

BOARD of SUPERVISORS



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

MEMORANDUM

TO: Sophia Kittler, Liaison to the Board, Mayor's Office
Robert Collins, Executive Director, Rent Board

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

DATE: April 20, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Preston on April 14, 2020:

File No. 200375

Ordinance amending the Administrative Code to prohibit landlords from evicting residential tenants for non-payment of rent that was not paid due to the COVID-pandemic; to prohibit landlords from imposing late fees, penalties, or similar charges on such tenants; and making findings as required by the California Tenant Protection Act of 2019.

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.

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 was not paid due to the COVID-**
5 **pandemic; to prohibit landlords from imposing late fees, penalties, or similar charges**
6 **on such tenants; and making findings as required by the California Tenant Protection**
7 **Act of 2019.**

8

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

13

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

15

16 Section 1. Purpose and Findings.

17 (a) The City and County of San Francisco is facing an unprecedented public health
18 and economic crisis due to the COVID-19 pandemic. The Mayor has responded with a series
19 of emergency orders, including an eviction moratorium that gives tenants who have suffered a
20 financial impact due to COVID-19 an extension of time to pay their rent (hereafter, the
21 “Eviction Moratorium”). The Mayor issued the Eviction Moratorium on March 13, 2020 and
22 updated it on March 23, 2020, and currently it only applies to rent payments missed in April.
23 But the Eviction Moratorium allows tenants to be evicted if they have not paid their past due
24 rent once the extension expires, and many tenants have lost their jobs and many businesses
25 have closed. If these trends worsen or if the emergency continues, tenants may find

1 themselves in an ever deepening financial hole, with the result that a large wave of evictions
2 for nonpayment of rent is likely to follow once the extension period ends. It is essential to
3 address this looming danger – an impending crisis in its own right. The City has a shortage of
4 affordable rental housing, and a significant percentage of its households are renters and at
5 risk of permanent displacement should they be forced to leave their current homes. Many
6 potentially impacted renters are also essential workers, and the City could be at even greater
7 risk in the event of a future pandemic if they are displaced.

8 (b) On March 16, 2020, the Governor issued Executive Order N-28-20 (the “Executive
9 Order”), which found that the COVID-19 pandemic is having severe impacts throughout the
10 State, and recognized that local jurisdictions must take measures based on their particular
11 needs to preserve and increase housing security, and to protect public health and mitigate the
12 economic effects of the pandemic. To encourage such efforts, Paragraph 2 of the Executive
13 Order authorized local governments to impose substantive limitations on residential evictions
14 for tenants who are unable to pay rent through May 31, 2020 due to the pandemic (or a later
15 date if extended by the Governor), and suspended any provisions of state law that would
16 otherwise preempt local governments from enacting such measures.

17 (c) The Board of Supervisors finds it is in the public interest to prevent tenant
18 displacement in San Francisco due to the COVID-19 pandemic to the maximum extent
19 permitted by law. Pursuant to its regular authority and consistent with Paragraph 2 of the
20 Executive Order, the protections of this ordinance shall apply only to rent payments that a
21 tenant was unable to pay due to the COVID-19 pandemic during the period from March 16,
22 2020 through May 31, 2020 (or if the Governor extends the May 31 date, through the date of
23 extension). This ordinance shall not apply to rent payments that become due after the May 31
24 date (or, if the Governor extends the May 31 date, after the date of extension).

1 (d) This ordinance is intended to prevent tenants from being evicted due to having
2 suffered a financial impact that arose out of the COVID-19 pandemic. As compared to the just
3 cause protections of the California Tenant Protection Act of 2019 (“AB 1482”), this ordinance
4 further limits the permissible reasons for termination of a residential tenancy and provides
5 additional tenant protections. The Board of Supervisors therefore finds that this ordinance is
6 more protective of tenants than AB 1482, and intends that the Rent Ordinance (as hereby
7 amended) shall apply rather than AB 1482.

8
9 Section 2. The Administrative Code is hereby amended by revising Section 37.9, to
10 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 (B) Habitually pays the rent late; or
20 (C) Gives checks which are frequently returned because there are
21 insufficient funds in the checking account; ~~or~~

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

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

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

19 * * * *

20 (D) Before endeavoring to recover possession based on the violation of
21 a lawful obligation or covenant of tenancy regarding subletting or limits on the number of
22 occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation
23 that provides the tenant with an opportunity to cure the violation in 10 or more days. The
24 tenant may cure the violation by making a written request to add occupants referenced in
25 Subsection (A), (B), or (C) of Section 37.9(a)(2) or by using other reasonable means to cure

1 the violation, including, without limitation, the removal of any additional or unapproved
2 occupant. Nothing in this Section 37.9(a)(2)(D) is intended to limit any other rights or remedies
3 that the law otherwise provides to landlords. ~~;~~

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

11 * * * *

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

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

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 was not paid due to the COVID-pandemic; to prohibit landlords from imposing late fees, penalties, or similar charges on such tenants; and making findings as required by the California Tenant Protection Act of 2019.

Existing Law

A landlord generally can evict their tenant for not paying the rent. Due to the COVID-19 pandemic, the Mayor has imposed a six-month moratorium on evictions for non-payment of rent. If a tenant has not paid their past due rent by the end of the moratorium period, the landlord may proceed with the eviction for non-payment at that time.

Also, a landlord may generally charge late fees or interest due to missed rent payments.

Amendments to Current Law

The ordinance would prohibit a landlord from evicting a tenant due to non-payment of rent if the tenant was unable to pay due to the COVID-19 pandemic, even if the tenant has not paid by the end of the Mayor's moratorium period. The ordinance only limits evictions and does not waive the tenant's obligation to pay the rent.

The tenant's inability to pay would need to be documented, and non-payment evictions would be prohibited only with respect to rent that became due while the Governor's Executive Order on evictions is in effect (N-28-20, ¶2). The Executive Order was adopted on March 16, 2020, and is currently set to expire on May 31, 2020, so the ordinance currently covers the April and May rent only. The ordinance would not prohibit evictions due to payments missed after May 31, unless the Executive Order were extended.

The ordinance would also prohibit a landlord from charging late fees or interest due to such missed payments, and would prohibit evictions due to the non-payment of such charges.

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. Question(s) 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):

Subject:

The text is listed:

Signature of Sponsoring Supervisor: