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September 20, 2021

Dean Preston, Supervisor
San Francisco Board of Supervisors, District 5
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

RE: Proposed Ordinance Regarding COVID-19 Tenant Protections

Dear Supervisor Preston:

On behalf of the members of the California Apartment Association, I write to you to communicate our organization's strong opposition to your proposed ordinance that attempts to impose COVID-19 tenant protections in direct opposition of clear state law.

The Proposed Ordinance

First, in violation of state law, the proposed ordinance would restrict landlords from evicting tenants due to the non-payment of rent (the "Ordinance") that became due between July 1, 2021, and December 31, 2021 (the "Transition Period"). Second, and also in violation of state law, beginning January 1, 2022, the Ordinance would continue to prohibit these evictions if a tenant paid at least 25% of the total rent that accrued during the Transition Period if that tenant can provide documentation showing that they are unable to pay the remainder of rent due to the financial impacts of the COVID-19 pandemic. Finally, the Ordinance would prohibit landlords from imposing late fees or penalties on tenants who missed their Transition Period rent, due to the financial impacts of the COVID-19 pandemic.

Upon even the most cursory review of the Ordinance, it leaves one wondering whether you have reviewed state law because these provisions are in clear contradiction of AB 832 or are already covered by its provisions. With this letter, I would like to inform you of existing law that renders the Ordinance impotent.

The Ordinance's Eviction Provisions Are Preempted by State Law

Regarding any ordinance or administrative action adopted by a "city and county in response to the COVID-19 pandemic to protect tenants from



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eviction,” Section 1179.05 of the Code of Civil Procedure (“Section 1179.05”) provides the following:

“Any extension, expansion, renewal, reenactment, or new adoption of a measure, however delineated, that occurs between August 19, 2020, and March 31, 2022, shall have no effect before April 1, 2022.”

Since the Ordinance is being considered during the time period prohibited by Section 1179.05, it has no legal effect. The language of Section 1179.05 is clear and unambiguous. We suspect there will be no shortage of responsible citizens and organizations ready to ensure Section 1179.05 is enforced to the fullest extent of the law.

The Ordinance is Duplicative of AB 832

The Ordinance is duplicative of state law in two areas. First, AB 832, which was an extension of SB 91, continues to ensure that any tenant who pays 25% of the rent due between March 1, 2020, and September 30, 2021, can never be evicted for the non-payment of the remaining rent.

With regard to the post-September 30 unlawful detainer filings and the potential “eviction cliff,” our Legislature and Governor were prepared for this scenario and anticipated the very actions you propose. AB 832 also added the COVID-19 Rental Housing Recovery Act (the “Recovery Act”) that requires detailed procedures for unlawful detainers filed between October 1, 2021, and March 31, 2022. These procedures require a landlord to apply for rental assistance on behalf of a delinquent tenant and prohibits a landlord from evicting a tenant who receives rental assistance. In other words, tenants who need help will receive it even if it takes longer than expected for the money to be dispersed. In sum, no tenant who has been financially impacted from the COVID-19 pandemic will be evicted. Tenants will receive rental assistance, and landlords are required to wait until it is received. To that end, San Francisco Superior Court’s Real Property Court has already implemented procedures to ensure that post-September 30 UD filings strictly comply with these rules.



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Second, Civil Code section 1942.9 prohibits landlords from specific actions relating to late fees and charges for tenants with a COVID-19 rental debt and who submitted a COVID-19 declaration. Owners cannot:

- Charge that tenant a late fee for the COVID-19 rental debt nor
- Increase fees or charge new fees for services previously provided to that tenant for free.

It is unclear why you would waste taxpayer funds considering an ordinance that is so clearly prohibited by state law and otherwise unnecessary. The residents and taxpayers of the great City and County of San Francisco deserve better. Accordingly, we trust that you will withdraw this proposed legislation.

The California Apartment Association is the largest statewide rental housing trade association in the country, representing over 50,000 single family and multi-family apartment owners and property managers who are responsible for over 2 million affordable and market-rate rental units throughout the State of California.

Sincerely,

CALIFORNIA APARTMENT ASSOCIATION

A handwritten signature in blue ink, appearing to read 'E. P. Madison, Jr.', is written over a light blue circular stamp.

By
Embert P. Madison, Jr.
State Advocacy and Compliance Counsel

cc: London Breed, Mayor
Dennis J. Herrera, City Attorney