

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Abigail Stewart-Kahn, Interim Director, Department of Homelessness and Supportive Housing  
Dr. Grant Colfax, Director, Department of Public Health  
Robert Collins, Executive Director, Rent Board

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

DATE: May 8, 2020

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 Peskin on May 5, 2020:

**File No. 200457**

**Ordinance amending the Administrative Code to prohibit landlords of residential hotel units (SROs) from evicting tenants for non-payment of rent that was not paid due to the COVID-19 pandemic, and from imposing late fees, penalties, or similar charges on such tenants; to establish a COVID-19 SRO Relief Fund to cover such rent payments; 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](mailto:erica.major@sfgov.org).

cc: Dylan Schneider, Department of Homelessness and Supportive Housing  
Emily Cohen, Department of Homelessness and Supportive Housing  
Greg Wagner, Department of Public Health  
Dr. Naveena Bobb, Department of Public Health  
Sneha Patil, Department of Public Health

1 [Administrative Code - COVID-19 Tenant Protections For SRO Residents]

2

3 **Ordinance amending the Administrative Code to prohibit landlords of residential hotel**  
4 **units (SROs) from evicting tenants for non-payment of rent that was not paid due to the**  
5 **COVID-19 pandemic, and from imposing late fees, penalties, or similar charges on such**  
6 **tenants; to establish a COVID-19 SRO Relief Fund to cover such rent payments; and**  
7 **making findings as required by the California Tenant Protection 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 most recently on April 30, 2020, to apply to rent payments missed in April, May,  
23 and June 2020. But the Eviction Moratorium will allow tenants to be evicted if they have not  
24 paid their past due rent once the extension of time to pay the rent expires. As of the second  
25 quarter of 2020, many tenants have lost their jobs and many businesses have closed. If these

1 trends worsen or if the emergency continues, many tenants may find themselves in an ever  
2 deepening financial hole, with the result that a large wave of evictions for nonpayment of rent  
3 is likely to follow once the extension period ends. It is essential to address this looming  
4 danger – an impending crisis in its own right. And these trends are particularly worrisome with  
5 respect to occupants of residential hotel units (SROs). SROs house some of the City’s most  
6 vulnerable residents. Many of these residents will become homeless if displaced from their  
7 SRO units, which will put them at even greater risk and undermine the City’s continuing efforts  
8 to combat the spread of COVID-19.

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

18 (c) The Board of Supervisors finds it is in the public interest to prevent SRO residents  
19 from being displaced due to the COVID-19 pandemic, to the maximum extent permitted by  
20 law. The protections of this ordinance will apply only to rent payments that an SRO resident  
21 tenant was unable to pay due to the COVID-19 pandemic during the period from March 16,  
22 2020 through the date the Governor’s Executive Order will expire (May 31, 2020, or if the  
23 Governor extends the May 31 date, through the date of extension). This ordinance shall not  
24 apply to rent payments that become due after the May 31 date (or, if the Governor extends  
25 the May 31 date, after the date of extension).

1 (d) This ordinance is intended to prevent SRO residents from being evicted due to  
2 having suffered a financial impact that arose out of the COVID-19 pandemic. As compared to  
3 the just cause protections of the California Tenant Protection Act of 2019 (“AB 1482”), this  
4 ordinance further limits the permissible reasons for termination of a residential tenancy and  
5 provides additional tenant protections. The Board of Supervisors therefore finds that this  
6 ordinance is more protective of tenants than AB 1482, and intends that the Rent Ordinance  
7 (as hereby 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 for residential hotel units as defined in  
23 Administrative Code Section 41.4, subsection (a)(1) shall not apply with respect to rent payments that  
24 initially became due during the time period when paragraph 2 of the Governor’s Executive Order No.  
25 N-28-20 (as said time period may be extended by the Governor from time to time) was in effect, and

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

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

20 \* \* \* \*

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

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

5 (E) Notwithstanding any lease provision to the contrary, a landlord of a  
6 residential hotel unit as defined in Administrative Code Section 41.4 may not impose late fees,  
7 penalties, interest, liquidated damages, or similar charges due to a tenant's non-payment of rent, if the  
8 tenant can demonstrate that it missed the rent payment due to the COVID-19 pandemic as set forth in  
9 subsection (a)(1)(D). A landlord may not recover possession of the unit due to a tenant's failure to pay  
10 late such charges when subsection (a)(1)(D) applies. The foregoing sentence shall not enlarge or  
11 diminish a landlord's rights with respect to such charges when subsection (a)(1)(D) does not apply; or

12 \* \* \* \*

13  
14 Section 3. Article XIII of Chapter 10 of the Administrative Code is hereby amended by  
15 adding Section 10.100-51, to read as follows:

16 **SEC. 10.100-51. COVID-19 SRO RELIEF FUND.**

17 (a) Establishment of Fund. The COVID-19 SRO Relief Fund ("Fund") is hereby established  
18 as a category eight fund to provide financial support to owners and occupants of Residential Hotel  
19 units as defined in Administrative Code Section 41.4.

20 (b) Use of Fund. The Fund shall be used to provide payments to occupants of Residential  
21 Hotel units who have been unable to pay rent due to the financial impacts of the COVID-19 pandemic,  
22 or to the landlords of units occupied by such persons.

23 (c) Sources of Funds. The Fund may receive any legally available monies appropriated or  
24 donated for the purpose set forth in subsection (b) including, but not limited to, funds appropriated by

1 the Board of Supervisors, funding made available from the federal or State governments, and private  
2 donations and grants.

3 (d) Administration of Fund.

4 (1) Responsible Agency. The Mayor's Office of Housing and Community Development  
5 (MOHCD) shall administer the Fund, and may seek assistance of other City agencies including, but not  
6 limited to, the Department of Homelessness and Supportive Housing. In consultation with the  
7 Controller's Office, the MOHCD Director or the Director's designee shall adopt rules for the  
8 distribution of monies in the Fund consistent with the purpose set forth in subsection (b) and the  
9 criteria set forth in subsection (d)(2). MOHCD shall make these rules available on its website and at  
10 its office.

11 (2) Criteria for Disbursement. In consultation with the Controller's Office, MOHCD's  
12 rules regarding the distribution of monies from the Fund shall incorporate and develop the following  
13 criteria:

14 (A) The amount of rent that the occupant's household owes;

15 (B) The degree to which the occupant's household has been financially impacted  
16 by the COVID-19 pandemic;

17 (C) Whether the occupant's household does not qualify for funding or payments  
18 provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (P.L. 116-136),  
19 or other federal or state or local assistance programs specific to the COVID-19 pandemic, due to the  
20 occupant or a member of the household's citizenship or immigration status, lack of a social security  
21 number, tax return filing history, or other factor unrelated to need;

22 (D) Whether the occupant is in good standing with the owner, other than with  
23 respect to the unpaid rent, and is unlikely to face eviction for reasons unrelated to rent; and

24 (E) The degree to which contributions from the Fund may reduce existing public  
25 assistance benefits that would otherwise be available.

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(3) **Outside Consultation.** MOHCD may consult with organizations representing the interests of SRO owners and residents regarding its implementation of this Section 10.100-51.

Section 4. Undertaking for the General Welfare. In enacting and implementing this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, 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.



1  
2 Section 7. Effective and Operative Dates.

3 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs  
4 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
5 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the  
6 Mayor's veto of the ordinance.

7 (b) Section 2 of this ordinance, which amends Administrative Code Chapter 37, is not  
8 intended to conflict with the ordinance in File No. 200375. Accordingly, Section 2 shall be  
9 inoperative if at the time of the effective date of this ordinance, the ordinance in File No.  
10 200375 is in effect, and Section 2 shall remain inoperative so long as the ordinance in File No.  
11 200375 remains in effect. If, at any time after the effective date of this ordinance, the  
12 ordinance in File No. 200375 is not in effect, then Section 2 of this ordinance shall become  
13 operative.

14  
15 Section 8. Mayoral Order. Section 2 of this ordinance is intended to supplement the  
16 tenant protections in the Mayor's Eviction Moratorium by prohibiting a landlord of a residential  
17 hotel unit from recovering possession due to the non-payment of rent upon expiration of the  
18 moratorium period described in Section 1(a). In the event of a conflict between this ordinance  
19 and the Eviction Moratorium, the measure that provides greater tenant protections shall apply.

20  
21 APPROVED AS TO FORM:  
22 DENNIS J. HERRERA, City Attorney

23 By: /s/  
24 MANU PRADHAN  
25 Deputy City Attorney

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## LEGISLATIVE DIGEST

[Administrative Code - COVID-19 Tenant Protections For SRO Residents]

**Ordinance amending the Administrative Code to prohibit landlords of residential hotel units (SROs) from evicting tenants for non-payment of rent that was not paid due to the COVID-19 pandemic, and from imposing late fees, penalties, or similar charges on such tenants; to establish a COVID-19 SRO Relief Fund to cover such rent payments; and making findings as required by the California Tenant Protection Act of 2019.**

### Existing Law

A landlord can usually evict their tenant for not paying the rent, but the Mayor has imposed a six-month moratorium on evictions for non-payment, in response to the COVID-19 pandemic. But, 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. The moratorium also prohibits a landlord from charging late fees or interest arising out of rent payments missed due to COVID-19.

### Amendments to Current Law

The ordinance would prohibit a landlord from evicting a tenant in a SRO unit for 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 will not prohibit evictions due to payments missed after May 31, unless the Executive Order is extended. The ordinance states that landlords may not charge late fees or interest due to such missed payments, or evict due to the non-payment of such charges.

The ordinance would also establish a SRO Relief Fund, and would direct the Mayor's Office of Housing and Community Development to adopt rules for landlords and tenants of SRO units to apply for monies from the fund, which would be subject to future appropriations, to cover missed rent payments.

### Background

The ordinance is not intended to conflict with the ordinance in File No. 200375.

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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):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only