the LLC that owns the building. We have given ourselves a rent break equivalent to what our mortgage company provided us in covid relief (3 months). We also passed this on to one of our tenants with a 33% monthly discount for the year so far and continuing until they can work (they are in the restaurant and personal service industries). The other tenant has been in a dispute with their subtenant about overcharging rent and we have been advised to let them resolve their issue without changing any terms of the lease, however their rent is submarket and even without a discount is less than the monthly rent for the other tenant with the discount.

At my other business in the Mission District, my landlord was very unwilling to negotiate with me until 5 months into the pandemic - I had notified her every month of my inability to pay according to the city regulations. I then offered to pay all back due rent within a week and continue to pay rent each month if she reduced my rent by 33% and continued that rate until the city reopens or if I have any profit before a full reopen, I will owe her 66% rent plus profit up to full rent. She agreed and I have paid all rent due under this agreement in a timely manner. I have not had a month without a loss so the rent has been paid at 66% of the lease term since May of 2020.

This agreement with my landlord is literally the only thing that has made this viable to date. I am not

sure if it will continue to be the driving force behind our survival but there is no way I could be in a position to survive without rent relief.

Please feel free to follow up if you have any questions about this that could be helpful to any other business owners.

Thank you

Laura

On Fri, Mar 12, 2021 at 5:01 PM Kilgore, Preston (BOS) <[preston.kilgore@sfgov.org](mailto:preston.kilgore@sfgov.org)> wrote:

Happy Friday,

On Thursday, March 18 at 10 am, Supervisor Preston, Mandelman, Chan and Ronen will be holding a hearing on Small Business Rent Debt at the Government Audit and Oversight commission with the Office of Economic Workforce Development and the Office of Small Business to discuss

- The economic and neighborhood impacts of commercial landlords failure to grant rent relief during the COVID-19 pandemic,
- City-provided legal resources or support services for small businesses engaging in commercial lease negotiations
- Local tools to protect small businesses and encourage commercial landlords to grant rent relief

**We are reaching out to small business owners to call in for public comment to share their stories about rent debt.**

**City Hall needs to hear from the small business community and this is your opportunity to share your story on:**

- *Any outstanding rent debt that you have*
- *Your experiences negotiating back rent with your landlord*
- *Landlords that have stepped up and partnered with small businesses to waive back rent debt*

Your voice and your experiences will help guide elected officials to craft legislation and push departments to create programs that support small business rent debt.

The small business hearing on rent debt is item number 1 on the agenda. **You can find the agenda [here](#).**

[https://sfbos.org/sites/default/files/gao031821\\_agenda.pdf](https://sfbos.org/sites/default/files/gao031821_agenda.pdf)

**Here is the information to watch the meeting and to call in for public comment:**

WATCH SF Cable Channel 26, 78 or 99 (depending on provider) WATCH [www.sfgovtv.org](http://www.sfgovtv.org)

PUBLIC COMMENT CALL-IN 1 (415) 655-0001 / Meeting ID: 187 333 9471

Please share this with your networks and the larger small business community,

Thanks