

1 [Administrative Code - Eviction of Commercial Tenants During COVID-19 Pandemic]

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3 **Ordinance amending the Administrative Code to temporarily restrict landlords from**
4 **evicting commercial tenants for non-payment of rent that was not paid due to the**
5 **COVID-19 pandemic.**

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

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

15 Section 1. The Administrative Code is hereby amended by adding Chapter Section
16 37C, to read as follows:

17 **CHAPTER 37C:**

18 **EVICTION PROTECTIONS FOR COMMERCIAL TENANTS DURING COVID-19 PANDEMIC**

19 **SEC. 37C.1. PURPOSE AND FINDINGS.**

20 (a) The City and County of San Francisco is facing an unprecedented public health and
21 economic crisis due to the COVID-19 pandemic. The Mayor declared a state of emergency on
22 February 25, 2020, and on March 16, 2020, the Governor issued Executive Order N-28-20 (the
23 “Executive Order”), which found that the COVID-19 pandemic is having severe impacts throughout
24 the State, and which recognized that local jurisdictions must take measures based on their particular
25 needs to prevent displacements and to protect public health and mitigate the economic effects of the
pandemic. Accordingly, paragraph 2 of the Executive Order allows local governments to enact

1 protections to protect commercial tenants impacted by COVID-19 from being evicted due to non-
2 payment. Paragraph 2 of the Executive Order will remain in effect until September 30, 2020, unless
3 the Governor orders otherwise.

4 (b) On March 19, 2020, the Mayor issued a Fourth Supplement to the February 25
5 emergency proclamation (and the Mayor issued an Eighth Supplement to clarify the intent of the
6 Fourth Supplement), to protect certain commercial businesses in the City from eviction, based on the
7 severe financial impacts of the pandemic and the public health risks that may result from such impacts.
8 These protections have protected many tenants from being evicted, but would allow evictions to resume
9 as soon as October 1, 2020, and the City is not yet ready for commercial evictions to occur. The City's
10 economy is gradually reopening but the pandemic is continuing to cause severe and lasting economic
11 effects, and the public health risks remain high.

12 (c) The Board of Supervisors hereby finds that the findings in the orders and directives above
13 remain valid and compelling, requiring the further extension of commercial eviction controls for
14 tenants who could not pay rent that came due under the Executive Order. An extension is necessary to
15 prevent businesses from displacements, mitigate broader economic harms, and address the public
16 health risks that may otherwise result. As stated in the Governor's Executive Order N-66-20 (issued on
17 May 29, 2020) and in Executive Order N-71-20, many Californians (including San Francisco residents)
18 are continuing to experience substantial losses of income, hindering their ability to keep up with their
19 rent, and there is an ongoing need to promote security and stability in order to reduce the spread of
20 COVID-19.

21 (d) The protections of this Chapter 37C shall only apply to rent payments that came due
22 between March 16, 2020 and September 30, 2020 (or if the Governor extends the September 30 date,
23 through the date of extension). This Chapter shall not apply to rent payments that become due after the
24 September 30 date (or, if the Governor extends that date, after the date of extension).

1 **SEC. 37C.2. TEMPORARY EVICTION PROTECTIONS.**

2 (a) This Section 37C.2 shall only apply to commercial tenants registered to do business in
3 San Francisco under Article 12 of the Business and Tax Regulations Code with combined worldwide
4 gross receipts for tax year 2019 for purposes of Article 12-A-1 of the Business and Taxation Code
5 equal to or below \$25 million. This figure shall be pro-rated in the case of businesses that were not
6 operating for the entire 2019 tax year.

7 (b) If a covered commercial tenant fails to make a rent payment that originally fell due
8 during the time period when paragraph 2 of the Governor’s Executive Order No. N-28-20 (as said time
9 period may be extended by the Governor from time to time) was in effect, and if the tenant was unable
10 to pay the rent due to financial impacts related to COVID-19, then the landlord may not recover
11 possession of the unit due to the missed or delayed payment until December 31, 2021, or six months
12 after the time period covered by the Executive Order (as said time period may be extended by the
13 Governor from time to time) has ended, whichever is later (the “Forbearance Period”). However, if
14 the landlord owns less than 25,000 square feet of rentable square feet in the building, then the eviction
15 for non-payment may proceed before the Forbearance Period ends, if the landlord can demonstrate
16 that being unable to evict would cause them a significant financial hardship (for example, default on
17 debt or similar enforceable obligation).

18 (c) Subdivision (b) shall also apply to attempts to recover possession of a commercial unit
19 from a tenant who is occupying the unit on a month-to-month periodic tenancy, holdover basis, or
20 similar arrangement, and including where the landlord has the right to terminate or not renew the
21 agreement at the landlord’s discretion. In such situations, if a tenant misses a payment due to COVID-
22 19, this prohibition against recovering possession due to non-payment shall apply, unless the landlord
23 can demonstrate an alternative, non-pretextual reason for recovering possession of the unit (e.g.,
24 turning the unit over to a new tenant under a previously executed agreement, planned renovations, or
25 previous agreement to turn over the unit vacant to a new owner).

1 (d) For purposes of this Chapter 37C, the term “financial impact” means a substantial
2 decrease in business income or increase in business expenses that arose due to illness or other
3 disruption, reduced open hours, or reduced consumer demand. A financial impact is “related to
4 COVID-19” if caused by the COVID-19 pandemic, or by any local, state, or federal government
5 response to COVID-19, and is documented.

6 (e) The provisions of this ordinance, being necessary for the welfare of the City and County
7 of San Francisco and its residents, shall be liberally construed to effectuate its purpose, which is to
8 protect commercial tenants from being evicted for missing rent payments due to the COVID-19
9 pandemic. Nothing in this ordinance shall relieve a commercial tenant of the obligation to pay rent,
10 nor restrict a landlord’s ability to recover rent due.

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12 **SEC. 37C.3. SEVERABILITY.**

13 If any section, subsection, sentence, clause, phrase, or word of this Chapter 37C, or any
14 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
15 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
16 portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have
17 passed this Chapter 37C and each and every section, subsection, sentence, clause, phrase, and word
18 not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or
19 application thereof would be subsequently declared invalid or unconstitutional.

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SEC. 37C.4. SUNSET PROVISION.

This Chapter 37C shall expire by operation of law after the Forbearance Period has ended.

Upon expiration, the City Attorney shall cause this Chapter 37C to be removed from the Administrative Code.

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

By: _____
MANU PRADHAN
Deputy City Attorney
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