

BOARD of SUPERVISORS



City Hall
1 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

TO: Robert Collins, Executive Director, Rent Board
Dr. Grant Colfax, Director, Department of Public Health

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

DATE: February 2, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Preston on January 26, 2021:

File No. 210077

Ordinance amending the Administrative Code to prohibit landlords from evicting residential tenants for non-payment of rent that came due between February 1, 2021, and June 30, 2021, that was not paid due to the COVID-19 pandemic; to prohibit landlords from imposing late fees, penalties, or similar charges on such tenants; and making findings as required by the California Tenant Protection Act of 2019.

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.

cc: Greg Wagner, Department of Public Health
Dr. Naveena Bobba, Department of Public Health
Sneha Patil, Department of Public Health
Arielle Fleisher, Department of Public Health

1 [Administrative Code - COVID-19 Tenant Protections]

2

3 **Ordinance amending the Administrative Code to prohibit landlords from evicting**
 4 **residential tenants for non-payment of rent that came due between February 1, 2021,**
 5 **and June 30, 2021, that was not paid due to the COVID-19 pandemic; to prohibit**
 6 **landlords from imposing late fees, penalties, or similar charges on such tenants; 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 *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. On February 25, 2020, the Mayor
 19 declared a state of emergency due to COVID-19 and the Board of Supervisors concurred in
 20 the emergency. On March 13, 2020, the Mayor adopted the first of a series of emergency
 21 orders to prevent the eviction of tenants who were unable to pay certain months' rent due to
 22 the financial impacts of COVID-19. The City later adopted an ordinance (Ordinance No. 93-
 23 20) to protect tenants from being evicted due to an inability to pay rent, if the tenant could not
 24 pay due to the financial impacts of COVID-19 and the missed rent payments originally came
 25 due between March 16, 2020, and September 30, 2020. The City also created a COVID-19

1 Rent Resolution and Relief Fund (Ordinance No. 227-20) to provide support to eligible
2 landlords whose tenants are unable to pay rent due to the financial impacts of the COVID-19
3 pandemic.

4 (b) At the state level, the Legislature adopted the Tenant, Homeowner, and Small
5 Landlord Relief and Stabilization Act of 2020 (hereafter, "AB 3088"), which enacted additional
6 eviction protections for tenants who were unable to pay their rent due to COVID-19. But AB
7 3088 applies only to rent payments that originally came due between March 1, 2020 and
8 January 31, 2021, inclusive, and does not protect tenants from being evicted due to rent
9 payments that originally came due on or after February 1, 2021.

10 (c) Regardless whether the Legislature extends AB 3088, there is an ongoing, dire
11 emergency in San Francisco. The pandemic is surging, hospital resources are stretched thin,
12 businesses throughout the City have been required to shutter or limit their operations, and
13 many residents are out of work entirely or have otherwise suffered a loss of income due to the
14 pandemic. The Board of Supervisors is considering an emergency ordinance to suspend
15 evictions due to the non-payment of rent that originally comes due on or after February 1,
16 2021 (File No. 210053), but the emergency ordinance would last only 60 days unless
17 renewed. The threat of mass evictions starting in February 2021 (or if the emergency
18 ordinance is adopted, April 2021) is a looming crisis for tenants who could be directly affected,
19 as well as for the City as a whole. The City has a shortage of affordable rental housing, and a
20 significant percentage of its households are renters and at risk of permanent displacement
21 should they be forced to leave their current homes. Many potentially impacted renters are
22 also essential workers, and the City could be at even greater risk in the event of a future
23 pandemic if they are displaced.

24 (d) The Board of Supervisors finds it is in the public interest to prevent tenant
25 displacement in San Francisco due to COVID-19 to the maximum extent permitted by law.

1 Pursuant to the City’s authority to regulate evictions, and consistent with AB 3088, this
2 ordinance applies to rent payments that originally came due between February 1, 2021 and
3 June 30, 2021, inclusive. Nothing in this ordinance shall affect or impair the application of any
4 other City law or AB 3088 with respect to rent payments that originally came due before
5 February 1, 2021.

6

7 Section 2. The Administrative Code is hereby amended by revising Section 37.9, to
8 read as follows:

9 **SEC. 37.9. EVICTIONS.**

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

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

13 (1) The tenant:

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

16 * * * *

17 (B) Habitually pays the rent late; or

18 (C) Gives checks which are frequently returned because there are
19 insufficient funds in the checking account;

20 (D) Provided, however, that subsection (a)(1) shall not apply with
21 respect to rent payments that initially became due during the time period when paragraph 2 of
22 the Governor’s Executive Order No. N-28-20 (as said time period may be extended by the
23 Governor from time to time) was in effect, and where the tenant’s failure to pay (i) arose out of
24 a substantial decrease in household income (including, but not limited to, a substantial
25 decrease in household income caused by layoffs or a reduction in the number of

1 compensable hours of work, or substantial out-of-pocket expenses]; (ii) that was caused by
2 the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19;
3 and (iii) is documented. The types of documentation that a tenant may use to show an inability
4 to pay due to COVID-19 may include, without limitation, bank statements, pay stubs,
5 employment termination notices, proof of unemployment insurance claim filings, sworn
6 affidavits, and completed forms prepared by the Rent Board. A tenant shall have the option,
7 but shall not be required, to use third-party documentation such as a letter from an employer
8 to show an inability to pay. The provisions of this subsection (a)(1)(D), being necessary for
9 the welfare of the City and County of San Francisco and its residents, shall be liberally
10 construed to effectuate its purpose, which is to protect tenants from being evicted for missing
11 rent payments due to the COVID-19 pandemic. Nothing in this subsection (a)(1)(D) shall
12 relieve a tenant of the obligation to pay rent, nor restrict a landlord's ability to recover rent
13 due; ~~or~~

14 (E) Provided, further, that subsection (a)(1) also shall not apply with respect to
15 rent payments that initially became due between February 1, 2021 and June 30, 2021, inclusive, if the
16 tenant can show an inability to pay due to the financial impacts of the COVID-19 pandemic as set forth
17 in subsection (a)(1)(D). This subsection (a)(1)(E) shall be interpreted and applied in the same manner
18 as subsection (a)(1)(D). Nothing in either subsection shall relieve a tenant of the obligation to pay
19 rent, nor restrict a landlord's ability 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 (E) Notwithstanding any lease provision to the contrary, a landlord
2 may not impose late fees, penalties, interest, liquidated damages, or similar charges due to a
3 tenant's non-payment of rent, if the tenant can demonstrate that it missed the rent payment
4 due to the COVID-19 pandemic as set forth in subsection (a)(1)(D) and/or (a)(1)(E). A
5 landlord may not recover possession of the unit due to a tenant's failure to pay late such
6 charges when subsection (a)(1)(D) and/or (a)(1)(E) ~~applies~~. The foregoing sentence shall not
7 enlarge or diminish a landlord's rights with respect to such charges when subsection (a)(1)(D) and/or (a)(1)(E) ~~does~~ not apply; or

8 * * * *

9
10
11 Section 3. 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
14 shall not affect the validity of the remaining portions or applications of the ordinance. The
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 4. Effective Date. This ordinance shall become effective 30 days after
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
23 of Supervisors overrides the Mayor's veto of the ordinance.

1 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the "Note" that appears under
6 the official title of the ordinance.

7
8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: /s/
11 MANU PRADHAN
12 Deputy City Attorney
13 n:\legana\as2020\2000387\01508444.docx

LEGISLATIVE DIGEST

[Administrative Code - COVID-19 Tenant Protections]

Ordinance amending the Administrative Code to prohibit landlords from evicting residential tenants for non-payment of rent that came due between February 1, 2021, and June 30, 2021, that was not paid due to the COVID-19 pandemic; to prohibit landlords from imposing late fees, penalties, or similar charges on such tenants; and making findings as required by the California Tenant Protection Act of 2019.

Existing Law

A landlord generally can evict their tenant for not paying the rent, and charge the tenant late fees or interest due to missed rent payments.

Due to the COVID-19 pandemic, the City adopted an ordinance (Ordinance No. 93-20) to prohibit evictions of residential tenants for non-payment of rent and to prevent late fees based on missed rent payments, if the tenant was unable to pay the rent due to the COVID-19 pandemic and the rent originally came due while the Governor's Executive Order on evictions was in effect (N-28-20, ¶2). Ordinance No. 93-20 does not waive the tenant's legal obligation to pay the rent; it prohibits a landlord from evicting due to the unpaid rent, but the rent is still owed. Based on the dates when the Executive Order was in effect, Ordinance No. 93-20 applies to rent payments that originally came due between March 16, 2020 and September 30, 2020.

Meanwhile, the California Legislature adopted the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (hereafter, "AB 3088"), which enacted eviction protections for tenants who were unable to pay their rent due to COVID-19. AB 3088 applies only to rent payments that originally came due between March 1, 2020 and January 31, 2021. AB3088 allows some evictions for non-payment of rent that arose during this time period to resume starting February 1, 2021, and does not protect tenants from being evicted due to rent payments that originally came due on or after February 1, 2021.

Amendments to Current Law

The ordinance would prohibit a landlord from evicting a tenant due to non-payment of rent and from charging the tenant late fees or interest due to missed rent payments, if the rent payment originally became due between February 1, 2021 and June 30, 2021, and the tenant could not pay due to the COVID-19 pandemic. The ordinance would limit evictions but would not waive the tenant's obligation to pay the rent for this time period.

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):

Supervisor Dean Preston

Subject:

Administrative Code - COVID-19 Tenant Protections

The text is listed:

Ordinance amending the Administrative Code to prohibit landlords from evicting residential tenants for non-payment of rent that came due between February 1, 2021, and June 30, 2021, that was not paid due to the COVID-19 pandemic; to prohibit landlords from imposing late fees, penalties, or similar charges on such tenants; and making findings as required by the California Tenant Protection Act of 2019.

Signature of Sponsoring Supervisor:

For Clerk's Use Only