

BOARD of SUPERVISORS



City Hall
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MEMORANDUM

TO: Robert Collins, Rent Board

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

DATE: September 29, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Peskin on September 22, 2020:

File No. 201057

Emergency ordinance to temporarily restrict landlords from evicting commercial tenants for non-payment of rent that was not paid due to the COVID-19 pandemic.

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.

1 [Emergency Ordinance - Eviction of Commercial Tenants During COVID-19 Pandemic]

2

3 **Emergency ordinance to temporarily restrict landlords from evicting commercial**
4 **tenants for non-payment of rent that was not paid due to the COVID-19 pandemic.**

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

10

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

12

13 Section 1. Declaration of Emergency under Charter Section 2.107.

14 (a) Section 2.107 of the Charter authorizes passage of an emergency ordinance in
15 cases of public emergency affecting life, health, or property, or for the uninterrupted operation
16 of any City or County department or office required to comply with time limitations established
17 by law. The Board of Supervisors hereby finds and declares that an actual emergency exists
18 that requires the passage of this emergency ordinance.

19 (b) The COVID-19 pandemic is having an unprecedented impact on the City. Mayor
20 London Breed proclaimed a state of emergency on February 25, 2020, and the County Health
21 Officer, starting with Order No. C19-07 which was issued on March 16, 2020, has been
22 restricting non-essential operations of businesses at physical locations across the City. Also,
23 on March 16, 2020, the Governor issued Executive Order N-28-20, paragraph 2 of which
24 granted local governments additional authority to regulate commercial tenancies. Executive
25 Order N-28-20 found that promoting stability among commercial tenancies will further public

1 health, by allowing businesses to keep paying the residents they employ, and by allowing
2 businesses to decide whether and how to remain open based on public health concerns
3 rather than due to economic pressures, and that it is necessary for local jurisdictions to
4 mitigate those economic pressures. On March 19, 2020, the Mayor issued a Fourth
5 Supplement to the February 25 emergency proclamation (and the Mayor later issued an
6 Eighth Supplement to clarify the Fourth Supplement), to protect certain commercial
7 businesses in the City from eviction, based on the severe financial impacts of the pandemic
8 and the public health risks that may result from such impacts. Finally, on June 30, 2020, the
9 Governor issued Executive Order N-71-20, which extended the provisions of paragraph 2 of
10 Executive Order N-28-20 through September 30, 2020. Copies of these orders and directives
11 are on file with the Clerk in File No. _____.

12 (c) The Board of Supervisors hereby finds that the findings in the orders and directives
13 referenced in subsection (b) remain valid and compelling, and declares that an actual
14 emergency continues to exist that requires the further extension of commercial eviction
15 controls. An extension is necessary to prevent displacements due to the COVID-19
16 pandemic, mitigate economic harms, and address the public health risks that may otherwise
17 result. The City's economy is gradually reopening but the pandemic is continuing to cause
18 severe and lasting economic effects. As stated in the Governor's Executive Order N-66-20
19 (issued on May 29, 2020) and in Executive Order N-71-20, many Californians (including San
20 Francisco residents) are continuing to experience substantial losses of income, and evicting
21 local businesses will hinder residents from keeping up with their rent so that they can stay
22 safely in their homes, and there is an ongoing need to promote security and stability in order
23 to reduce the spread of COVID-19.

24 (d) For the foregoing reasons, the Board of Supervisors finds it is essential to prevent
25 the unnecessary displacement of commercial tenants who are unable, due to the financial

1 impacts related to COVID-19, to pay rent that came due while the Governor’s Executive Order
2 remains in effect (that is, rent from March 16, 2020 until September 30, 2020, unless the
3 Governor extends the September 30 date). Preventing evictions will protect local businesses
4 and the people that rely on them.

5
6 Section 2. Protections for Commercial Tenants.

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

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

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

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

7 (d) For purposes of this emergency ordinance, the term “financial impact” as it
8 pertains to a commercial tenant means a substantial decrease in business income or
9 substantial increase in business expenses that arose due to illness or other disruption,
10 reduced open hours, or reduced consumer demand. A financial impact is “related to COVID-
11 19” if it was caused by the COVID-19 pandemic, or by any local, state, or federal government
12 response to the COVID-19 pandemic, and is documented.

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

17 (f) Nothing in this ordinance shall relieve a commercial tenant of the obligation to
18 pay rent, or restrict a landlord’s ability to recover rent due.

19

20 Section 3. Deadline to Enact; Effective Date; Duration; Expiration.

21 This emergency ordinance shall take effect only if it is enacted before paragraph 2 of
22 the Governor’s Executive Order N-28-20 expires. If this ordinance is enacted on or after the
23 expiration of said paragraph of said Executive Order, it shall be null and void. If this ordinance
24 is enacted before such date, then, consistent with Charter Section 2.107, it shall become
25 effective and operative immediately upon enactment. Enactment occurs when the Mayor

1 signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance
2 within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the
3 ordinance. Once enacted, it shall remain in effect for 60 days, unless reenacted as provided
4 by Section 2.107. If not reenacted, it shall expire on the 61st day after enactment.

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6 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word
7 of this emergency ordinance, or any application thereof to any person or circumstance, is held
8 to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such
9 decision shall not affect the validity of the remaining portions or applications of the ordinance.
10 The Board of Supervisors hereby declares that it would have passed this ordinance and each
11 and every section, subsection, sentence, clause, phrase, and word not declared invalid or
12 unconstitutional without regard to whether any other portion of this ordinance or application
13 thereof would be subsequently declared invalid or unconstitutional.

14
15 Section 5. Supermajority Vote Required.

16 In accordance with Charter Section 2.107, passage of this emergency ordinance by the
17 Board of Supervisors requires an affirmative vote of two-thirds of the Board of Supervisors.

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

21
22 By: /s/
23 MANU PRADHAN
24 Deputy City Attorney
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REVISED LEGISLATIVE DIGEST
(Substituted, 9/22/2020)

[Emergency Ordinance - Eviction of Commercial Tenants During COVID-19 Pandemic]

Emergency ordinance to temporarily restrict landlords from evicting commercial tenants for non-payment of rent that was not paid due to the COVID-19 pandemic.

Existing Law

On March 16, 2020, the Governor issued Executive Order N-28-20, paragraph 2 of which allows local governments to enact measures to protect commercial tenants from being evicted due to their inability to pay rent due to COVID-19. Paragraph 2 of the Executive Order is currently set to expire on September 30, 2020.

On March 19, 2020, the Mayor issued an Emergency Order to restrict landlords from evicting commercial tenants registered to do business in San Francisco with worldwide gross receipts for tax year 2019 equal to or below \$25 million (“covered tenants”). The Order applies to rent owed by covered tenants from March 19 through the end of September. Under the Order, a landlord may not evict a covered tenant for non-payment of rent that fell due during this time period, for up to six months after the rent payment was first due. For example, if a covered tenant missed an April 1 rent payment, the tenant could receive an extension up until October 1 for that month’s rent. Likewise, a rent payment originally due on May 1 could be extended up until November 1. However, a landlord could evict for non-payment before the six-month mark by demonstrating that the eviction is necessary to avoid a significant financial hardship to the landlord.

Amendments to Current Law

The emergency ordinance would prohibit landlords from evicting covered tenants who had missed rent payments that fell due while paragraph 2 of the Executive Order was in effect (i.e., from March 16 until September 30, unless the Governor extends the September 30 date further). But, an eviction could proceed if the landlord owns less than 25,000 square feet of rentable square feet in the building, and can demonstrate that being unable to evict would create a significant financial hardship for the landlord. The ordinance is an emergency ordinance, so it would stay in effect for only 60 days after its enactment.

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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