

File No. 211265 Committee Item No. 3
Board Item No. 20

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date January 10, 2022

Board of Supervisors Meeting Date January 25, 2022

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER (Use back side if additional space is needed)

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Completed by: Erica Major Date January 6, 2022
Completed by: Erica Major Date _____

1 [Administrative Code - Tenant Opportunity To Cure; Eviction Protections]

2

3 **Ordinance amending the Administrative Code to require landlords pursuing certain**
 4 **types of evictions to first provide their tenants written notice and an opportunity to**
 5 **cure, unless the eviction is based on an imminent health or safety issue or the non-**
 6 **payment of COVID-19 rental debt; and making findings that the eviction protections in**
 7 **the Rent Ordinance are more protective than those found in State law pursuant to**
 8 **California Civil Code, Section 1946.2.**

9

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

14

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

16

17 Section 1. Purpose and Findings.

18 The Rent Ordinance recognizes that tenants owe certain obligations to their landlords,
 19 and that a tenant's failure to meet those obligations may under certain conditions give the
 20 landlord just cause to evict. But the Rent Ordinance generally does not specify for how long a
 21 tenant's misconduct must continue before it rises to the level of being a just cause. This
 22 ambiguity creates confusion, and is particularly harmful to tenants, as some landlords claim
 23 that a tenant's violation instantly creates just cause to evict even if the tenant just made an
 24 innocent mistake or is able to correct the issue. A cure period would reduce the undue
 25 hardship suffered by tenants who face sudden evictions and promote economy in the use of

1 judicial resources, while still protecting the property owners by curing the harm. It is essential
2 to provide clarity around what constitutes just cause: if a tenant can correct the violation within
3 a reasonable timeframe, to nevertheless evict the tenant and put them at risk of permanent
4 displacement from the City is not appropriate.

5
6 Section 2. The Administrative Code is hereby amended by revising Section 37.1, to
7 read as follows:

8 **SEC. 37.1. TITLE AND FINDINGS.**

9 * * * *

10 (d) In accordance with California Civil Code Section 1946.2(g)(1)(B), the Board of
11 Supervisors finds that this Chapter 37 further limits the permissible reasons for termination of a
12 residential tenancy and provides additional tenant protections as compared to California Civil Code
13 Section 1946.2, which the California Legislature adopted as part of the Tenant Protection Act of 2019.
14 The Board of Supervisors therefore finds that this Chapter 37 is more protective of tenants than Section
15 1946.2, and intends that this Chapter 37 shall apply rather than Section 1946.2.

16
17 Section 3. The Administrative Code is hereby amended by revising Section 37.9, to
18 read as follows:

19 **SEC. 37.9. EVICTIONS.**

20 Notwithstanding Section 37.3, this Section 37.9 shall apply as of August 24, 1980, to
21 all landlords and tenants of rental units as defined in Section 37.2(r).

22 (a) A landlord shall not endeavor to recover possession of a rental unit unless:

23 (1) The tenant:

24 (A) Has failed to pay the rent to which the landlord is lawfully entitled under the
25 oral or written agreement between the tenant and landlord:

1 * * * *

2 (B) Habitually pays the rent late; or

3 (C) Gives checks which are frequently returned because there are insufficient
4 funds in the checking account;

5 * * * *

6 (2) The tenant has violated a lawful obligation or covenant of tenancy other than
7 the obligation to surrender possession upon proper notice or other than an obligation to pay a
8 charge prohibited by Police Code Section 919.1, the violation was substantial, and the tenant
9 fails to cure such violation after having received written notice thereof from the landlord.

10 * * * *

11 (3) The tenant is committing or permitting to exist a nuisance in, or is causing
12 substantial damage to, the rental unit, or is creating a substantial interference with the
13 comfort, safety or enjoyment of the landlord or tenants in the building, the activities are
14 severe, continuing or recurring in nature, and the nature of such nuisance, damage or
15 interference is specifically stated by the landlord in writing as required by Section 37.9(c).

16 * * * *

17 (4) The tenant is using or permitting a rental unit to be used for any illegal
18 purpose, provided however that a landlord shall not endeavor to recover possession of a
19 rental unit solely:

20 (A) as a result of a first violation of Chapter 41A that has been cured within 30
21 days written notice to the tenant; or

22 (B) because the illegal use is the residential occupancy of a unit not authorized
23 for residential occupancy by the City. Nothing in this Section 37.9(a)(4)(B) prohibits a landlord
24 from endeavoring to recover possession of the unit under Section 37.9(a)(8) or (10) of this
25 Chapter 37.

1 (5) The tenant, who had an oral or written agreement with the landlord which
2 has terminated, has refused after written request or demand by the landlord to execute a
3 written extension or renewal thereof for a further term of like duration and under such terms
4 which are materially the same as in the previous agreement; provided, that such terms do not
5 conflict with any of the provisions of this Chapter 37; or

6 (6) The tenant has, after written notice to cease, refused the landlord access to
7 the rental unit as required by State or local law; or

8 * * * *

9 (c) A landlord shall not endeavor to recover possession of a rental unit unless at
10 least one of the grounds enumerated in Section 37.9(a) or (b) above is (1) the landlord's
11 dominant motive for recovering possession and (2) unless the landlord informs the tenant in
12 writing on or before the date upon which notice to vacate is given of the grounds under which
13 possession is sought. For notices to vacate under Sections 37.9(a)(1), (2), (3), (4), (5), or (6), the
14 landlord shall prior to serving the notice to vacate provide the tenant a written warning and an
15 opportunity to cure as set forth in Section 37.9(o). For ~~and for~~ notices to vacate under Sections
16 37.9(a)(8), (9), (10), (11), ~~or and~~ (14), the landlord shall state in the notice to vacate the lawful
17 rent for the unit at the time the notice is issued, before endeavoring to recover possession.
18 The Board shall prepare a written form that (1) states that a tenant's failure to timely act in
19 response to a notice to vacate may result in a lawsuit by the landlord to evict the tenant, and
20 that advice regarding the notice to vacate is available from the Board; and (2) includes
21 information provided by the Mayor's Office of Housing and Community Development
22 regarding eligibility for affordable housing programs. The Board shall prepare the form in
23 English, Chinese, Spanish, Vietnamese, Tagalog, and Russian and make the form available
24 to the public on its website and in its office. A landlord shall attach a copy of the form that is in
25 the primary language of the tenant to a notice to vacate before serving the notice, except that

1 if the tenant’s primary language is not English, Chinese, Spanish, Vietnamese, Tagalog, or
2 Russian, the landlord shall attach a copy of the form that is in English to the notice. A copy of
3 all notices to vacate except three-day notices to pay rent or quit and a copy of any additional
4 written documents informing the tenant of the grounds under which possession is sought shall
5 be filed with the Board within 10 days following service of the notice to vacate. In any action to
6 recover possession of the rental unit under Section 37.9, the landlord must plead and prove
7 that at least one of the grounds enumerated in Section 37.9(a) or (b) and also stated in the
8 notice to vacate is the dominant motive for recovering possession. Tenants may rebut the
9 allegation that any of the grounds stated in the notice to vacate is the dominant motive.

10 * * * *

11 (o) Notice and Opportunity to Cure. The grounds for recovering possession set forth in
12 Sections 37.9(a)(1), (2), (3), (4), (5), and (6) shall not apply unless the violation is not cured within ten
13 days after the landlord has provided the tenant a written warning that describes the alleged violation
14 and informs the tenant that a failure to correct such violation within ten days may result in the
15 initiation of eviction proceedings. The Rent Board shall prepare a form that landlords may use for this
16 purpose. However, this Section 37.9(o) shall not apply if a longer notice and cure period applies (for
17 example, under the terms of the lease agreement between the parties); or if the landlord is seeking to
18 recover possession based on the tenant causing or creating an imminent risk of physical harm to
19 persons or property; or if the landlord is seeking to recover possession based on the non-payment of
20 rent or any other unpaid financial obligation of a tenant under the tenancy that came due between
21 March 1, 2020 and March 31, 2022.

22
23 Section 4. Effective Date. This ordinance shall become effective 30 days after
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
25

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 5. 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 Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word
12 of this ordinance, or any application thereof to any person or circumstance, is held to be
13 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
14 shall not affect the validity of the remaining portions or applications of the ordinance. The
15 Board of Supervisors hereby declares that it would have passed this ordinance and each and
16 every section, subsection, sentence, clause, phrase, and word not declared invalid or
17 unconstitutional without regard to whether any other portion of this ordinance or application
18 thereof would be subsequently declared invalid or unconstitutional.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22
23 By: /s/
24 MANU PRADHAN
25 Deputy City Attorney
n:\legana\as2021\2200114\01568918.docx

LEGISLATIVE DIGEST

[Administrative Code - Tenant Opportunity To Cure; Eviction Protections]

Ordinance amending the Administrative Code to require landlords pursuing certain types of evictions to first provide their tenants written notice and an opportunity to cure, unless the eviction is based on an imminent health or safety issue or the non-payment of COVID-19 rental debt; and making findings that the eviction protections in the Rent Ordinance are more protective than those found in State law pursuant to California Civil Code, Section 1946.2.

Existing Law

The Rent Ordinance (Admin. Code Ch. 37) recognizes various “just causes” for landlords to evict their tenants. Sections 37.9(a)(1)-(6) involve situations that are the fault of the tenant: (1) failure to pay rent; (2) violating a material term of the tenancy; (3) committing or allowing a nuisance that is severe, continuing, or recurring; (4) using or permitting the unit to be used for any illegal purpose; (5) refusal to execute a written extension or renewal of the lease under the same terms as existed previously; and (6) refusal to allow the landlord access to the unit as required by state or local law. If the tenant commits any of these violations, the landlord has just cause to evict. The Rent Ordinance does not generally specify how much time the landlord must give the tenant to cure the violation in these situations.

Amendments to Current Law

The proposed ordinance would create a 10-day cure period for all evictions under subsections (a)(1)-(6): the landlord would need to send the tenant a written warning notice that describes the alleged violation and informs the tenant that a failure to correct such violation within 10 days may result in the initiation of eviction proceedings. The landlord would have just cause to evict if the tenant had not addressed the violation within the 10-day period. But a 10-day warning period would not be required for evictions based on the tenant creating a serious and imminent risk of injury or property damage, or the nonpayment of COVID-19 rental debt.

The ordinance also adopts a finding pertaining to the Rent Ordinance generally, which states that the Rent Ordinance’s tenant protections are more protective than those found under state law (the Tenant Protection Act of 2019, California Civil Code Section 1946.2).

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

TO: Christina Varner, Acting Executive Director, Rent Board
Eric D. Shaw, Director, Mayor's Office of Housing and Community Development
Adrienne Pon, Executive Director, Office of Civic Engagement and Immigrant Affairs

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

DATE: December 15, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Preston on December 7, 2021:

File No. 211265

Ordinance amending the Administrative Code to require landlords pursuing certain types of evictions to first provide their tenants written notice and an opportunity to cure, unless the eviction is based on an imminent health or safety issue or the non-payment of COVID-19 rental debt; and making findings that the eviction protections in the Rent Ordinance are more protective than those found in State law pursuant to California Civil Code, Section 1946.2.

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: Lydia Ely, Mayor's Office of Housing and Community Development
Brian Cheu, Mayor's Office of Housing and Community Development
Maria Benjamin, Mayor's Office of Housing and Community Development

From: [Emma Heinichen](#)
To: [Major, Erica \(BOS\)](#); [MelgarStaff \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Peskin, Aaron \(BOS\)](#)
Cc: [Emily Lowther Brough](#); [Andrew Zacks](#)
Subject: FW: San Francisco Ordinance, File No. 211265
Date: Monday, January 10, 2022 11:34:45 AM
Attachments: [BOS LTR 1.10.2022.pdf](#)
Importance: High

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Good morning,

Apologies for the duplicate transmission. I'm re-sending the below/attached with Mr. Peskin's email address corrected.

Thank you,

Emma Heinichen
Paralegal
Zacks, Freedman & Patterson, PC
601 Montgomery Street, Suite 400
San Francisco, CA 94111
Telephone: [\(415\) 956-8100](tel:(415)956-8100)
Facsimile: [\(415\) 288-9755](tel:(415)288-9755)
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From: Emma Heinichen
Sent: Monday, January 10, 2022 11:30 AM
To: Erica.major@sfgov.org; MelgarStaff@sfgov.org; Dean.Preston@sfgov.org; AaronPeskin@sfgov.org
Cc: [Emily Lowther Brough <emily@zfplaw.com>](mailto:emily@zfplaw.com); [Andrew Zacks <az@zfplaw.com>](mailto:az@zfplaw.com); [Angelica Nguyen <angelica@zfplaw.com>](mailto:angelica@zfplaw.com)
Subject: San Francisco Ordinance, File No. 211265
Importance: High

Good morning,

At the request of Emily Brough, I attach a letter which has also been sent to you by First Class Mail.

Sincerely,

Emma Heinichen
Paralegal
Zacks, Freedman & Patterson, PC
601 Montgomery Street, Suite 400
San Francisco, CA 94111
Telephone: [\(415\) 956-8100](tel:(415)956-8100)
Facsimile: [\(415\) 288-9755](tel:(415)288-9755)
www.zfplaw.com

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January 10, 2022

San Francisco Board of Supervisors
Supervisors Melgar, Peskin and Preston
c/o Erica Major, Clerk of the Land Use
and Transportation Committee
1390 Market, 7th Floor
San Francisco, CA 94102
Erica.major@sfgov.org
MelgarStaff@sfgov.org
Dean.Preston@sfgov.org
Aaron.Peskin@sfgov.org

VIA US MAIL AND EMAIL

Re: San Francisco Ordinance, File No. 211265

Dear Supervisors Melgar, Peskin and Preston and Ms. Major,

We write on behalf of the Small Property Owners of San Francisco in opposition to recently proposed San Francisco Ordinance, File No. 211265 (the “Ordinance”), which we understand will be heard before the San Francisco Land Use and Transportation Committee today, January 10, 2022. The Ordinance purports to eliminate “fault based” grounds for eviction under the San Francisco Rent Ordinance, unless landlords provide defaulting tenants “written warning” that “describes the alleged violation and informs the tenant that a failure to correct such violation within ten days may result in the initiation of eviction proceedings.” The Ordinance unlawfully suspends, and restricts landlords from accessing, unlawful detainer (“UD”) proceedings and is therefore preempted by state law.

The specific purpose of a UD action is to provide landlords a summary proceeding for recovery of possession of their properties. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 149-151.) While cities may be authorized to limit *substantive* grounds for eviction, thereby “giving rise to a substantive ground of defense” in a UD proceeding, additional *procedural* requirements imposed by local government that are not found in the UD statutes are preempted by those laws. (*Ibid.*)

The Ordinance does not create a substantive defense to a UD action. Instead, it purports to eliminate permissible just causes for eviction *until* landlords have entertained a procedure entirely of local making. This local procedure places a ten-day block of time between a tenant’s violation and a landlord’s access to a UD proceeding. It purports to apply to cases of default in rent and

breach of lease, as well as to cases of tenant nuisance and waste. In the former scenarios, the California Legislature has clearly stated that three days, excluding weekends and judicial holidays, is the requisite notice period. (CCP §§1161(2), (3).) In the latter scenarios, the lease is “terminated” under state law, and only three *calendar days*’ notice, *including* weekends and holidays, and without the opportunity to cure, is required before availing oneself of the UD process. (CCP §1161(4).) While state law permits local government to enact additional tenant protections in certain cases, those protections must not be “prohibited by any other provision of law.” (CCP § 1946.2(g)(B)(ii); also see, CCP § 1179.05(e) [reiterating per AB 3088 (2020), that UD statutes are “a matter of statewide concern”].)

The Ordinance’s requirement of a 10-day “warning” prior to serving an eviction notice under state law “raises procedural barriers between the landlord and the judicial proceeding,” and is therefore precisely what the UD statutes prohibit. (*Birkenfeld, supra*, 17 Cal.3d at pp. 150-151 [Holding Berkeley’s requirement that a landlord obtain a “certificate of eviction” from local government prior to initiating UD proceeding in conflict with UD statutes].) The Ordinance’s purpose, to reduce tenant hardship and “promote economy in the use of judicial resources” does not save it from preemption; only the state has the authority to govern timing in the UD procedures to meet this objective—and it has. (see, AB 2343 (2018) [extending timeline for curable eviction notices by excluding weekends and judicial holidays from the requisite “three days”]; AB 3088 (2020) [extending timeline to “no shorter than 15 days, excluding Saturdays, Sundays, and other judicial holidays” in the event of Covid-related rent default].)

In closing, our client writes not to question the soundness of the Ordinance’s purpose, but to emphasize that San Francisco does not have the authority to implement it. For this reason, we urge the Board to not adopt the Ordinance.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC

 /s/ Emily L. Brough
Emily L. Brough

From: [Cindy O'Neill](#)
To: [Major, Erica \(BOS\)](#)
Subject: Dean Preston's eviction legislation
Date: Monday, January 10, 2022 12:13:31 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

It is difficult, at this point in my career, for me to be surprised by any legislation this BOS presents. Dean Preston is now proposing a ten day period for a tenant to correct a violation BEFORE we can send a three day notice. It is unbelievable how difficult it is to be a property owner in this city let alone have a good relationship with your tenants given the completely one sided responsibility that landlords here are burdened with. With rights, come responsibilities but it appears that the BOS only feels that property owners have responsibilities, not tenants. Covid has been hard on ALL of us; even property owners whose bills have not decreased or miraculously disappeared even while tenants have stopped paying rent.

Though I am sure this will fall on deaf ears, I feel compelled to at least voice my concerns and hope that this legislation does not pass.

Sincerely,
Cynthia O'Neill

From: [Oliveira, Daniel](#)
To: [Major, Erica \(BOS\)](#)
Cc: [Louie, Matthew \(UCSF\)](#); [Fortney, Reilly \(UCSF\)](#); [Mendoza, Teresa](#); [Bahman, Nina \(UCSF\)](#); [Capistrano, Lianne \(UCSF\)](#)
Subject: Public Comment on 01/10/2022 Meeting
Date: Sunday, January 9, 2022 8:24:50 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi Erica,

My classmates and I here at UCSF would like to submit this comment to the following members for tomorrow's Land Use and Transportation Committee Meeting. Please let me know if we should also call in in order to get a response:

Dear Ms. Myrna Melgar (District 7), Mr. Dean Preston (District 5), and Mr. Aaron Peskin (District 3)...

We are pleased to hear your sponsorship for Administrative Code 211265 - Tenant Opportunity To Cure; Eviction Protections that would provide tenants written notice and opportunities to cure in relation to evictions. As PharmD candidates from UCSF, we recognize that the number of individuals experiencing homelessness is rising in San Francisco, therefore we deem it is essential to facilitate access to pregnancy and neonatal resources. In expanding such access to prenatal care and education for homeless individuals who are pregnant, what additional measures can San Francisco implement to provide, in addition to more secure housing, affordable prenatal and newborn care, and supplies to low-income populations?

Cordially,

Daniel Oliveira
Matthey Louie
Teresa Mendoza
Reilly Fortney
Nina Bahman
Lianne Capistrano

01/10/2022

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):


Supervisor Preston; Walton, Chan, Peskin, Ronen, Haney

Subject:

Administrative Code - Tenant Opportunity To Cure; Eviction Protections

The text is listed:

Ordinance amending the Administrative Code to require landlords pursuing certain types of evictions to first provide their tenants written notice and an opportunity to cure, unless the eviction is based on an imminent health or safety issue or the non-payment of COVID-19 rental debt; and making findings that the eviction protections in the Rent Ordinance are more protective than those found in State law pursuant to California Civil Code Section 1946.2.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only