From:	BOS Legislation, (BOS)
То:	<u>Major, Erica (BOS)</u>
Subject:	FW: San Francisco Ordinance, File No. 211265
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From: Quitania Brooks <Quitania@zfplaw.com>

Sent: Monday, January 31, 2022 12:06 PM

To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; MelgarStaff (BOS) <melgarstaff@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; ChanStaff (BOS) <chanstaff@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; Ahsha. <Safai@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>

Cc: Andrew Zacks <az@zfplaw.com>; Emily Lowther Brough <emily@zfplaw.com>; Angelica Nguyen <angelica@zfplaw.com>

Subject: San Francisco Ordinance, File No. 211265

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Good Afternoon All,

Please see attached letter from Emily Lowther-Brough, on behalf of the Small Property Owners of San Francisco, regarding the subject matter. A copy is also being placed in the mail.

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January 31, 2022

San Francisco Board of Supervisors c/o Angela Calvillo, Clerk of Board 1 Dr. Carlton B. Goodlett Place City Hall, Room 244 San Francisco, CA 94102 Board.of.Supervisors@sfgov.org bos.legislation@sfgov.org bos@sfgov.org MelgarStaff@sfgov.org Dean.Preston@sfgov.org Aaron.Peskin@sfgov.org ChanStaff@sfgov.org Matt.Haney@sfgov.org mandelmanstaff@sfgov.org Ahsha.Safai@sfgov.org Shamann.Walton@sfgov.org Catherine.Stefani@sfgov.org Hillary.Ronen@sfgov.org Gordon.Mar@sfgov.org

VIA US MAIL AND EMAIL

Re: San Francisco Ordinance, File No. 211265

Dear Supervisors Chan, Haney, Mar, Mandelman, Ronan, Stefani, Walton, Safai, Melgar, Peskin and Preston, and Ms. Calvillo,

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 finally heard before the San Francisco Board of Supervisors on February 1, 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.)

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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