

**From:** [La Marsa team](#)  
**To:** [Major, Erica \(BOS\)](#)  
**Subject:** File #210603.  
**Date:** Friday, June 4, 2021 2:55:08 AM

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Hi,

I understand that there a 30 day rule before your board vote on the legislation .I wanted to mention that June 25th or 26 th its only 4 days and landlord will start evicting tenants left and right . My landlord has refused any form of arrangement I proposed I have a long lease and he wants to brake it .and he has already started to lay the ground on eviction process and I am sure that July 1st he will try to evict me . Please don't let this happen to me and to thousands of tenants . Thank you very much and god bless

**From:** [Smeallie, Kyle \(BOS\)](#)  
**To:** [soul fist](#)  
**Cc:** [Major, Erica \(BOS\)](#)  
**Subject:** RE: Small biz relief from back rent ?  
**Date:** Tuesday, June 29, 2021 12:26:07 PM

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Absolutely – you can submit written remarks to the Land Use Committee Clerk Erica Major ([erica.major@sfgov.org](mailto:erica.major@sfgov.org)) to be submitted to the public record. Thanks again for your support!

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**From:** soul fist <[soulfistication@yahoo.com](mailto:soulfistication@yahoo.com)>  
**Sent:** Tuesday, June 29, 2021 11:40 AM  
**To:** Smeallie, Kyle (BOS) <[kyle.smeallie@sfgov.org](mailto:kyle.smeallie@sfgov.org)>  
**Subject:** Re: Small biz relief from back rent ?

Thanks kindly for the update - sounds good.

One quick question - is it possible to provide written comment in advance, rather than verbal during the call? If so, what is best email address?

Thank you !

On Monday, June 28, 2021, 10:48:16 PM PDT, Smeallie, Kyle (BOS) <[kyle.smeallie@sfgov.org](mailto:kyle.smeallie@sfgov.org)> wrote:

Hi Geoff,

Thanks for your follow up and for your advocacy. The latest update is that the item was unanimously [recommended](#) by the Small Business Commission on June 17, and the next step is it will be heard at the Land Use and Transportation Committee of the Board of Supervisors. We have requested and tentatively confirmed July 19<sup>th</sup> for that hearing, at which we encourage you to call in and make public comment.

Let me know if you have any other questions, and thanks again!

Kyle

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**From:** soul fist <[soulfistication@yahoo.com](mailto:soulfistication@yahoo.com)>  
**Sent:** Thursday, June 24, 2021 6:55 AM  
**To:** PrestonStaff (BOS) <[prestonstaff@sfgov.org](mailto:prestonstaff@sfgov.org)>; Smeallie, Kyle (BOS) <[kyle.smeallie@sfgov.org](mailto:kyle.smeallie@sfgov.org)>  
**Subject:** Re: Small biz relief from back rent ?

Hello, I am following up on message below - could you please let me know if there is still time to enter public comment in support of this bill? I would also like to understand the current status as well - could you let me know ?

<https://sfgov.legistar.com/LegislationDetail.aspx?ID=4967609&GUID=1421AF9C-5CDF-4737-B119-D68D4537825E&Options=&Search=>

Thanks !

On Sunday, June 20, 2021, 11:47:52 AM PDT, soul fist <[soulfistication@yahoo.com](mailto:soulfistication@yahoo.com)> wrote:

Hello Mr. Preston. I am hoping for just a quick moment of help and input - could you (or perhaps Kyle Smeallie, who is noted in your twitter feed) perhaps provide me with a quick update, or at least the BOS legislative language reference, for the small business rent relief proposal that you made back on 5/25?

The proposal looks very similar in spirit to the suggestion that I had made below in public comment about "presumption" handling, and so I am interested in following the developments. Naturally I am also hoping that the proposal passes, as our small business continues to struggle with our landlord. I am also available to discuss at an anecdotal level the practicalities behind this bill if you would like to have further input, particularly if that discussion might assist with analysis of any issues you are addressing as you work with other supervisors on passage.

Thanks kindly once again for your help on this critical issue !

Geoff

----- Forwarded Message -----

**From:** soul fist <[soulfistication@yahoo.com](mailto:soulfistication@yahoo.com)>

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

**Sent:** Thursday, March 18, 2021, 01:54:02 PM PDT

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

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.

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**From:** soul fist <[soulfistication@yahoo.com](mailto:soulfistication@yahoo.com)>

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

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