

1 [Administrative Code - COVID-19 Tenant Protections]

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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.**

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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~~ most recently on April 30, 2020, and currently it ~~only~~ applies to
23 rent payments missed in April, May, and June. But the Eviction Moratorium allows tenants to
24 be evicted if they have not paid their past due rent once the extension expires, and many
25 tenants have lost their jobs and many businesses have closed. If these trends worsen or if

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

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. On May 29, 2020, the
18 Governor issued Executive Order N-66-20, which extended Paragraph 2 of Order N-28-20 by
19 an additional 60 days.

20 (c) The Board of Supervisors finds it is in the public interest to prevent tenant
21 displacement in San Francisco due to the COVID-19 pandemic to the maximum extent
22 permitted by law. Pursuant to its regular authority and consistent with Paragraph 2 of the
23 Executive Order, the protections of this ordinance shall apply only to rent payments that a
24 tenant was unable to pay due to the COVID-19 pandemic during the period from March 16,
25 2020 through ~~May 31~~ July 29, 2020 (or if the Governor extends the ~~May 31~~ July 29 date,

1 through the date of extension). This ordinance shall not apply to rent payments that become
2 due after the ~~May 31~~July 29 date (or, if the Governor extends the ~~May 31~~July 29 date, after
3 the date of extension).

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

11 (e) The Board of Supervisors intends to create a COVID-19 Rent Resolution and
12 Relief Fund by separate legislation to provide support to eligible landlords whose tenants are
13 unable to pay rent due to the financial impacts of the COVID-19.

14
15 Section 2. The Administrative Code is hereby amended by revising Section 37.9, to
16 read as follows:

17 **SEC. 37.9. EVICTIONS.**

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

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

21 (1) The tenant:

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

24 * * * *

25 (B) Habitually pays the rent late; or

1 (C) Gives checks which are frequently returned because there are
2 insufficient funds in the checking account; ~~or~~

3 (D) Provided, however, that subsection (a)(1) shall not apply with respect to
4 rent payments that initially became due during the time period when paragraph 2 of the Governor's
5 Executive Order No. N-28-20 (as said time period may be extended by the Governor from time to time)
6 was in effect, and where the tenant's failure to pay (i) arose out of a substantial decrease in household
7 income (including, but not limited to, a substantial decrease in household income caused by layoffs or a
8 reduction in the number of compensable hours of work, or substantial out-of-pocket expenses; (ii) that
9 was caused by the COVID-19 pandemic, or by any local, state, or federal government response to
10 COVID-19; and (iii) is documented. The types of documentation that a tenant may use to show an
11 inability to pay due to COVID-19 may include, without limitation, bank statements, pay stubs,
12 employment termination notices, proof of unemployment insurance claim filings, sworn affidavits, and
13 completed forms prepared by the Rent Board. A tenant shall have the option, but shall not be required,
14 to use third-party documentation such as a letter from an employer to show an inability to pay. The
15 provisions of this subsection (a)(1)(D), being necessary for the welfare of the City and County of San
16 Francisco and its residents, shall be liberally construed to effectuate its purpose, which is to protect
17 tenants from being evicted for missing rent payments due to the COVID-19 pandemic. Nothing in this
18 subsection (a)(1)(D) shall relieve a tenant of the obligation to pay rent, nor restrict a landlord's ability
19 to recover rent due; or

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

25 * * * *

1 (D) Before endeavoring to recover possession based on the violation of
2 a lawful obligation or covenant of tenancy regarding subletting or limits on the number of
3 occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation
4 that provides the tenant with an opportunity to cure the violation in 10 or more days. The
5 tenant may cure the violation by making a written request to add occupants referenced in
6 Subsection (A), (B), or (C) of Section 37.9(a)(2) or by using other reasonable means to cure
7 the violation, including, without limitation, the removal of any additional or unapproved
8 occupant. Nothing in this Section 37.9(a)(2)(D) is intended to limit any other rights or remedies
9 that the law otherwise provides to landlords. ~~—~~

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

17 * * * *

18
19 Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word
20 of this ordinance, or any application thereof to any person or circumstance, is held to be
21 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
22 shall not affect the validity of the remaining portions or applications of the ordinance. The
23 Board of Supervisors hereby declares that it would have passed this ordinance and each and
24 every section, subsection, sentence, clause, phrase, and word not declared invalid or
25

1 unconstitutional without regard to whether any other portion of this ordinance or application
2 thereof would be subsequently declared invalid or unconstitutional.

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4 Section 4. Effective Date. This ordinance shall become effective 30 days after
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
7 of Supervisors overrides the Mayor’s veto of the ordinance.

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9 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
10 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
11 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
12 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
13 additions, and Board amendment deletions in accordance with the “Note” that appears under
14 the official title of the ordinance.

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16 Section 6. Mayoral Order. This ordinance is intended to supplement the tenant
17 protections in the Mayor’s Eviction Moratorium by prohibiting a landlord from recovering
18 possession due the non-payment of rent upon expiration of the moratorium period. In the
19 event of a conflict between this ordinance and the Eviction Moratorium, the measure that
20 provides greater tenant protections shall apply.

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

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