

BOARD of SUPERVISORS



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MEMORANDUM

TO: Robert Collins, Rent Board

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

DATE: September 29, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Peskin on September 22, 2020:

File No. 201056

Ordinance amending the Administrative Code to temporarily restrict landlords from evicting commercial tenants for non-payment of rent that was not paid due to the COVID-19 pandemic.

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.

[Administrative Code - Eviction of Commercial Tenants During COVID-19 Pandemic]

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Ordinance amending the Administrative Code to temporarily restrict landlords from evicting commercial tenants for non-payment of rent that was not paid due to the COVID-19 pandemic.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font. **Additions to Codes** are in *single-underline italics Times New Roman font*. **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~. **Board amendment additions** are in double-underlined Arial font. **Board amendment deletions** are in ~~Arial font~~. **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. The Administrative Code is hereby amended by adding Chapter Section 37C, to read as follows:

CHAPTER 37C:

EVICTION PROTECTIONS FOR COMMERCIAL TENANTS DURING COVID-19 PANDEMIC

SEC. 37C.1. PURPOSE AND FINDINGS.

(a) The City and County of San Francisco is facing an unprecedented public health and economic crisis due to the COVID-19 pandemic. The Mayor declared a state of emergency on February 25, 2020, and on March 16, 2020, the Governor issued Executive Order N-28-20 (the “Executive Order”), which found that the COVID-19 pandemic is having severe impacts throughout the State, and which recognized that local jurisdictions must take measures based on their particular needs to prevent displacements and to protect public health and mitigate the economic effects of the pandemic. Accordingly, paragraph 2 of the Executive Order allows local governments to enact

1 measures to protect commercial tenants impacted by COVID-19 from being evicted due to non-
2 payment. Paragraph 2 of the Executive Order remains in effect until September 30, 2020, unless the
3 Governor orders otherwise.

4 (b) On March 19, 2020, the Mayor issued a Fourth Supplement to the February 25
5 emergency proclamation (and the Mayor later issued an Eighth Supplement to clarify the intent of the
6 Fourth Supplement), to protect certain commercial businesses in the City from eviction, based on the
7 severe financial impacts of the pandemic and the public health risks that may result from such impacts.
8 These measures have protected many tenants from being evicted, but would allow some evictions to
9 resume as soon as October 1, 2020. As of that date, the City was not yet ready for commercial
10 evictions to occur, and that remained true for some time thereafter. The City's economy is gradually
11 reopening but the pandemic is continuing to cause severe and lasting economic effects, and the public
12 health risks remain high.

13 (c) The Board of Supervisors hereby finds that the findings in the orders and directives
14 referenced in subsections (a) and (b) remain valid and compelling, requiring the further extension of
15 commercial eviction controls for tenants who could not pay rent that came due under the Executive
16 Order. An extension is necessary to prevent businesses from displacement, mitigate broader economic
17 harms, and address the public health risks that may otherwise result. As stated in the Governor's
18 Executive Order N-66-20 (issued on May 29, 2020) and in Executive Order N-71-20, many
19 Californians (including San Francisco residents) are continuing to experience substantial losses of
20 income, and evicting local businesses will hinder residents from keeping up with their rent so that they
21 can stay safely in their homes, and there is an ongoing need to promote security and stability in order
22 to reduce the spread of COVID-19.

23 (d) The protections of this Chapter 37C shall only apply to rent payments that came due
24 between March 16, 2020 and September 30, 2020 (or if the Governor extends the September 30 date,
25

1 through the date of extension). This Chapter shall not apply to rent payments that become due after the
2 September 30 date (or, if the Governor extends that date, after the date of extension).

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4 **SEC. 37C.2. TEMPORARY EVICTION PROTECTIONS.**

5 (a) This Section 37C.2 shall apply only to commercial tenants registered to do business in
6 San Francisco under Article 12 of the Business and Tax Regulations Code with combined worldwide
7 gross receipts for tax year 2019 for purposes of Article 12-A-1 of the Business and Tax Regulations
8 Code equal to or below \$25 million. This figure shall be prorated in the case of businesses that were
9 not operating for the entire 2019 tax year.

10 (b) If a covered commercial tenant (1) fails to make a rent payment that originally fell due
11 during the time period when paragraph 2 of the Governor’s Executive Order N-28-20 is or was in
12 effect (including as said time period may be extended by the Governor from time to time), and (2) was
13 unable to pay the rent due to financial impacts related to COVID-19, then the landlord may not recover
14 possession of the unit due to the missed or delayed payment until January 1, 2022, or six months after
15 the time period covered by paragraph 2 of the Executive Order (as said time period may be extended by
16 the Governor from time to time) has ended, whichever is later (the “Forbearance Period”). However,
17 if the landlord owns less than 25,000 square feet of rentable square feet in the building, then the
18 eviction for non-payment may proceed before the Forbearance Period ends, if the landlord can
19 demonstrate that being unable to evict would create a significant financial hardship (for example,
20 default on debt or similar enforceable obligation) for the landlord.

21 (c) Subdivision (b) shall also apply in its entirety to attempts to recover possession of a
22 commercial unit from a tenant that is occupying the unit on a month-to-month periodic tenancy,
23 holdover basis, or similar arrangement, and including where the landlord has the right to terminate or
24 not renew the agreement at the landlord’s discretion. In such situations, if a tenant misses a rent
25 payment due to COVID-19, the prohibition in subsection (b) against recovering possession due to non-

1 payment shall apply, unless the landlord qualifies for the “significant financial hardship” exception
2 stated in subsection (b), or can demonstrate an alternative, non-pretextual reason (unrelated to the
3 commercial tenant’s failure to make a rental payment) for recovering possession of the unit (for
4 example, turning the unit over to a new tenant under a previously executed agreement; planned
5 renovations or a previous agreement to turn over the unit vacant to a new owner).

6 (d) For purposes of this Chapter 37C, the term “financial impact” as it pertains to a
7 commercial tenant means a substantial decrease in business income or substantial increase in business
8 expenses that arose due to illness or other disruption, reduced open hours, or reduced consumer
9 demand. A financial impact is “related to COVID-19” if it was caused by the COVID-19 pandemic, or
10 by any local, state, or federal government response to the COVID-19 pandemic, and is documented.

11 (e) The provisions of this ordinance, being necessary for the welfare of the City and County
12 of San Francisco, its residents, and the health of its economy, shall be liberally construed to effectuate
13 its purpose, which is to protect commercial tenants from being evicted for missing rent payments due to
14 the COVID-19 pandemic.

15 (f) Nothing in this ordinance shall relieve a commercial tenant of the obligation to pay rent,
16 nor restrict a landlord’s ability to recover rent due.

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18 **SEC. 37C.3. SEVERABILITY.**

19 If any section, subsection, sentence, clause, phrase, or word of this Chapter 37C, or any
20 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
21 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
22 portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have
23 passed this Chapter 37C and each and every section, subsection, sentence, clause, phrase, and word
24 not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or
25 application thereof would be subsequently declared invalid or unconstitutional.

LEGISLATIVE DIGEST
(Substituted 9/22/20)

[Administrative Code - Eviction of Commercial Tenants During COVID-19 Pandemic]

Ordinance amending the Administrative Code to temporarily restrict landlords from evicting commercial tenants for non-payment of rent that was not paid due to the COVID-19 pandemic.

Existing Law

On March 16, 2020, the Governor issued Executive Order N-28-20, paragraph 2 of which allows local governments to enact measures to protect commercial tenants from being evicted due to their inability to pay rent due to COVID-19. Paragraph 2 of the Executive Order is currently set to expire on September 30, 2020.

On March 19, 2020, the Mayor issued an Emergency Order to restrict landlords from evicting commercial tenants registered to do business in San Francisco with worldwide gross receipts for tax year 2019 equal to or below \$25 million (“covered tenants”). The Order applies to rent owed by covered tenants from March 19 through the end of September. Under the Order, a landlord may not evict a covered tenant for non-payment of rent that fell due during this time period, for up to six months after the rent payment was first due. For example, if a covered tenant missed an April 1 rent payment, the tenant could receive an extension up until October 1 for that month’s rent. Likewise, a rent payment originally due on May 1 could be extended up until November 1. However, a landlord could evict for non-payment before the six-month mark by demonstrating that the eviction is necessary to avoid a significant financial hardship to the landlord.

Amendments to Current Law

The proposed ordinance would prohibit landlords from evicting covered tenants who had missed rent payments that fell due while paragraph 2 of the Executive Order was in effect (i.e., from March 16 until September 30, unless the Governor extends the September 30 date further), until January 1, 2022, or six months after the time period covered by paragraph 2 of the Executive Order (as said time period may be extended by the Governor from time to time) has ended, whichever is later (the “Forbearance Period”). But, an eviction may proceed if the landlord owns less than 25,000 square feet of rentable square feet in the building and can demonstrate that being unable to evict would create a significant financial hardship for the landlord.

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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):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only