

1 [Administrative Code - Effect Of COVID-19 On Commercial Leases]

2

3 **Ordinance amending the Administrative Code to establish a rebuttable presumption**  
4 **that a commercial tenant who was legally required to shut down due to COVID-19 may**  
5 **be excused from having to pay rent that came due during the shutdown.**

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 ~~*strikethrough italics Times New Roman font*~~.  
9 **Board amendment additions** are in double-underlined Arial font.  
10 **Board amendment deletions** are in ~~strikethrough 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. Chapter 37C of the Administrative Code is hereby amended by adding a  
14 new Section 37.4, renumbering existing Section 37.4 as Section 37.5, and revising existing  
15 Section 37C.5, to read as follows:

16 **SEC. 37C.4. SHUTDOWNS DUE TO HEALTH ORDERS.**

17 *(a) Purpose and Findings. The COVID-19 pandemic has created an unprecedented crisis in*  
18 *the City, leading to disputes between commercial landlords and tenants regarding whether a tenant is*  
19 *required to pay rent that accrued during periods when the tenant was legally prohibited from operating*  
20 *due to COVID-19. In some cases, where performance of a contractual duty has become impossible or*  
21 *where the purposes of a contract have been frustrated, state law excuses a party to the contract from*  
22 *performance. The Board of Supervisors finds that it is appropriate to presume – at least in the absence*  
23 *of a contract provision or other agreement between the parties to the contrary – that a legally required*  
24 *shutdown due to COVID-19 is a circumstance that made it impossible for those tenants to perform or*  
25 *frustrated the purpose of those tenants’ leases. This presumption applies only to those situations where*

1 a tenant fell under a category of businesses that was required to shut down under a health order, not  
2 where a tenant would have been allowed to stay open but had to close due to a COVID-19 outbreak, or  
3 where the tenant closed due to the economic impacts of COVID-19. The payment of rent pursuant to a  
4 commercial lease should be excused if the operation of the business was rendered illegal by a COVID-  
5 19 health order(s), if the parties have not agreed otherwise.

6 (b) **Excusing Performance.** Absent an agreement to the contrary between a Covered  
7 Commercial Tenant and the landlord, if the Covered Commercial Tenant fell under a category of  
8 businesses that was legally prohibited from operating in the unit due to a state or local health order  
9 concerning COVID-19, then there shall be a rebuttable presumption that the shutdown frustrated the  
10 purpose of the lease and that payment of rent covering the period of the shutdown is excused. The  
11 Covered Commercial Tenant need not seek to terminate the lease to invoke the protections of this  
12 ordinance. This presumption shall apply unless and until evidence is introduced that would support a  
13 finding that, notwithstanding the shutdown order(s), the purpose of the lease was not frustrated and  
14 performance remained possible.

15 (c) **Non-Applicability to Certain Negotiated Agreements.** In some cases,  
16 commercial landlords and their tenants may have executed written agreements in response to  
17 the COVID-19 pandemic in order to reduce, waive, or extend the tenant's deadline to pay rent  
18 that might otherwise have been due. It is the policy of the Board of Supervisors to encourage  
19 such negotiated agreements. Accordingly, the presumption in subsection (b) shall not apply  
20 to those rent payments that the landlord and tenant addressed in such a negotiated  
21 agreement, assuming the agreement is otherwise legal and valid.

22 (d) **Federal and state law.** Nothing in this Section 37C.4 shall be interpreted or applied so as  
23 to conflict with the terms of the lease or any federal or state law. This Section 37C.4 does not override  
24 the terms of any lease, does not modify any state laws that relate to the interpretation or enforcement of  
25 leases, and does not alter the burden of proof under state law with regard to a landlord's claim that a

1 tenant has breached the lease or a tenant's defense or excuse regarding the alleged breach. Instead,  
2 this Section 37C.4 seeks to simplify the burden of presenting evidence so that landlords and tenants,  
3 especially those who may be unable to afford legal representation or protracted litigation, may resolve  
4 their disputes more easily and more economically.

5

6 **SEC. 37.45. SEVERABILITY.**

7 \* \* \* \*

8

9 **SEC. 37C.65. SUNSET PROVISION.**

10 This Chapter 37C shall expire by operation of law on June 30, 2025~~after the Tier 1~~  
11 ~~Forbearance Period has ended.~~ Upon expiration, the City Attorney shall cause this Chapter 37C  
12 to be removed from the Administrative Code.

13

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

22

23 //

24 //

25 //

1 Section 3. Effective Date. This ordinance shall become effective 30 days after  
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
4 of Supervisors overrides the Mayor's veto of the ordinance.

5

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

8

9 By: /s/ \_\_\_\_\_  
10 MANU PRADHAN  
11 Deputy City Attorney  
12 n:\legana\as2021\2100443\01544327.docx

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25