**BOARD of SUPERVISORS** 



City Hall 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

# LAND USE AND TRANSPORTATION COMMITTEE

## SAN FRANCISCO BOARD OF SUPERVISORS

- TO: Supervisor Aaron Peskin, Chair, Land Use and Transportation Committee
- FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee
- DATE: May 19, 2020
- SUBJECT: **COMMITTEE REPORT, BOARD MEETING** Tuesday, May 19, 2020

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, May 19, 2020. This item was acted upon at the Committee Meeting on Monday, May 18, 2020, at 1:30 p.m., by the votes indicated.

#### Item No. 23 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.

## **RECOMMENDED AS A COMMITTEE REPORT**

- Vote: Supervisor Aaron Peskin Aye Supervisor Ahsha Safai - Aye Supervisor Dean Preston - Aye
- c: Board of Supervisors Angela Calvillo, Clerk of the Board Alisa Somera, Legislative Deputy Anne Pearson, Deputy City Attorney Kristen Jensen, Deputy City Attorney

File No. 200457 Committee Item No. 3 Board Item No. 23

# **COMMITTEE/BOARD OF SUPERVISORS**

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Committee: Land Use and Transportation Committee Date May 18, 2020 Board of Supervisors Meeting Date <u>May 19, 2020</u> Cmte Board

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	Department/Agency Cover L	etter and/or Report
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FILE NO. 200457

ORDINANCE NO.

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 <u>single-underline italics Times New Roman font</u> . Deletions to Codes are in strikethrough italics Times New Roman font.
11	Board amendment additions are in <u>double-underlined Arial font</u> . Board amendment deletions are in strikethrough Arial font.
12	Asterisks (* * * *) indicate the omission of unchanged Code 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 danger - an impending crisis in its own right. And these trends are particularly worrisome with 4 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 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 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 The Board of Supervisors finds it is in the public interest to prevent SRO residents (C) 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, 2020 through the date the Governor's Executive Order will expire (May 31, 2020, or if the 22 23 Governor extends the May 31 date, through the date of extension). This ordinance shall not apply to rent payments that become due after the May 31 date (or, if the Governor extends 24 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; <del>or</del>
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	<u>N-28-20 (as said time period may be extended by the Governor from time to time) was in effect, and</u>

5 (iii) is documented. The types of documentation that a tenant may use to show an inability to pay due to COVID-19 may include, without limitation, bank statements, pay stubs, employment termination 6 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 this subsection (a)(1)(D), being necessary for the welfare of the City and County of San Francisco and 10 its residents, shall be liberally construed to effectuate its purpose, which is to protect tenants from 11 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 landlord. 19 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 tenant may cure the violation by making a written request to add occupants referenced in 25 Supervisors Peskin; Safai **BOARD OF SUPERVISORS** 

where the tenant's failure to pay (i) arose out of a substantial decrease in household income (including,

but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the

number of compensable hours of work, or substantial out-of-pocket expenses); (ii) that was caused by

the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19; and

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## Page 4

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; or
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
25	

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) <b>Responsible Agency.</b> 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	<u>criteria:</u>
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.

1 2 (3) **Outside Consultation.** MOHCD may consult with organizations representing the 3 interests of SRO owners and residents regarding its implementation of this Section 10.100-51. 4 Section 4. Undertaking for the General Welfare. In enacting and implementing this 5 6 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not 7 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it 8 is liable in money damages to any person who claims that such breach proximately caused 9 injury. 10 11 Section 5. 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 shall not affect the validity of the remaining portions or applications of the ordinance. The 14 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 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors 21 intends to amend only those words, phrases, paragraphs, subsections, sections, articles, 22 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal 23 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment 24 additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance. 25

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Section 7. Effective and Operative Dates.

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

- (b) Section 2 of this ordinance, which amends Administrative Code Chapter 37, is not
  intended to conflict with the ordinance in File No. 200375. Accordingly, Section 2 shall be
  inoperative if at the time of the effective date of this ordinance, the ordinance in File No.
  200375 is in effect, and Section 2 shall remain inoperative so long as the ordinance in File No.
  200375 remains in effect. If, at any time after the effective date of this ordinance, the
  ordinance in File No. 200375 is not in effect, then Section 2 of this ordinance shall become
  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
- APPROVED AS TO FORM: 21 DENNIS J. HERRERA, City Attorney
- 22

23 By: <u>/s/</u> MANU PRADHAN 24 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 fom charging late fees or interest arising out of rent patments 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. n:\legana\as2020\2000486\01445975.docx

From:	Board of Supervisors, (BOS)
То:	Major, Erica (BOS)
Subject:	FW: SUPPORTING LU&T Committee Agenda Item #3 and BOS Agenda Item #23 Administrative Code - COVID-19 Tenant Protections for SRO Residents File #200457
Date:	Monday, May 18, 2020 4:36:06 PM

From: aeboken <aeboken@gmail.com>

**Sent:** Friday, May 15, 2020 11:13 AM

To: BOS-Supervisors <bos-supervisors@sfgov.org>; BOS-Legislative Aides <bos-

legislative\_aides@sfgov.org>

**Subject:** SUPPORTING LU&T Committee Agenda Item #3 and BOS Agenda Item #23 Administrative Code - COVID-19 Tenant Protections for SRO Residents File #200457

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

## TO: Board of Supervisors members

I am strongly supporting tenant protections for SRO residents from eviction due to nonpayment of rent and to establish a COVID-19 SRO Relief Fund.

Eileen Boken Chair, Land Use and Transportation Committee Coalition for San Francisco Neighborhoods\*

\* For identification purposes only.

Sent from my Verizon, Samsung Galaxy smartphone

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi Committee members,

First off, I'd like to thank Supervisors Peskin, Ronen, and Haney for bringing these items up. My name is Jaime Viloria and am a resident and I also work in the Tenderloin where as you already know have a lot of SRO residents that would benefit from this legislation. Particularly since the neighborhood seem to have been ignored even during the pandemic. I think protecting the residents here would also protect the rest of San Franciscans from COVID19.

We've been lucky enough that for the time being, there hasn't been an explosion of infections in the neighborhood (however, there hasn't been a lot of testing done). I would like to urge the committee members to unanimously vote for this legislation because it is a proactive way to address this pandemic for SRO residents rather than waiting till it's too late.

Thank you, Jaime Viloria TL Resident

From:	Gabriella Ruiz
To:	<u>Major, Erica (BOS)</u>
Subject:	[Emergency Ordinance - Protections for Occupants of Residential Hotels During COVID-19 Pandemic] + [Administrative Code - COVID-19 Tenant Protections For SRO Residents] Sponsor: Peskin
Date:	Monday, May 18, 2020 2:25:48 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello,

Providing public comment on both of these items, numbers 2 and 3.

Hi, my name is Gabby Ruiz and I am the Policy and Planning Manager at TNDC, and we support these two emergency ordinances, that will establish necessary protections for our SRO residents. Here at TNDC, we serve over 5,000 low-income residents in San Francisco by providing permanent affordable housing; many of which are SRO's. We have heard from our community about their experiences, working, and living in these congregate settings. The bottom line is that it is extremely difficult to safely socially distance in an environment where you must share a kitchen and a bathroom. This leaves everyone involved, extremely vulnerable to catching COVID-19 because of the difficulty to safely shelter in place. And if a tenant does test positive, there is absolutely no way they can safely isolate in their SRO unit. We also want to point out that a significant number of our residents are seniors, disabled, immunocompromised, and people of color. That is why we believe it is necessary to provide support such as mass testing, community education, culturally competent SRO contact notification, case investigation, I/Q hotel rooms, and other support needed to stop the spread of COVID in our community. Additionally, we also want to emphasize the need to provide eviction protections for SRO residents and fully support a relief fund, and a "right to return" to units after quarantining.

Thank you for your time.

Best,

Gabriella Ruiz, Policy and Planning Manager Tenderloin Neighborhood Development Corporation 210 Golden Gate Ave. San Francisco, CA 94102 o: 415.358.3955 | c: 415.912.0118 pronouns: she, her This message is from outside the City email system. Do not open links or attachments from untrusted sources.

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First off, I'd like to thank Supervisors Peskin, Ronen, and Haney for bringing these items up. My name is Jaime Viloria and am a resident and I also work in the Tenderloin where as you already know have a lot of SRO residents that would benefit from this legislation. Particularly since the neighborhood seem to have been ignored even during the pandemic. I think protecting the residents here would also protect the rest of San Franciscans from COVID19.

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Thank you, Jaime Viloria TL Resident

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Eileen Boken Chair, Land Use and Transportation Committee Coalition for San Francisco Neighborhoods\*

\* For identification purposes only.

Sent from my Verizon, Samsung Galaxy smartphone

# **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:
Planning Commission   Building Inspection Commission
Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.
Sponsor(s):
Supervisor Peskin
Subject:
[Administrative Code - COVID-19 Tenant Protections For SRO Residents]
The text is listed:
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.
Signature of Sponsoring Supervisor:

For Clerk's Use Only