

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

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

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

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

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

**CHAPTER 37C:**

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

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

(a) The City and County of San Francisco is facing an unprecedented public health and economic crisis due to the COVID-19 pandemic. The Mayor declared a state of emergency on February 25, 2020, and 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 State, and which recognized that local jurisdictions must take measures based on their particular 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 measures to protect commercial tenants impacted by COVID-19 from being evicted due to non-  
2 payment. Paragraph 2 of the Executive Order remains in effect until September 30, 2020, unless the  
3 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 later 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 measures have protected many tenants from being evicted, but would allow some evictions to  
9 resume as soon as October 1, 2020. As of that date, the City was not yet ready for commercial  
10 evictions to occur, and that remained true for some time thereafter. The City's economy is gradually  
11 reopening but the pandemic is continuing to cause severe and lasting economic effects, and the public  
12 health risks remain high.

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

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

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

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

10 (b) If a covered commercial tenant (1) fails to make a rent payment that originally fell due  
11 during the time period when paragraph 2 of the Governor’s Executive Order N-28-20 is or was in  
12 effect (including as said time period may be extended by the Governor from time to time), and (2) was  
13 unable to pay the rent due to financial impacts related to COVID-19, then the landlord may not recover  
14 possession of the unit due to the missed or delayed payment until January 1, 2022, or six months after  
15 the time period covered by paragraph 2 of the Executive Order (as said time period may be extended by  
16 the Governor from time to time) has ended, whichever is later (the “Forbearance Period”). However,  
17 if the landlord owns less than 25,000 square feet of rentable square feet in the building, then the  
18 eviction for non-payment may proceed before the Forbearance Period ends, if the landlord can  
19 demonstrate that being unable to evict would create a significant financial hardship (for example,  
20 default on debt or similar enforceable obligation) for the landlord.

21 (c) Subdivision (b) shall also apply in its entirety to attempts to recover possession of a  
22 commercial unit from a tenant that is occupying the unit on a month-to-month periodic tenancy,  
23 holdover basis, or similar arrangement, and including where the landlord has the right to terminate or  
24 not renew the agreement at the landlord’s discretion. In such situations, if a tenant misses a rent  
25 payment due to COVID-19, the prohibition in subsection (b) against recovering possession due to non-

1 payment shall apply, unless the landlord qualifies for the “significant financial hardship” exception  
2 stated in subsection (b), or can demonstrate an alternative, non-pretextual reason (unrelated to the  
3 commercial tenant’s failure to make a rental payment) for recovering possession of the unit (for  
4 example, turning the unit over to a new tenant under a previously executed agreement; planned  
5 renovations or a previous agreement to turn over the unit vacant to a new owner).

6 (d) For purposes of this Chapter 37C, the term “financial impact” as it pertains to a  
7 commercial tenant means a substantial decrease in business income or substantial increase in business  
8 expenses that arose due to illness or other disruption, reduced open hours, or reduced consumer  
9 demand. A financial impact is “related to COVID-19” if it was caused by the COVID-19 pandemic, or  
10 by any local, state, or federal government response to the COVID-19 pandemic, and is documented.

11 (e) The provisions of this ordinance, being necessary for the welfare of the City and County  
12 of San Francisco, its residents, and the health of its economy, shall be liberally construed to effectuate  
13 its purpose, which is to protect commercial tenants from being evicted for missing rent payments due to  
14 the COVID-19 pandemic.

15 (f) Nothing in this ordinance shall relieve a commercial tenant of the obligation to pay rent,  
16 nor restrict a landlord’s ability to recover rent due.

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18 **SEC. 37C.3. SEVERABILITY.**

19 If any section, subsection, sentence, clause, phrase, or word of this Chapter 37C, or any  
20 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a  
21 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining  
22 portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have  
23 passed this Chapter 37C and each and every section, subsection, sentence, clause, phrase, and word  
24 not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or  
25 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.

Section 2. Deadline to Enact; Effective Date. This ordinance shall take effect only if it is enacted before paragraph 2 of the Governor’s Executive Order N-28-20 expires. If this ordinance is enacted on or after the expiration of said paragraph of said Executive Order, it shall be null and void. If this ordinance is enacted before such date, then it 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.

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

By: /s/  
MANU PRADHAN  
Deputy City Attorney  
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