From:	BOS Legislation, (BOS)
To:	Major, Erica (BOS)
Subject:	FW: San Francisco Ordinance - File No. 220341
Date:	Tuesday, May 24, 2022 1:39:57 PM
Attachments:	SPOSFI Letter re File No. 220341.pdf

From: Justin Goodman <justin@zfplaw.com>
Sent: Tuesday, May 24, 2022 1:37 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>
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Subject: San Francisco Ordinance - File No. 220341

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Dear Supervisors Chan, Dorsey, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton:

Please see the attached letter from the Small Property Owners of San Francisco Institute, concerning File No. 220341.

Thank You,
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**Zacks, Freedman & Patterson proudly announces the opening of two additional offices, one in the East Bay and one in Monterey Bay.
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SPOSFI

The SPOSF Institute

THE SMALL PROPERTY OWNERS OF SAN FRANCISCO INSTITUTE

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May 24, 2022

San Francisco Board of Supervisors
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VIA US MAIL AND EMAIL

Re: San Francisco Ordinance - File No. 220341

Dear Supervisors Chan, Dorsey, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton:

The San Francisco Small Property Owners of San Francisco Institute ("SPOSFI") writes to oppose Board of Supervisors File No. 220341 – a proposed ordinance amending the Administrative Code to alter how the Ellis Act (Cal. Gov., §§7060, et seq.) is implemented in San Francisco. File No. 220341 follows AB 1399 (2019), which amended the Ellis Act itself to allow cities to require that a property owner re-offer all units for rent when *any* withdrawn units are again offered for rent during the period of constraints.

As for implementing this requirement, we would ask that the Board clarify that the displaced tenant who receives an offer to re-rent a unit must only receive an offer to re-rent *their former*

unit. (See, SF Admin., §37.9A(c)(5).) Some of our members have experienced litigation or threats of litigation when a displaced former tenant does not receive an offer to rent a unit they never lived in. This creates confusion about who receives what offers (particularly when an owner occupies one such unit as their primary residence) and results in unnecessary litigation. We think that clarifying language would benefit the orderly administration of these new procedures.

Secondly, we must unambiguously object to any change to the relocation assistance payment standard for Ellis Act terminations (SF Admin., §37.9A(e)) that diverges from the payment standard for all other non-fault evictions in San Francisco (SF Admin., §37.9C(e)). While the history of these provisions is different, they have shared the logic, in their consistency, about the limits of the costs a landlord may be required to pay tenants when recovering possession of their property.

In 2005, the Board of Supervisors passed Ordinance 21-05 to implement a 2003 amendment to the Ellis Act and extend relocation assistance for Ellis Act evictions to all tenants who had resided in their unit for at least 12 months prior to invocation of the Ellis Act, eliminating a previous low-income requirement for these payments. Ordinance 21-05 initially set this amount at $4,500 per tenant, with an additional $3,000 per elderly or disabled tenant, keying an annual increase to inflation (similar to the annual allowable rent increase under the Rent Ordinance).

A group of landlords and property owners' associations challenged the payment standard as preempted by the Ellis Act itself. However, the Court of Appeal in *Pieri v. City & Cty. of San Francisco* (2006) 137 Cal. App. 4th 886 interpreted the 2003 amendment as permitted cities to impose "reasonable relocation assistance" on property owners to "mitigate the adverse impacts" of displacement. In interpreting what constituted a "reasonable" payment, *Pieri* drew inspiration from cases like *Kalaydjian v. City of Los Angeles* (1983) 149 Cal. App. 3d 690, 694, which found relocation fees permissibly when based on average relocation costs.

The same year *Pieri* was decided, San Francisco voters passed Proposition H (2006), to provide for relocation assistance to tenants displaced by *other* non-fault evictions as well. It also required a $4,500 payment per tenant, and an additional $3,000 per qualified elderly or disabled tenant. This payment schedule was likewise keyed to inflation, and with two exceptions (discussed below), these payments – for tenants displaced by the Ellis Act and tenants displaced by other non-fault bases for eviction – have been roughly in parity (other

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than that the Ellis Act payments have been nominally higher for being imposed a year earlier and thus having an additional year of inflation adjustment before Proposition H took effect).

The two exceptions to this parity were Ordinances 54-14 and 68-15 – successive efforts by San Francisco to require landlords, who were going out of business, to subsidize their former tenants for two years following displacement. The Court of Appeal in *Coyne v. City & Cnty. of San Francisco* (2017) 9 Cal. App. 5th 1215 rebuked these enhanced payments, finding that the "higher market-rate rents for comparable units" were not an adverse impact created by the "landlord's decision to exercise Ellis Act rights", but were rather the result of the *City's* choice to implement rent control (*Id.* at 1230.) In reaching this result, it condoned *Pieri's* rubric for a "mitigation payment" based on "relocation expenses". (*Id.* at 1228.)

A federal challenge to Ordinance 54-14 likewise struck the ordinance as an unconstitutional monetary exactions taking, contrasting it with "[t]he payments required by the 2005 Ordinance [which] were, in both amount and intent, **roughly proportional to the typical relocation costs** that the property owner causes a tenant to incur by withdrawing a unit from the rental market. The few thousand dollars required per tenant (and a correspondingly higher amount for the relocation of a multiple-tenant household) under the 2005 Ordinance approximates the expenses incurred in a typical relocation, which are the expenses *caused by* the property owner's withdrawal". *Levin v. City & Cnty. of San Francisco* (N.D. Cal. 2014) 71 F. Supp. 3d 1072, 1085 (emph. added).

File No. 220341 goes beyond the *Pieri*-approved standard. Its logic is based on a Policy Analysis Report of the Budget and Legislative Analyst ("the Report"), where Sup. Melgar asked the Budget and Legislative Analyst to "conduct an update of [their] **2014 analysis** on the **level of profits** realized by landlords following the sale of a building after the eviction of tenants under the Ellis Act." The 2014 report was requested by then-Supervisor Campos, who introduced Ordinances 54-14 and 68-15, and therefore begins its analysis on faulty footing. (See, Budget and Legislative Analyst March 17, 2014 report.)

The Report compares "Ellis Act Relocation Costs and Payments by Housing Scenario" (see Exhibit B). It concludes that the existing payments are "insufficient" based on a *fictionalized* chart of "payments versus costs". However, this chart presents arbitrary and few hypothetical examples of tenant relocation experiences, to reach an ends-based conclusion that the *existing* payment is not enough. It presents five scenarios:

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- One able-bodied tenant in studio moves to another studio: this hypothetical tenant loses $160 after moving with current relocation payments;
- One able-bodied tenant in a one-bedroom moves to another one-bedroom: this tenant loses $2,470 after moving with current relocation payments;
- Two able-bodied tenants in a two-bedroom move together to a two-bedroom: this household ***gains*** $1,769 after moving with current relocation payments;
- Two able-bodied tenants in a two-bedroom move into *different* one-bedrooms: these tenants lose $2,470 after moving with current relocation payments;
- One elderly or disabled tenant in a studio moves into another studio: this tenant *gains* $5,439 after moving with current relocation payments.

Even in these contorted examples, the collective gains exceed the loses. The only strained example divides the relocation costs of one displaced household into two new households. Conspicuously absent is the household that receives the maximum payment of $22,279.62 and stays together. (It should be uncontroversial that it does not take $22,279.62 to move from one apartment to another.)

More to the point, this analysis diverges greatly from the allowable "mitigation" payments authorized by the Ellis Act. *Levin's* "roughly proportional" payments are nowhere to be found. Instead, the Report finds relocation fee deficiencies where tenants are paying not only for a first month's rent, but also a *last* month's rent. (The *vast* majority of our members do not charge a last month's rent for a new tenant, and *Coyne* and *Levin* specifically *reject* the use of market rates as a rubric for relocation costs.) The Report finds the relocation fee insufficient to cover a security deposit, but security deposit is merely the tenants' money held by the landlord.

The Report curiously neglects the tenants' receipt of the past deposit from the withdrawing landlord and neglects to observe that these San Francisco tenant's *new* deposit is essentially an interest-bearing savings account. (See, SF Admin. Ch. 49.) And our members are genuinely curious why – after years of subsidizing their tenants' housing expense - they may be required to pay for *five days* of a displaced tenant's wages during an unusually leisurely move. The underlying premises of the Report debase its use as support for altering the long-standing (and constitutional) Ellis Act relocation payment.

And even if the existing relocation payment were not enough to cover the relocation costs of the conventional tenant (not the fictitious one conjured to stress a point in a report), this extraordinary relocation fee will not survive a challenge where it diverges from the fee for all

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other non-fault evictions. Case law is clear that "impos[ing] an inevitable and undue burden (to wit, a 'prohibitive price')" on the use of the Ellis Act is impermissible. (*San Francisco Apartment Assn. v. City & Cnty. of San Francisco* (2016) 3 Cal. App. 5th 463, 482. *See, also Small Prop. Owners of San Francisco Inst. v. City & Cty. of San Francisco* (2018) 22 Cal. App. 5th 77.

A property owner might desire to live in his own property, but cannot avail herself of the owner move-in provision because her tenant is an educator, and she makes her decision in September, or she only needs to live there for 2 years, not the required 3, or she faces any of the other numerous factual scenarios where an owner cannot live in their own property. This owner may need or choose to use the Ellis Act instead of the owner move-in provision, and therefore, to enjoy the same right – the use of her property as her residence – she must pay roughly 33% *more* to enjoy this right via the Ellis Act. This is the species of hostility and discrimination toward the Ellis Act that neither our members nor the Courts will tolerate. We hope you will reconsider including this aggressive increase of relocation fees for Ellis Act terminations in File No. 220341.

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President, SPOSFI