

BOARD of SUPERVISORS



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MEMORANDUM

TO: Eric D. Shaw, Director, Mayor's Office of Housing and Community Development
Shireen McSpadden, Director, Department of Homelessness and Supportive Housing
Dr. Grant Colfax, Director, Department of Public Health
Robert Collins, Executive Director, Rent Board

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

DATE: June 11, 2021

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Preston on June 8, 2021:

File No. 210601-2

Ordinance amending the Administrative Code to prohibit landlords from evicting residential tenants for non-payment of rent that came due between July 1, 2021, and December 31, 2021, that was not paid due to the COVID-19 pandemic, provided the tenant has paid at least 25 percent of the rent owed; 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: Eugene Flannery, Mayor's Office of Housing and Community Development
Dylan Schneider, Department of Homelessness and Supportive Housing
Emily Cohen, Department of Homelessness and Supportive Housing
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 July 1, 2021, and**
5 **December 31, 2021, that was not paid due to the COVID-19 pandemic, provided the**
6 **tenant has paid at least 25 percent of the rent owed; to prohibit landlords from**
7 **imposing late fees, penalties, or similar charges on such tenants; and making findings**
8 **as required by the California Tenant Protection Act of 2019.**

9

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

14

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

16

17 Section 1. Purpose and Findings.

18 (a) The City and County of San Francisco is facing an unprecedented public health
19 and economic crisis due to the COVID-19 pandemic. On February 25, 2020, the Mayor
20 declared a state of emergency due to COVID-19 and the Board of Supervisors concurred in
21 the emergency. On March 13, 2020, the Mayor adopted the first of a series of emergency
22 orders to prevent the eviction of tenants who were unable to pay certain months' rent due to
23 the financial impacts of COVID-19. The City later adopted an ordinance (Ordinance No. 93-
24 20) to protect tenants from being evicted due to an inability to pay rent, if the tenant could not

25

1 pay due to the financial impacts of COVID-19 and the missed rent payments originally came
2 due between March 16, 2020, and September 30, 2020. The City also created a COVID-19
3 Rent Resolution and Relief Fund (Ordinance No. 227-20) to provide support to eligible
4 landlords whose tenants are unable to pay rent due to the financial impacts of the COVID-19
5 pandemic.

6 (b) At the state level, the Legislature adopted the Tenant, Homeowner, and Small
7 Landlord Relief and Stabilization Act of 2020 (hereafter, "SB 91"), which enacted additional
8 eviction protections for tenants who were unable to pay their rent due to COVID-19. But SB
9 91 applies only to rent payments that originally came due between March 1, 2020 and June
10 30, 2021, inclusive, and does not protect tenants from being evicted due to rent payments that
11 originally came due on or after July 1, 2021.

12 (c) Regardless of whether the Legislature extends SB 91, there is an ongoing
13 emergency in San Francisco. The pandemic appears to be slowly coming under control, but
14 the end is not in sight, and the threat of mass evictions starting July 1, 2021 is a looming crisis
15 for tenants who could be directly affected, as well as for the City as a whole. The City has a
16 shortage of affordable rental housing, a significant percentage of its households are renters at
17 risk of permanent displacement should they be forced to leave their current homes, and many
18 potentially impacted renters are also essential workers who will be needed immediately if the
19 pandemic takes a turn for the worse. The Board of Supervisors is considering an emergency
20 ordinance to suspend evictions due to the non-payment of rent that originally comes due on or
21 after July 1, 2021 (File No. 210602), but the emergency ordinance would last only 60 days
22 unless renewed. The threat of mass evictions starting in July 2021 (or if applicable, 60 days
23 after the adoption of the emergency ordinance) is a looming crisis for tenants who could be
24 directly affected, as well as for the City as a whole. State and federal relief programs have
25 been delayed and and only began processing San Francisco applications in May 2021, and

1 these funding delays have in turn impacted the City’s efforts to administer relief to landlords
2 and tenants. See, e.g., *Los Angeles Times*, “Cash to help California renters goes unspent
3 with eviction protections expiring soon” (May 20, 2021), available at
4 <https://www.latimes.com/california/story/2021-05-20/california-renters-unspent-financial->
5 [assistance-eviction-protections-expiring](https://www.latimes.com/california/story/2021-05-20/california-renters-unspent-financial-assistance-eviction-protections-expiring)); and *48 Hills*, “Not one dollar of state rent-relief
6 money has arrived in SF” (May 13, 2021, available at [https://48hills.org/2021/05/not-one-](https://48hills.org/2021/05/not-one-dollar-of-state-rent-relief-money-has-arrived-in-sf/)
7 [dollar-of-state-rent-relief-money-has-arrived-in-sf/](https://48hills.org/2021/05/not-one-dollar-of-state-rent-relief-money-has-arrived-in-sf/)). A short-term extension of SB 91’s
8 evictions protections through the end of the calendar year is necessary to help tenants during
9 this transitional phase.

10 (d) The Board of Supervisors finds it is in the public interest to prevent tenant
11 displacement in San Francisco due to COVID-19 to the maximum extent permitted by law.
12 Pursuant to the City’s authority to regulate evictions, and consistent with SB 91, this ordinance
13 applies to rent payments that originally came due between July 1, 2021 and December 31,
14 2021, inclusive. Nothing in this ordinance shall affect or impair the application of any other
15 City law or SB 91 with respect to rent payments that originally came due before July 1, 2021.

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

19 **SEC. 37.9. EVICTIONS.**

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

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

23 (1) The tenant:

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

1 * * * *

2 (B) Habitually pays the rent late; or

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

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

23 ~~or~~

24 (E) Provided, further, that prior to January 1, 2022, subsection (a)(1) also shall
25 not apply with respect to rent payments that initially became due between July 1, 2021 and December

1 31, 2021, inclusive (hereafter, the “Transition Period”), if the tenant can show they were unable to pay
2 the rent because of the financial impacts of the COVID-19 pandemic as set forth in subsection
3 (a)(1)(D). Commencing January 1, 2022, subsection (a)(1) shall not apply with respect to the non-
4 payment of rent that initially became due during the Transition Period if (i) on or before December 31,
5 2031, the tenant tenders one or more payments that, when taken together, are of an amount equal to or
6 not less than 25% of the total rent that initially became due during the Transition Period; and (ii) the
7 tenant can show they are unable to pay the remaining rent that initially became due during the
8 Transition Period because of the financial impacts of the COVID-19 pandemic as set forth in
9 subsection (a)(1)(D). Nothing in either subsection shall relieve a tenant of the obligation to pay rent,
10 nor restrict a landlord’s ability to recover rent due; or

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

15 * * * *

16 (E) Notwithstanding any lease provision to the contrary, a landlord may
17 not impose late fees, penalties, interest, liquidated damages, or similar charges due to a
18 tenant’s non-payment of rent, if the tenant can demonstrate that it missed the rent payment
19 due to the COVID-19 pandemic as set forth in subsection (a)(1)(D) and/or (a)(1)(E). A
20 landlord may not recover possession of the unit due to a tenant’s failure to pay late such
21 charges when subsection (a)(1)(D) and/or (a)(1)(E) applies. The foregoing sentence shall not
22 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

23 * * * *

1 Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word
2 of this ordinance, or any application thereof to any person or circumstance, is held to be
3 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
4 shall not affect the validity of the remaining portions or applications of the ordinance. The
5 Board of Supervisors hereby declares that it would have passed this ordinance and each and
6 every section, subsection, sentence, clause, phrase, and word not declared invalid or
7 unconstitutional without regard to whether any other portion of this ordinance or application
8 thereof would be subsequently declared invalid or unconstitutional.

9
10 Section 4. Effective Date. This ordinance shall become effective 30 days after
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
13 of Supervisors overrides the Mayor's veto of the ordinance.

14
15 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
17 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
18 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
19 additions, and Board amendment deletions in accordance with the "Note" that appears under
20 the official title of the ordinance.

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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LEGISLATIVE DIGEST
(Substituted 6/8/2021)

[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 July 1, 2021, and December 31, 2021, that was not paid due to the COVID-19 pandemic, provided the tenant has paid at least 25 percent of the rent owed; 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

The Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (hereafter, "SB 91") grants certain eviction protections to residential tenants who have paid at least 25% of the rent owed by June 30, 2020, but could not pay the remainder due to COVID-19. SB 91 does not protect tenants from evictions based on unpaid rent that initially came due on or after July 1, 2021. Under the City's Rent Ordinance, 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.

Amendments to Current Law

The ordinance would restrict landlords from evicting tenants due to the non-payment of rent that originally came due between July 1, 2021 and December 31, 2021 (the "Transition Period"). Until December 31, 2021, a landlord could not evict a tenant for non-payment of Transition Period rent if the tenant can show with documentation that they were unable to pay due to the financial impacts of the COVID-19 pandemic. But starting January 1, 2022, a tenant would need to (1) have paid at least 25% of the total rent that had accrued during the Transition Period, and (2) be able to provide documentation showing that they are unable to pay the remainder due to the financial impacts of the COVID-19 pandemic, in order to not be evicted. A landlord could evict for non-payment of Transition Period rent if the tenant had not paid at least 25% of the total Transition Period rent by December 31, 2021. The ordinance would restrict evictions for non-payment of Transition Period rent, but the rent would still be owed. Also, the ordinance would prohibit landlords from imposing late fees or penalties or similar charges on a tenant who missed their Transition Period rent due to COVID-19, and would prohibit landlords from evicting due to these unpaid fees/charges.

Background

This version of the legislative digest corresponds with a substitute ordinance introduced on June 8, 2021. The substitute ordinance clarifies that the tenant would have until December 31, 2021 to pay 25% of the Transition Period rent, before they could be evicted.

FILE NO. 210601

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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:

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