

BOARD of SUPERVISORS



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MEMORANDUM

TO: Robert Collins, Executive Director, Rent Board
Kate Sofis, Director, Office of Economic and Workforce Development
Rich Hillis, Director, Planning Department

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

DATE: July 6, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Safai on June 29, 2021:

File No. 210762

Ordinance amending the Administrative Code to revise the eviction protections for commercial tenants related to unpaid rent due to financial impacts from the COVID-19 pandemic to create a six-month forbearance period for tenants with between 50 and 99 full-time employees, and to authorize the Office of Economic and Workforce Development to create incentive programs to encourage landlords and tenants to agree to repayment plans.

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.

cc: Eugene Flannery, Mayor's Office of Housing and Community Development
J'Wel Vaughan, Office of Economic and Workforce Development
Anne Taupier, Office of Economic and Workforce Development
Lisa Pagan, Office of Economic and Workforce Development
Scott Sanchez, Planning Department
Corey Teague, Planning Department
Lisa Gibson, Planning Department
Devyani Jain, Planning Department
Adam Varat, Planning Department
AnMarie Rodgers, Planning Department
Dan Sider, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department

1 [Administrative Code - Eviction of Commercial Tenants for Unpaid Rent Due to COVID-19
2 Financial Impacts]

3 **Ordinance amending the Administrative Code to revise the eviction protections for**
4 **commercial tenants related to unpaid rent due to financial impacts from the COVID-19**
5 **pandemic to create a six-month forbearance period for tenants with between 50 and 99**
6 **full-time employees, and to authorize the Office of Economic and Workforce**
7 **Development to create incentive programs to encourage landlords and tenants to agree**
8 **to repayment plans.**

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

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

17 Section 1. The Administrative Code is hereby amended by revising Sections 37C.1,
18 37C.2, and 37C.3 to read as follows:

19 **SEC. 37C.1. PURPOSE AND FINDINGS.**

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

1 initially allowed local governments to enact measures to protect commercial tenants impacted
2 by COVID-19 from being evicted due to non-payment through May 31, 2020. Through a series
3 of follow-up orders (Executive Orders N-66-20, N-710-20, N-80-20, N-03-21, and most recently
4 Executive Order N-~~08-21~~N-03-21), the Governor has ordered that the protections of paragraph
5 2 of E.O. N-28-20 will remain in effect through September 30, June 30, 2021, unless the
6 Governor orders otherwise.

7 * * * *

8 (e) The protections of this Chapter 37C shall only apply to rent payments that came
9 due between March 16, 2020 and September 30, June 30, 2021, inclusive (or if the Governor
10 extends the effective period of paragraph 2 of E.O. N-28-20 past September 30, June 30, 2021,
11 through the date of extension).

12
13 **SEC. 37C.2. DEFINITIONS.**

14 * * * *

15 “Forbearance Period” means the time period by which a Covered Commercial Tenant
16 that was unable to pay rent due to a Financial Impact Related to COVID-19 must pay the rent,
17 as set forth in Section 37C.3(a)(1)-(54).

18 “Moratorium Period” means the period from March 16, 2020 until the expiration of
19 paragraph 2 of E.O. N-28-20, as extended by Executive Orders N-66-20, N-710-20, ~~and~~ N-80-
20 20, N-03-21, and N-08-21, and as may be further extended by the Governor.

21 “Tier 1 Commercial Tenant” means a Covered Commercial Tenant that employs fewer
22 than 10 full-time equivalent (“FTE”) employees as of November 1, 2020.

23 “Tier 2 Commercial Tenant” means a Covered Commercial Tenant that employs
24 between 10 and 24 FTE employees, inclusive, as of November 1, 2020.

1 “Tier 3 Commercial Tenant” means a Covered Commercial Tenant that employs
2 between 25 and 49 FTE employees, inclusive, as of November 1, 2020.

3 “Tier 4 Commercial Tenant” means a Covered Commercial Tenant that employs
4 between 50 and 99 or more FTE employees, inclusive, as of November 1, 2020.

5 “Tier 5 Commercial Tenant” means a Covered Commercial Tenant that employs 100 or more
6 FTE employees as of November 1, 2020.

7
8 **SEC. 37C.3. TEMPORARY EVICTION PROTECTIONS.**

9 (a) If a Covered Commercial Tenant (1) fails to make a rent payment that originally fell
10 due during the Moratorium Period, and (2) was unable to pay the rent due to a Financial
11 Impact Related to COVID-19, then the landlord may not recover possession of the unit due to
12 the missed or delayed payment unless the rent remains unpaid after the end of the applicable
13 Forbearance Period, which shall be:

14 (1) For Tier 1 Covered Commercial Tenants, 24 months after expiration of the
15 Moratorium Period;

16 (2) For Tier 2 Covered Commercial Tenants, 18 months after the expiration of
17 the Moratorium Period;

18 (3) For Tier 3 Covered Commercial Tenants, 12 months after the expiration of
19 the Moratorium Period;

20 (4) For Tier 4 Covered Commercial Tenants, ~~upon~~ 6 months after expiration of
21 the Moratorium Period.

22 (5) For Tier 5 Covered Commercial Tenants, upon expiration of the Moratorium
23 Period.

24 (b) A Covered Commercial Tenant may pay rent deferred under the conditions stated
25 in subsection (a) in installments or in a lump sum prior to the expiration of the applicable

1 Forbearance Period; provided, however, that any payments made prior to the Forbearance
2 Period by Covered Commercial Tenants in Tiers 1-~~43~~ shall first be applied to rents that come
3 due during the Forbearance Period, and then to unpaid rents that originally came due during
4 the Moratorium Period. Landlords and tenants are encouraged to negotiate agreements for
5 repayment plans in good faith. An agreement for repayment must be in writing and may
6 provide for a longer or shorter Forbearance Period than as set forth in subsection (a), subject
7 to the mutual agreement of the parties, in which case the agreement rather than this Chapter
8 37C shall govern the timing of the tenant's obligation to pay the deferred rent. The Office of
9 Economic and Workforce Development ("OEWD") is authorized to create incentive programs to
10 encourage landlords and tenants to agree to repayment plans, and may require proof of an agreement
11 for repayment or successful mediation in order to be eligible for participation in such programs.

12 * * * *

13 (d) Notwithstanding subsections (a) and (b), if the landlord owns less than 25,000
14 square feet of Gross Floor Area (as defined in Section 102 of the Planning Code) in the City,
15 then the eviction for non-payment may proceed before the applicable Forbearance Period
16 ends, if the landlord can demonstrate that being unable to evict would create a significant
17 financial hardship (for example, default on debt or similar enforceable obligation) for the
18 landlord. ~~The Office of Economic and Workforce Development ("OEWD")~~ shall have authority to
19 adopt regulations and develop and publish guidelines consistent with this Chapter 37C,
20 including forms and recommendations of the types of documentation that tenants may use to
21 show Financial Impact Related to COVID-19 or that landlords may use to show significant
22 financial hardship.

23
24 Section 2. Effective Date. This ordinance shall become effective 30 days after
25 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

3
4 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
8 additions, and Board amendment deletions in accordance with the "Note" that appears under
9 the official title of the ordinance.

10
11 APPROVED AS TO FORM:
12 DENNIS J. HERRERA, City Attorney

13 By: /s/ Bradley A. Russi
14 BRADLEY A. RUSSI
Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Eviction of Commercial Tenants for Unpaid Rent Due to COVID-19 Financial Impacts]

Ordinance amending the Administrative Code to revise the eviction protections for commercial tenants related to unpaid rent due to financial impacts from the COVID-19 pandemic to create a six-month forbearance period for tenants with between 50 and 99 full-time employees, and to authorize the Office of Economic and Workforce Development to create incentive programs to encourage landlords and tenants to agree to repayment plans.

Existing Law

Chapter 37C of the Administrative Code provides eviction protections for certain commercial tenants that have suffered financial hardships due to the COVID-19 pandemic. Commercial tenants covered by Chapter 37C are generally businesses with less than \$25 million in annual gross receipts, with the exception of for-profit businesses leasing space zoned for office use. Chapter 37C prohibits landlords from evicting covered commercial tenants for missed rent payments that fell due while paragraph 2 of the Governor's Executive Order N-28-20 is in effect (from March 17, 2020 until September 30, 2021, unless the Governor extends the expiration date further), if the tenant is unable to make the rent payment due to financial impacts related to the COVID-19 pandemic. Some covered commercial tenants are entitled to a forbearance period following termination of the Governor's Executive Order in order to catch up on past unpaid rent before a landlord can pursue eviction for the unpaid rent. The forbearance period depends on the number of full-time employees employed by the commercial tenant. Businesses with more than 49 full-time employees are not entitled to forbearance.

Amendments to Current Law

The proposed ordinance would amend Chapter 37C to provide a 6-month forbearance period for covered commercial tenants with between 50 and 99 full-time employees. The proposed ordinance would also authorize the Office of Economic and Workforce Development to create incentive programs to encourage landlords and tenants to agree to repayment plans and to require proof of an agreement for repayment or successful mediation in order to be eligible for participation in such programs.

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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):

Safai

Subject:

Administrative Code - Eviction of Commercial Tenants for Unpaid Rent Due to COVID-19 Financial Impacts

The text is listed:

Ordinance amending the Administrative Code to revise the eviction protections for commercial tenants related to unpaid rent due to financial impacts from the COVID-19 pandemic to create a six-month forbearance period for tenants with between 50 and 99 full-time employees, and to authorize the Office of Economic and Workforce Development to create incentive programs to encourage landlords and tenants to agree to repayment plans.

Signature of Sponsoring Supervisor: []

For Clerk's Use Only