

BOARD of SUPERVISORS



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MEMORANDUM

TO: Eric D. Shaw, Director, Mayor's Office of Housing and Community Development
Christina Varner, Acting Executive Director, Rent Board

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

DATE: March 14, 2023

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Preston on March 7, 2023.

File No. 230260

Ordinance amending the Administrative Code to extend by 60 days the restrictions on evicting or imposing late fees on residential tenants who could not pay rent that came due during the COVID-19 emergency.

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
Sheila Nickolopoulos, Mayor's Office of Housing and Community Development

[Administrative Code - COVID-19 Tenant Protections]

Ordinance amending the Administrative Code to extend by 60 days the restrictions on evicting or imposing late fees on residential tenants who could not pay rent that came due during the COVID-19 emergency.

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

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

Section 1. Purpose and Findings.

(a) On February 25, 2020, the Mayor proclaimed a state of emergency due to COVID-19 and the Board of Supervisors concurred in the emergency. Three years later, the City is preparing for the end of this state of emergency, but the City and its residents have suffered an unprecedented public health and economic crisis.

(b) With respect to evictions, the Mayor on March 13, 2020 adopted the first of a series of emergency orders to prevent the eviction of residential tenants who were unable to pay certain months' rent due to the financial impacts of COVID-19. The City later adopted an ordinance to limit such evictions, which applied to missed rent payments that originally came due between March 16, 2020, and September 30, 2020. See Ordinance No. 093-20, codified at Administrative Code Section 37.9(a)(1)(D). The City also created a COVID-19 Rent

1 Resolution and Relief Fund (Ordinance No. 227-20) to provide support to eligible landlords
2 whose tenants are unable to pay rent due to the financial impacts of the COVID-19 pandemic.

3 (c) At the state level, the Legislature adopted the COVID-19 Tenant Relief Act
4 (California Code of Civil Procedure Sections 1179.01 *et seq.*, hereafter, “the Act”), which
5 created additional protections for tenants who were unable to pay their rent due to COVID-19.
6 The Act addresses evictions for non-payment of rent that came due between March 1, 2020
7 and June 30, 2022 only. But the Act does not alter a local government’s authority to extend,
8 expand, renew, reenact, or newly adopt an ordinance that requires just cause for termination
9 of a residential tenancy or amend existing ordinances that require just cause for termination of
10 a residential tenancy, provided that such ordinances do not apply to rental payments that
11 came due between March 1, 2020, and June 30, 2022, and do not take effect before July 1,
12 2022. Accordingly, by Ordinance No. 034-22, the City has continued to regulate evictions for
13 non-payment, from July 1, 2022 until the end of the Mayor’s state of emergency. The City has
14 also assisted more than 6,070 households with more than \$47 million in funding to help them
15 cover their unpaid rent, but there is a significant backlog of relief applications and more
16 applications are expected.

17 (d) The Board of Supervisors finds there is a compelling need to ensure a safe and
18 orderly transition for tenants following the end of the Mayor’s state of emergency. The health
19 orders have recently lifted, but it is important to remain vigilant against further spread of the
20 disease, and ensure the City’s most vulnerable residents can stay housed, find employment
21 opportunities in a post-pandemic economy, and not leave San Francisco. Many potentially
22 impacted renters are essential workers on whom the City will depend as it begins its post-
23 emergency recovery.

24 (e) The Board of Supervisors finds it is in the public interest to prevent tenant
25 displacement in San Francisco due to COVID-19, by enacting a limited extension of these

1 tenant protections to ensure a safe and orderly wind-down following the end of the state of
2 emergency. Pursuant to the City's legislative authority to regulate evictions, and consistent
3 with the Act, this ordinance applies to rent payments that originally came due on or after July
4 1, 2022, through 60 days after the end of the Mayor's proclamation of emergency related to
5 the COVID-19 pandemic. Nothing in this ordinance shall affect or impair the application of
6 any other City law or the Act with respect to rent payments that originally came due before
7 July 1, 2022.

8
9 Section 2. Chapter 37 of the Administrative Code is hereby amended by revising
10 Section 37.9, to read as follows:

11 **SEC. 37.9. EVICTIONS.**

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

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

15 (1) The tenant:

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

18 * * * *

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

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

12 (E) Provided, further, that subsection (a)(1) also shall not apply with
13 respect to rent payments that initially became due during the time period between ~~April~~July 1,
14 2022, and 60 days after the date that the Mayor's proclamation of emergency related to the
15 COVID-19 pandemic ceases to be in effect, if the tenant can show inability to pay the rent
16 because of the financial impacts of the COVID-19 pandemic as set forth in subsection
17 (a)(1)(D). Nothing in this subsection (a)(1)(E) shall relieve a tenant of the obligation to pay
18 rent, nor restrict a landlord's ability to recover rent due.

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

23 * * * *

24 (E) Notwithstanding any lease provision to the contrary, a landlord may
25 not impose late fees, penalties, interest, liquidated damages, or similar charges due to a

1 tenant's non-payment of rent, if the tenant can demonstrate that it missed the rent payment
2 due to the COVID-19 pandemic as set forth in subsections (a)(1)(D) and/or (a)(1)(E). A
3 landlord may not recover possession of the unit due to a tenant's failure to pay late such
4 charges when subsections (a)(1)(D) and/or (a)(1)(E) apply. The foregoing sentence shall not
5 enlarge or diminish a landlord's rights with respect to such charges when subsections
6 (a)(1)(D) and/or (a)(1)(E) do not apply. ~~nor~~

7 * * * *

8
9 Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word
10 of this ordinance, or any application thereof to any person or circumstance, is held to be
11 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
12 shall not affect the validity of the remaining portions or applications of the ordinance. The
13 Board of Supervisors hereby declares that it would have passed this ordinance and each and
14 every section, subsection, sentence, clause, phrase, and word not declared invalid or
15 unconstitutional without regard to whether any other portion of this ordinance or application
16 thereof would be subsequently declared invalid or unconstitutional.

17
18 Section 4. Effective Date. This ordinance shall become effective 30 days after
19 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
20 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
21 of Supervisors overrides the Mayor's veto of the ordinance.

22
23 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
24 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
25 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/
MANU PRADHAN
Deputy City Attorney
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LEGISLATIVE DIGEST

[Administrative Code - COVID-19 Tenant Protections]

Ordinance amending the Administrative Code to extend by 60 days the restrictions on evicting or imposing late fees on residential tenants who could not pay rent that came due during the COVID-19 emergency.

Existing Law

City law prohibits landlords from evicting or imposing late fees on residential tenants who could not pay their rent based on the financial impacts of COVID-19, if the rent originally came due while Paragraph 2 Governor's Executive Order No. N-28-20 was in effect (i.e., between March 16, 2020 and September 30, 2020); or between July 1, 2022 and the end of the Mayor's COVID-19 emergency proclamation (which has not yet occurred). A tenant who could not pay their rent due to the financial impacts of COVID-19 is permanently protected from eviction and late fees due to missed rent from these time periods. But this law does not apply to rent that will come due after the emergency proclamation ends.

Amendments to Current Law

The proposed ordinance would extend these protections, by applying them to rent that comes due within 60 days after the emergency proclamation ends.

Background

Administrative Code Section 37.9(a)(1)(E) states that these eviction protections apply to rent that comes due between April 1, 2022 until the end of the emergency proclamation. But after the City enacted this language, the State of California amended State law to state that a local enactment on evictions for non-payment may only address the post-July 1, 2022 rent.

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Introduction Form

(by a Member of the Board of Supervisors or the Mayor)

I hereby submit the following item for introduction (select only one):

- ☒ 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- ☐ 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- ☐ 3. Request for Hearing on a subject matter at Committee
- ☐ 4. Request for Letter beginning with "Supervisor [] inquires..."
- ☐ 5. City Attorney Request
- ☐ 6. Call File No. [] from Committee.
- ☐ 7. Budget and Legislative Analyst Request (attached written Motion)
- ☐ 8. Substitute Legislation File No. []
- ☐ 9. Reactivate File No. []
- ☐ 10. Topic submitted for Mayoral Appearance before the Board on []

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- ☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission
- ☐ Planning Commission ☐ Building Inspection Commission ☐ Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- ☐ Yes ☐ No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Supervisors Preston; Walton, Peskin, Ronen

Subject:

Administrative Code - COVID-19 Tenant Protections

Long Title or text listed:

Ordinance amending the Administrative Code to extend by 60 days the restrictions on evicting or imposing late fees on residential tenants who could not pay rent that came due during the COVID-19 emergency.

Signature of Sponsoring Supervisor: []