

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Christina Varner, Acting Executive Director, Rent Board

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

DATE: February 9, 2022

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Preston on February 1, 2022:

**File No. 220131**

**Ordinance amending the Administrative Code to prohibit landlords from evicting residential tenants for non-payment of rent that came due on or after April 1, 2022, and was not paid due to the COVID-19 pandemic; and to prohibit landlords from imposing late fees, penalties, or similar charges on such tenants.**

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](mailto:erica.major@sfgov.org).

1 [Administrative Code - COVID-19 Tenant Protections]

2

3 **Ordinance amending the Administrative Code to prohibit landlords from evicting**  
4 **residential tenants for non-payment of rent that came due on or after April 1, 2022, and**  
5 **was not paid due to the COVID-19 pandemic; and to prohibit landlords from imposing**  
6 **late fees, penalties, or similar charges on such tenants.**

7

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

12

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

14

15 Section 1. Purpose and Findings.

16 (a) The City and County of San Francisco is facing an unprecedented public health  
17 and economic crisis due to the COVID-19 pandemic. On February 25, 2020, the Mayor  
18 proclaimed a state of emergency due to COVID-19 and the Board of Supervisors concurred in  
19 the emergency. On March 13, 2020, the Mayor adopted the first of a series of emergency  
20 orders to prevent the eviction of tenants who were unable to pay certain months' rent due to  
21 the financial impacts of COVID-19. The City later adopted an ordinance (Ordinance No. 93-  
22 20) to protect tenants from being evicted due to an inability to pay rent, if the tenant could not  
23 pay due to the financial impacts of COVID-19 and the missed rent payments originally came  
24 due between March 16, 2020, and September 30, 2020. The City also created a COVID-19  
25 Rent Resolution and Relief Fund (Ordinance No. 227-20) to provide support to eligible

1 landlords whose tenants are unable to pay rent due to the financial impacts of the COVID-19  
2 pandemic. The Mayor allowed the emergency orders specific to non-payment evictions to  
3 lapse following the adoption of Ordinance No. 93-20, but the February 25, 2020 proclamation  
4 remains in effect due to the ongoing circumstances of the emergency.

5 (b) At the state level, the Legislature adopted the Tenant, Homeowner, and Small  
6 Landlord Relief and Stabilization Act of 2020 (hereafter, "AB 832"), which enacted additional  
7 eviction protections for tenants who were unable to pay their rent due to COVID-19. AB 832  
8 addresses evictions for non-payment of rent that came due between March 1, 2020 and  
9 March 31, 2022, and states that it does not alter a local government's authority to extend,  
10 expand, renew, reenact, or newly adopt an ordinance that requires just cause for termination  
11 of a residential tenancy or amend existing ordinances that require just cause for termination of  
12 a residential tenancy, provided that such provision not apply to rental payments that came due  
13 between March 1, 2020, and March 31, 2022; and provided further that such provisions shall  
14 have no effect before April 1, 2022.

15 (c) The City finds there is a compelling need to continue providing protections to San  
16 Francisco tenants who remain unable to pay rent that comes due on or after April 1, 2022,  
17 due to the financial impacts of COVID-19. The City has made progress in reopening its  
18 economy, but the situation is still unstable and the recent surge of the highly infectious  
19 Omicron variant highlights the serious consequences that could result if evictions of the City's  
20 most vulnerable residents were to resume. Residents need to be able to stay safely in their  
21 homes and find employment opportunities within a pandemic economy, and many will be at  
22 risk of permanent displacement if evicted, and many potentially impacted renters are also  
23 essential workers on whom the City depends.

24 (d) Following the creation in 2021 of two federal Emergency Rental Assistance  
25 Programs, as well as the allocation of local funds, significant investments have been made to

1 COVID-19 rent relief programs for the benefit of San Francisco landlords and tenants,  
2 including \$120 million in combined federal dollars, \$42 million in funding from Proposition I  
3 (including a supplemental appropriation from FY20-21), and \$20 million in funding from  
4 Proposition C. In addition, Governor Newsom publicly pledged in June 2021 to cover all of  
5 the unpaid rent for low income tenants. But despite these developments, rent relief has  
6 lagged. While many claims for rent relief have been processed, recent figures show that as of  
7 February 1, 2022, approximately 11,000 applications for rent relief remain outstanding and  
8 that of the \$266 million in requested relief from San Francisco residents, only \$81 million in  
9 funds have been disbursed.

10 (e) The Board of Supervisors finds it is in the public interest to prevent tenant  
11 displacement in San Francisco due to COVID-19 to the maximum extent permitted by law.  
12 Pursuant to the City's regular authority to regulate evictions, and consistent with AB 832, this  
13 ordinance applies to rent payments that originally came due on or after April 1, 2022, through  
14 the end of the Mayor's proclamation of emergency related to the COVID-19 pandemic.  
15 Nothing in this ordinance shall affect or impair the application of any other City law or AB 832  
16 with respect to rent payments that originally came due before April 1, 2022.

17 (f) Finally, the Board of Supervisors finds it is appropriate to repeal Ordinance No.  
18 157-21. The City adopted Ordinance No. 157-21 as an interim measure before AB 832 was  
19 adopted, to amend the Administrative Code to restrict landlords from evicting tenants due to  
20 the non-payment of rent that came due between October 1, 2021 and December 31, 2021.  
21 Pursuant to its terms, Ordinance No. 157-21, although enacted, never became operative (and  
22 thus was never codified), and at this point will not become operative, as the State of California  
23 did not modify California Code of Civil Procedure Section 1179.05 in order to allow the City to  
24 regulate evictions for non-payment during the time period that Ordinance No. 157-21 covered.

1 Section 2. Repeal of Ordinance No. 157-21.

2 (a) Ordinance No. 157-21 is deemed null and void and is hereby repealed.

3 (b) The Clerk of the Board of Supervisors shall place a copy of this ordinance in Board  
4 File No. 210601, the file for Ordinance No. 157-21, and shall place a notation on the Board's  
5 website indicating that Ordinance No. 157-21 has been repealed by this ordinance.  
6

7 Section 3. The Administrative Code is hereby amended by revising Section 37.9, to  
8 read as follows:

9 **SEC. 37.9. EVICTIONS.**

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

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

13 (1) The tenant:

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

16 \* \* \* \*

17 (B) Habitually pays the rent late; or

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

20 (D) Provided, however, that subsection (a)(1) shall not apply with  
21 respect to rent payments that initially became due during the time period when paragraph 2 of  
22 the Governor's Executive Order No. N-28-20 (as said time period may be extended by the  
23 Governor from time to time) was in effect, and where the tenant's failure to pay (i) arose out of  
24 a substantial decrease in household income (including, but not limited to, a substantial  
25 decrease in household income caused by layoffs or a reduction in the number of

1 compensable hours of work, or substantial out-of-pocket expenses]; (ii) that was caused by  
2 the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19;  
3 and (iii) is documented. The types of documentation that a tenant may use to show an inability  
4 to pay due to COVID-19 may include, without limitation, bank statements, pay stubs,  
5 employment termination notices, proof of unemployment insurance claim filings, sworn  
6 affidavits, and completed forms prepared by the Rent Board. A tenant shall have the option,  
7 but shall not be required, to use third-party documentation such as a letter from an employer  
8 to show an inability to pay. The provisions of this subsection (a)(1)(D), being necessary for  
9 the welfare of the City and County of San Francisco and its residents, shall be liberally  
10 construed to effectuate its purpose, which is to protect tenants from being evicted for missing  
11 rent payments due to the COVID-19 pandemic. Nothing in this subsection (a)(1)(D) shall  
12 relieve a tenant of the obligation to pay rent, nor restrict a landlord's ability to recover rent due;

13 ~~or~~

14 (E) Provided, further, that subsection (a)(1) also shall not apply with respect to  
15 rent payments that initially became due during the time period between April 1, 2022, and the date that  
16 the Mayor's proclamation of emergency related to the COVID-19 pandemic ceases to be in effect, if the  
17 tenant can show inability to pay the rent because of the financial impacts of the COVID-19 pandemic  
18 as set forth in subsection (a)(1)(D). Nothing in this subsection (a)(1)(E) shall relieve a tenant of the  
19 obligation to pay rent, nor restrict a landlord's ability to recover rent due.

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

24 \* \* \* \*

1 (E) Notwithstanding any lease provision to the contrary, a landlord may  
2 not impose late fees, penalties, interest, liquidated damages, or similar charges due to a  
3 tenant's non-payment of rent, if the tenant can demonstrate that it missed the rent payment  
4 due to the COVID-19 pandemic as set forth in subsection (a)(1)(D) and/or (a)(1)(E). A  
5 landlord may not recover possession of the unit due to a tenant's failure to pay late such  
6 charges when subsection (a)(1)(D) and/or (a)(1)(E) ~~applies~~. The foregoing sentence shall not  
7 enlarge or diminish a landlord's rights with respect to such charges when subsection (a)(1)(D) and/or (a)(1)(E)  
8 ~~does~~ not apply; or

9 \* \* \* \*

10  
11 Section 4. 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 Section 5. Effective Date; Retroactivity.

21 (a) This ordinance shall become effective on April 1, 2022, or 30 days after  
22 enactment, whichever is later. Enactment occurs when the Mayor signs the ordinance, the  
23 Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of  
24 receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

1 (b) If the effective date of this ordinance is not April 1, 2022, upon the effective date of  
2 the ordinance, Section 3 of the ordinance shall be retroactive to April 1, 2022.

3  
4 Section 6. Scope of Ordinance. Except as to Section 2 of this ordinance which repeals  
5 Ordinance No. 157-21, which was never codified, in enacting this ordinance the Board of  
6 Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections,  
7 articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the  
8 Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board  
9 amendment additions, and Board amendment deletions in accordance with the "Note" that  
10 appears under the official title of the ordinance.

11  
12 APPROVED AS TO FORM:  
13 DAVID CHIU, City Attorney

14 By: /s/  
15 MANU PRADHAN  
16 Deputy City Attorney  
17 n:\legana\as2020\2000387\01579878.docx



**LEGISLATIVE DIGEST**

[Administrative Code - COVID-19 Tenant Protections]

**Ordinance amending the Administrative Code to prohibit landlords from evicting residential tenants for non-payment of rent that came due on or after April 1, 2022, and was not paid due to the COVID-19 pandemic; and to prohibit landlords from imposing late fees, penalties, or similar charges on such tenants.**

Existing Law

City law prohibits landlords from evicting or imposing late fees on residential tenants based on unpaid rent that came due between March 2020-September 2021, if the tenant could not pay due to COVID-19. For unpaid rent from between October 2020-March 2022, State law, the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (“AB 832”), controls. AB 832 does not address evictions based on unpaid rent that came due on or after April 1, 2022.

Amendments to Current Law

The proposed ordinance would prohibit landlords from evicting or imposing late fees on residential tenants based on unpaid rent that came due between April 1, 2022, and the date that the Mayor terminates her COVID-19 Emergency Proclamation. The Mayor has not yet announced an end date for the Emergency Proclamation.

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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):

Supervisors Preston; Chan, Peskin, Ronen

Subject:

Administrative Code - COVID-19 Tenant Protections

The text is listed:

Ordinance amending the Administrative Code to prohibit landlords from evicting residential tenants for non-payment of rent that came due on or after April 1, 2022, and was not paid due to the COVID-19 pandemic; and to prohibit landlords from imposing late fees, penalties, or similar charges on such tenants.

Signature of Sponsoring Supervisor:

For Clerk's Use Only