

File No. 200529

Committee Item No. _____

Board Item No. 26

COMMITTEE/BOARD OF SUPERVISORS

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Date: _____

Board of Supervisors Meeting

Date: June 2, 2020

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OTHER

- California State Senate Bill No. 939 - 05/13/20
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Prepared by: Lisa Lew

Date: May 29, 2020

Prepared by: _____

Date: _____

1 [Supporting California State Senate Bill No. 939 (Wiener) - Commercial Tenancies and
2 Evictions]

3 **Resolution supporting California State Senate Bill No. 939, authored by Senator Scott**
4 **Wiener and coauthored by Assembly Members David Chiu and Phil Ting, to protect**
5 **businesses and non-profit organizations from evictions, and permit small businesses**
6 **or restaurants that have experienced a decline in revenue during the shelter-in-place to**
7 **renegotiate or terminate their commercial leases.**

8

9 WHEREAS, The shelter-in-place order, while necessary for health and safety, has had
10 an enormous negative impact on small businesses, especially restaurants; and

11 WHEREAS, 47 percent of San Francisco restaurant owners laid off all their employees
12 during the shelter-in-place; and

13 WHEREAS, Among the 73 percent of restaurants that remain open for takeout, 60
14 percent are doing so at a financial loss; and

15 WHEREAS, 87 percent of restaurants surveyed report that they cannot survive
16 financially with takeout and delivery service alone; and

17 WHEREAS, 62 percent of restaurants surveyed report that they are making less than
18 50 percent of what they made prior to shelter-in-place; and

19 WHEREAS, 36 percent of restaurants surveyed do not report that they are planning
20 on reopening their restaurants regardless of the future capacity allowances; and

21 WHEREAS, More than 30 percent of surveyed consumers do not feel comfortable
22 returning to restaurants for dine-in service; and

23 WHEREAS, Governor Gavin Newsom released extensive new guidelines for reopening
24 restaurants in California, which will increase the cost of running a restaurant and decrease the
25 revenue a restaurant is able to generate; and

1 WHEREAS, One of the biggest determinations of restaurants' survival is rent, and
2 while more than half of those surveyed got some lease payments deferred, just 28 percent
3 were offered discounted rent while 41 percent received no relief from landlords; and

4 WHEREAS, Restaurants represent a substantial portion of California's and San
5 Francisco's economies, contribute immeasurably to our City's culture, and, according to the
6 Planning Department's Commerce and Industry study (2018), the restaurant industry employs
7 approximately 65,000 people across nearly 4,000 establishments; and

8 WHEREAS, California has more than 90,000 restaurant locations, generating more
9 than \$7 billion in sales tax annually; and

10 WHEREAS, San Francisco is at severe risk of mass closure of restaurants, bars and
11 cafes due to social distancing requirements; and

12 WHEREAS, Through Senate Bill No. 939, restaurants, entertainment venues, and
13 other vulnerable sectors will be provided with the opportunity to work with landlords to
14 modify leases and stay in business; and

15 WHEREAS, Senate Bill No. 939 will also ensure that no commercial tenants
16 (businesses, non-profits, and other non-residential lessees) will be evicted during the State of
17 Emergency declared to help fight the COVID-19 pandemic, during which economic activity
18 has been suppressed and commercial tenants may prove unable to pay the rent through no
19 fault of their own; and

20 WHEREAS, Senate Bill No. 939 already enjoys widespread support from business and
21 non-profit leaders, labor unions, civil and consumer rights organizations, and individual small
22 businesses, including the Bay Area Hospitality Coalition, the Golden Gate Restaurant
23 Association, the ACLU of California, and the Greenlining Institute; now, therefore, be it

24 RESOLVED, That the City and County of San Francisco supports Senate Bill No. 939,
25 which will permit small businesses and non-profit organizations to renegotiate or terminate

1 their commercial leases if they have suffered financial losses due to the shelter-in-place
2 requirements; and, be it

3 FURTHER RESOLVED, That a copy of this Resolution be forwarded to San
4 Francisco's state delegation.

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AMENDED IN SENATE MAY 13, 2020
AMENDED IN SENATE MARCH 25, 2020
AMENDED IN SENATE MARCH 12, 2020

SENATE BILL

No. 939

Introduced by Senators Wiener and Lena Gonzalez

(Principal coauthor: ~~Senator Skinner~~)

(Principal coauthors: Assembly Members Bonta, ~~Burke~~, Chiu, and Ting)

(Coauthor: Assembly Member Kalra)

February 6, 2020

An act to add Section ~~396.1~~ 1951.9 to the Penal Civil Code, relating to evictions, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 939, as amended, Wiener. Emergencies: COVID-19: *commercial tenancies: evictions.*

Existing law permits the Governor to proclaim a state of emergency during conditions of disaster or of extreme peril to the safety of persons and property, including epidemics. Existing law provides that the proclamation takes effect immediately, affords specified powers to the Governor, and terminates upon further proclamation by the Governor. Existing law prohibits the eviction of residential tenants during the pendency of a state of emergency, except as specified.

This bill would prohibit ~~the eviction of a person, business, or other entity from evicting~~ tenants of commercial real property, including businesses and ~~non-profit~~ *nonprofit* organizations, and from taking *specified other actions relating to the eviction of tenants of commercial real property*, during the pendency of the state of emergency proclaimed

by the Governor on March 4, 2020, related to COVID-19. *The bill would make an eviction in violation of those provisions void, against public policy, and unenforceable, and would make harassment or mistreatment of or retaliation against a tenant punishable by a fine not to exceed \$2,000 for each violation. The bill would make it a misdemeanor, an act of unfair competition, competition and an unfair business practice to violate the foregoing prohibition. The bill would require written notice of protections afforded by the bill to be provided to commercial property tenants within 30 days of the effective date of the bill. The bill would render void and unenforceable evictions that occurred after the proclamation of the state of emergency but before the effective date of this bill. The bill would not prohibit the continuation of evictions that lawfully began prior to the proclamation of the state of emergency, and would not preempt local ordinances prohibiting or imposing more severe penalties for the same conduct.*

~~By adding a new crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

The bill would also authorize a commercial tenant that is a small business or is an eating or drinking establishment, place of entertainment, or performance venue that meets specified financial criteria, including experiencing a specified decline in revenue after a shelter-in-place order took effect, to engage in negotiations with its landlord to modify rent or other economic requirements. The bill, with exceptions, would specify the notice and other requirements for engaging in negotiations to modify the lease, including that the tenant affirm, under the penalty of perjury, that the tenant meets the required financial criteria. By creating a new crime, the bill would impose a state-mandated local program. The bill would also authorize a tenant to terminate the lease, as provided. The bill would exclude publicly traded companies and affiliated companies from those provisions. The bill would make those provisions inoperative on December 31, 2021, or 2 months after the declared state of emergency ends, whichever is later.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 396.1 is added to the Penal Code, to read:~~
2 ~~396.1. (a) It shall be unlawful for a person, business, or other~~
3 ~~entity to evict a tenant of commercial real property, including a~~
4 ~~business or non-profit organization, during the pendency of the~~
5 ~~State of Emergency proclaimed by the Governor on March 4, 2020,~~
6 ~~related to COVID-19.~~
7 ~~(b) (1) A violation of this section is a misdemeanor punishable~~
8 ~~by imprisonment in a county jail for a period not exceeding one~~
9 ~~year, or by a fine of not more than ten thousand dollars (\$10,000),~~
10 ~~or by both that fine and imprisonment.~~
11 ~~(2) A violation of this section shall constitute an unlawful~~
12 ~~business practice and an act of unfair competition within the~~
13 ~~meaning of Section 17200 of the Business and Professions Code.~~
14 ~~The remedies and penalties provided by this section are cumulative~~
15 ~~to each other, the remedies under Section 17200 of the Business~~
16 ~~and Professions Code, and the remedies or penalties available~~
17 ~~under all other laws of this state.~~
18 ~~(c) An eviction in violation of this section that occurred after~~
19 ~~the Proclamation of the State of Emergency but before the effective~~
20 ~~date of this section shall be deemed void, against public policy,~~
21 ~~and unenforceable.~~
22 ~~(d) It is not a violation of this section for a person, business, or~~
23 ~~other entity to continue an eviction process that was lawfully begun~~
24 ~~prior to the Proclamation of the State of Emergency.~~
25 ~~(e) This section does not preempt any local ordinance prohibiting~~
26 ~~the same or similar conduct or imposing a more severe penalty for~~
27 ~~the same conduct prohibited by this section.~~
28 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
29 ~~Section 6 of Article XIII B of the California Constitution because~~

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

8 *SECTION 1. Section 1951.9 is added to the Civil Code, to read:*

9 *1951.9. (a) It shall be unlawful for a person, business, or other*
10 *entity to terminate a tenancy, serve notice to terminate a tenancy,*
11 *use lockout or utility shutoff actions to terminate a tenancy, or*
12 *otherwise endeavor to evict a tenant of commercial real property,*
13 *including a business or nonprofit organization, during the*
14 *pendency of the state of emergency proclaimed by the Governor*
15 *on March 4, 2020, related to COVID-19, unless the tenant has*
16 *been found to pose a threat to the property, other tenants, or a*
17 *person, business, or other entity.*

18 *(b) (1) An eviction in violation of this section shall be deemed*
19 *void, against public policy, and unenforceable. Harassment or*
20 *mistreatment of or retaliation against a tenant by a person,*
21 *business, or other entity in order to force abrogation of a lease is*
22 *punishable by a fine of not more than two thousand dollars*
23 *(\$2,000) for each violation.*

24 *(2) A violation of this section shall constitute an unlawful*
25 *business practice and an act of unfair competition within the*
26 *meaning of Section 17200 of the Business and Professions Code.*
27 *The remedies and penalties provided by this section are cumulative*
28 *to each other, the remedies under Section 17200 of the Business*
29 *and Professions Code, and the remedies or penalties available*
30 *under all other laws of this state.*

31 *(c) An eviction in violation of this section that occurred after*
32 *the proclamation of the state of emergency but before the effective*
33 *date of this section shall be deemed void, against public policy,*
34 *and unenforceable.*

35 *(d) If a tenant does not pay rent during any or all months*
36 *occurring during the state of emergency, the sum total of that rent*
37 *shall be due 12 months after the date the state of emergency ends,*
38 *unless the tenant has reached an agreement with the person,*
39 *business, or other entity to pay the sum total of that rent at a date*
40 *later than the end of the month containing the date 12 months after*

1 *the end of the state of emergency. The nonpayment of rent that*
2 *would have been due during the state of emergency shall not be*
3 *grounds for an unlawful detainer. Notwithstanding any lease*
4 *provision to the contrary, no late fees may be imposed for rent*
5 *that became due during the state of emergency.*

6 *(e) It is not a violation of this section for a person, business, or*
7 *other entity to continue an eviction process that was lawfully begun*
8 *prior to the proclamation of the state of emergency.*

9 *(f) This section shall serve as a complete affirmative defense in*
10 *unlawful detainer proceedings.*

11 *(g) Written notice of protections afforded by this section shall*
12 *be provided to tenants of commercial real property within 30 days*
13 *of the effective date of this section.*

14 *(h) No writ of possession for commercial real property may be*
15 *enforced while the state of emergency is in effect.*

16 *(i) This section does not preempt any local ordinance prohibiting*
17 *the same or similar conduct or imposing a more severe penalty*
18 *for the same conduct prohibited by this section.*

19 *SEC. 2. (a) For purposes of this section, “commercial tenant”*
20 *means a business that operates primarily in California that meets*
21 *all of the following:*

22 *(1) The commercial tenant’s primary business is a small*
23 *business, or is an eating or drinking establishment, place of*
24 *entertainment, or performance venue.*

25 *(2) The commercial tenant has experienced a decline of 40*
26 *percent or more of monthly revenue as compared to two months*
27 *either before a state or local government shelter-in-place order*
28 *took effect or as compared to the same month in 2019, and, if an*
29 *eating or drinking establishment, place of entertainment, or*
30 *performance venue, a decline of 25 percent or more in capacity*
31 *due to a social or physical distancing order or safety concerns;*
32 *and is subject to regulations to prevent the spread of COVID-19*
33 *that will financially impair the business when compared to the*
34 *period before the shelter-in-place order took effect (financial*
35 *criteria).*

36 *(b) A commercial tenant described in subdivision (a) who wishes*
37 *to modify its commercial lease, may engage in good faith*
38 *negotiations with its landlord to modify any rent or economic*
39 *requirement regardless of the term remaining on the lease.*

1 (c) *The commercial tenant may serve written notice on the*
2 *premises landlord by affirming, under the penalty of perjury, that*
3 *the commercial tenant meets the financial criteria and stating the*
4 *modifications the commercial tenant desires to obtain (negotiation*
5 *notice). The negotiation notice shall be served in accordance with*
6 *the notice provisions of the lease. If no notice provisions exist in*
7 *the lease, the commercial tenant shall provide the negotiation*
8 *notice through certified mail, return receipt requested, recognized*
9 *overnight carrier, personal delivery, or any other manner where*
10 *actual receipt occurs to the landlord or landlord’s designated*
11 *agent. However, a commercial tenant that was prevented from*
12 *opening or required to delay opening its business because of a*
13 *shelter-in-place order shall not be required to demonstrate the*
14 *financial criteria.*

15 (d) *If the commercial tenant and landlord do not reach a*
16 *mutually satisfactory agreement within 30 days of the date the*
17 *landlord received the negotiation notice, then within 10 days*
18 *thereafter, the commercial tenant may terminate the lease without*
19 *any liability for future rent, fees, or costs that otherwise may have*
20 *been due under the lease by providing written notification to the*
21 *landlord as set forth in subdivision (c) (termination notice).*
22 *Notwithstanding the previous sentence, the commercial tenant is*
23 *obligated to pay previously due rent, in an amount no greater than*
24 *the sum of the following: (1) a maximum of three months’ worth*
25 *of the past due rent incurred during the civil authority and*
26 *regulations related to COVID-19 (or a lesser sum as may be*
27 *actually unpaid), and (2) all rent incurred and unpaid during a*
28 *time unrelated to COVID-19 through the date of the termination*
29 *notice (payment). The payment shall be paid to the landlord within*
30 *12 months of the termination notice. The tenant is required to*
31 *vacate the premises within 14 days of the landlord’s receipt of the*
32 *termination notice. Upon service of the termination notice, the*
33 *lease and any third-party guaranties associated with the lease*
34 *shall also terminate and shall no longer be enforceable.*

35 (e) *If a commercial tenant and landlord reach a mutually*
36 *satisfactory agreement pursuant to this section, the commercial*
37 *tenant shall not have a subsequent option to terminate its lease*
38 *under this section at a later date.*

1 (f) *This section shall not apply to any publicly traded company*
2 *or a company that is owned by or is affiliated with a publicly traded*
3 *company.*

4 (g) *This section shall be inoperative on December 31, 2021, or*
5 *two months after the declared state of emergency ends, whichever*
6 *is later.*

7 *SEC. 3. No reimbursement is required by this act pursuant to*
8 *Section 6 of Article XIII B of the California Constitution because*
9 *the only costs that may be incurred by a local agency or school*
10 *district will be incurred because this act creates a new crime or*
11 *infraction, eliminates a crime or infraction, or changes the penalty*
12 *for a crime or infraction, within the meaning of Section 17556 of*
13 *the Government Code, or changes the definition of a crime within*
14 *the meaning of Section 6 of Article XIII B of the California*
15 *Constitution.*

16 ~~SEC. 3.~~

17 *SEC. 4. This act is an urgency statute necessary for the*
18 *immediate preservation of the public peace, health, or safety within*
19 *the meaning of Article IV of the California Constitution and shall*
20 *go into immediate effect. The facts constituting the necessity are:*

21 *In order to mitigate the economic hardships to tenants of*
22 *commercial real property, including businesses and non-profit*
23 *organizations, resulting from COVID-19, it is necessary that this*
24 *act take effect immediately.*

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):

Stefani

Subject:

Supporting California State Senate Bill No. 939 (Wiener) - Commercial Tenancies and Evictions

The text is listed:

Resolution supporting California State Senate Bill No. 939, authored by Senator Scott Wiener and coauthored by Assembly Members David Chiu and Phil Ting, to protect businesses and non-profit organizations from evictions, and permit small businesses or restaurants that have experienced a decline in revenue during the shelter-in-place to renegotiate or terminate their commercial leases.

Signature of Sponsoring Supervisor: /s/ Catherine Stefani