

File No. 210603 Committee Item No. 7
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date July 19, 2021

Board of Supervisors Meeting Date _____

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Completed by: Erica Major Date July 15, 2021
Completed by: Erica Major Date _____

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.

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

14 Section 1. Chapter 37C of the Administrative Code is hereby amended by adding a
15 new Section 37.4, renumbering existing Section 37.4 as Section 37.5, and revising existing
16 Section 37C.5, to read as follows:

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

18 *(a) Purpose and Findings. The COVID-19 pandemic has created an unprecedented crisis in*
19 *the City, leading to disputes between commercial landlords and tenants regarding whether a tenant is*
20 *required to pay rent that accrued during periods when the tenant was legally prohibited from operating*
21 *due to COVID-19. In some cases, where performance of a contractual duty has become impossible or*
22 *where the purposes of a contract have been frustrated, state law excuses a party to the contract from*
23 *performance. The Board of Supervisors finds that it is appropriate to presume – at least in the absence*
24 *of a contract provision or other agreement between the parties to the contrary – that a legally required*
25 *shutdown due to COVID-19 is a circumstance that made it impossible for those tenants to perform or*
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) **Federal and state law.** Nothing in this Section 37C.4 shall be interpreted or applied so as
16 to conflict with the terms of the lease or any federal or state law. This Section 37C.4 does not override
17 the terms of any lease, does not modify any state laws that relate to the interpretation or enforcement of
18 leases, and does not alter the burden of proof under state law with regard to a landlord's claim that a
19 tenant has breached the lease or a tenant's defense or excuse regarding the alleged breach. Instead,
20 this Section 37C.4 seeks to simplify the burden of presenting evidence so that landlords and tenants,
21 especially those who may be unable to afford legal representation or protracted litigation, may resolve
22 their disputes more easily and more economically.

1 **SEC. 37.45. SEVERABILITY.**

2 * * * *

3
4 **SEC. 37C.65. SUNSET PROVISION.**

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

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

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LEGISLATIVE DIGEST

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

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

Existing Law

Chapter 37C of the Administrative Code grants eviction protections to Covered Commercial Tenants who could not pay their rent due to the financial impacts of COVID-19. The term “Covered Commercial Tenant” means a tenant or subtenant registered to do business in San Francisco with combined worldwide gross receipts for tax year 2019 equal to or below \$25 million, but does not include for-profit tenants and subtenants who are occupying space zoned or approved for Office Use under the Planning Code. The eviction protections for Covered Commercial tenants are currently scheduled to expire in June 2023.

Meanwhile, state law may excuse a party to a contract from performing under the contract, in some cases, if performance has become impossible or where the purposes of a contract have been frustrated.

Amendments to Current Law

The ordinance would enact a new provision, Section 37C.4, that would apply to any Covered Commercial Tenant who had been legally prohibited from operating in a unit due to a state or local health order concerning COVID-19. As to that situation, Section 37C.4 would create a rebuttable presumption – absent a contract provision or other agreement between the parties to the contrary – that the tenant’s shutdown frustrated the purpose of the lease and that the tenant’s duty to pay rent that accrued during the period of the shutdown is excused. This presumption would apply unless and until evidence was introduced that would support a finding that the purpose of the lease was not frustrated and that performance remained possible, notwithstanding the shutdown order(s). Section 37C.4 would sunset on June 30, 2025. The expiration date of Chapter 37C’s eviction protections would not change.

Background Information

The purpose of the ordinance is to simplify the burden of presenting evidence so that landlords and tenants, especially those who may be unable to afford legal representation or protracted litigation, may resolve their disputes regarding COVID-19 more easily and more economically.

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BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

TO: 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 1, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Preston on May 25, 2021:

File No. 210603

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

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

REUBEN, JUNIUS & ROSE, LLP

James A. Reuben
jreuben@reubenlaw.com

July 13, 2021

Delivered Via Email (erica.major@sfgov.org)

Chair Myrna Melgar
Supervisor Dean Preston
Supervisor Aaron Peskin
San Francisco Board of Supervisors
Land Use Committee
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

Re: File No. 210603 - Effect Of COVID-19 On Commercial Leases
Hearing Date: July 19, 2021
Our File No.: 7574.99

Dear Chair Melgar and Supervisors Preston and Peskin:

We are writing regarding the proposed commercial rent relief ordinance [File No. 210603] that is pending action by the Land Use and Transportation Committee of the San Francisco Board of Supervisors (the “Committee”). We urge the Committee not to refer this item to the full Board of Supervisors.

We are a law firm that represents commercial landlords that own and lease commercial space to tenants operating a variety of businesses in San Francisco. Like most businesses, commercial landlords have been harmed by the COVID-19 pandemic. While our clients appreciate the policy goals of the legislation, we respectfully must note that the ordinance would constitute a form of commercial rent control, and so is preempted by California law.

The proposed ordinance would establish a rebuttable presumption that the purpose of a commercial lease in San Francisco was “frustrated” if the tenant had been required to shut down due to COVID-19 orders. The ordinance would create a presumption that excuses the payment of rent during this shutdown period. In this way, the law would alter the affirmative defense of “commercial frustration” available to California tenants, which turns on the landlord’s warrant that the premises are suitable for their intended use.¹

¹ Miller and Starr, 10 Cal. Real Est. § 34:166 (4th ed.).

Chair Melgar
Supervisor Preston
Supervisor Peskin
San Francisco Board of Supervisors
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Under the *Costa-Keene-Seymour Commercial Property Investment Act of 1987*, no public entity shall enact or enforce any measure constituting “commercial rental control.”² In adopting this Act, the Legislature expressly found that the price charged for commercial real property is a matter of statewide concern.³ Accordingly, the Legislature has enacted a uniform system with respect to commercial rents, which applies to every local jurisdiction in the state.⁴

On March 16, 2020, California Governor Gavin Newsom issued an emergency order that temporarily suspended this prohibition to the extent it related to evictions.⁵ Through a series of subsequent emergency orders, the suspension remained in effect through June 30, 2021.⁶ However, the Governor’s order expressly provided that “[n]othing in [it] shall relieve a tenant of the obligation to pay rent, nor restrict a landlord’s ability to recover rent due.”⁷ The proposed ordinance would do exactly what the Governor did not intend.

Normally, if a party is able to invoke the doctrine of “commercial frustration,” the remedy is termination of the lease.⁸ In contrast, the proposed ordinance provides that a “Covered Commercial Tenant” would not have to seek termination of its lease, but instead may cite COVID-19 shutdown orders as a defense against paying rent.⁹ This recasting of the commercial frustration doctrine is preempted by state law because it is a *de facto* form of commercial rent control, not allowed by the Governor’s order.

To reiterate, the *Costa-Keene-Seymour Act* prohibits local governments from enacting “any control or system of controls, on the price at which . . . commercial real property may be offered for rent.”¹⁰ The proposal would not merely affect commercial evictions, which was allowed temporarily by

² Cal. Civ. Code § 1954.27(a).

³ *Id.*

⁴ *Id.*

⁵ Exec. Order N-28-20.

⁶ Exec. Orders N-66-20, ¶ 21 (May 29, 2020), N-71-20, ¶ 3 (June 30, 2020), N-80-20, ¶ 2 (Sept. 23, 2020), and N-03-21, ¶ 3 (Mar. 4, 2021).

⁷ Exec. Order N-28-20, ¶ 2.

⁸ See *Knoblauch v. McKinney* (1935) 5 Cal.App.2d 339, 340-41 [“The lessees make no claim that they elected to terminate the lease under the provisions of section 1932 of the Civil Code. [Citations.] They chose to remain in possession while the lessors proceeded with repairs. . . . Under circumstances such as here presented, the obligation devolving upon lessees to continue paying rent as provided by the lease was not diminished or otherwise affected by the impairment of the property by earthquake.”].

⁹ File No. 210603, Leg Ver 1, proposed S.F. Admin. Code § 37C.4 (b).

¹⁰ Cal. Civ. Code § 1954.26(f).

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the Governor's order, but also control the price of at least some commercial rental property – by dropping it to zero.

The entire world has been deeply harmed by the COVID-19 crisis, commercial landlords and tenants included. The City and County of San Francisco has many tools it may use to mitigate the devastating impact of the pandemic, but the proposed ordinance reaches into an area beyond its power.

We urge you to consider different approaches. Thank you.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP



James A. Reuben



CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

June 17, 2021

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 210603: Administrative Code - Effect Of COVID-19 On Commercial Lease

Small Business Commission Recommendation to the Board of Supervisors: **Approve**
This motion passed 5 to 0, with 2 recused.

Dear Ms. Calvillo,

On June 14, 2021, the Small Business Commission (SBC) heard BOS File No. 210603: Administrative Code - Effect Of COVID-19 On Commercial Lease, presented by Kyle Smeallie, aide to Supervisor Preston.

The SBC recommends the Board of Supervisor approve this ordinance and enact a new provision to Chapter 37C. The SBC supports the purpose of the ordinance, which simplifies the burden of presenting evidence, and more easily resolve disputes between landlord and commercial tenants forced to cease operations at the direction of the San Francisco Health Officer due to COVID-19.

Thank you for considering the Commission's recommendation. Please feel free to contact me should you have any questions.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

cc: Dean Preston, Member, Board of Supervisors,
Sophia Kittler, Mayor's Liaison to the Board of Supervisors
Lisa Pagan, Office of Economic and Workforce Development
Erica Major, Clerk of the Rules Committee

From: [La Marsa team](#)
To: [Major, Erica \(BOS\)](#)
Subject: File #210603.
Date: Friday, June 4, 2021 2:55:08 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi,

I understand that there a 30 day rule before your board vote on the legislation .I wanted to mention that June 25th or 26 th its only 4 days and landlord will start evicting tenants left and right . My landlord has refused any form of arrangement I proposed I have a long lease and he wants to brake it .and he has already started to lay the ground on eviction process and I am sure that July 1st he will try to evict me . Please don't let this happen to me and to thousands of tenants . Thank you very much and god bless

From: [Smeallie, Kyle \(BOS\)](#)
To: [soul fist](#)
Cc: [Major, Erica \(BOS\)](#)
Subject: RE: Small biz relief from back rent ?
Date: Tuesday, June 29, 2021 12:26:07 PM

Absolutely – you can submit written remarks to the Land Use Committee Clerk Erica Major (erica.major@sfgov.org) to be submitted to the public record. Thanks again for your support!

From: soul fist <soulfistication@yahoo.com>
Sent: Tuesday, June 29, 2021 11:40 AM
To: Smeallie, Kyle (BOS) <kyle.smeallie@sfgov.org>
Subject: Re: Small biz relief from back rent ?

Thanks kindly for the update - sounds good.

One quick question - is it possible to provide written comment in advance, rather than verbal during the call? If so, what is best email address?

Thank you !

On Monday, June 28, 2021, 10:48:16 PM PDT, Smeallie, Kyle (BOS) <kyle.smeallie@sfgov.org> wrote:

Hi Geoff,

Thanks for your follow up and for your advocacy. The latest update is that the item was unanimously [recommended](#) by the Small Business Commission on June 17, and the next step is it will be heard at the Land Use and Transportation Committee of the Board of Supervisors. We have requested and tentatively confirmed July 19th for that hearing, at which we encourage you to call in and make public comment.

Let me know if you have any other questions, and thanks again!

Kyle

From: soul fist <soulfistication@yahoo.com>
Sent: Thursday, June 24, 2021 6:55 AM
To: PrestonStaff (BOS) <prestonstaff@sfgov.org>; Smeallie, Kyle (BOS) <kyle.smeallie@sfgov.org>
Subject: Re: Small biz relief from back rent ?

Hello, I am following up on message below - could you please let me know if there is still time to enter public comment in support of this bill? I would also like to understand the current status as well - could you let me know ?

<https://sfgov.legistar.com/LegislationDetail.aspx?ID=4967609&GUID=1421AF9C-5CDF-4737-B119-D68D4537825E&Options=&Search=>

Thanks !

On Sunday, June 20, 2021, 11:47:52 AM PDT, soul fist <soulfistication@yahoo.com> wrote:

Hello Mr. Preston. I am hoping for just a quick moment of help and input - could you (or perhaps Kyle Smeallie, who is noted in your twitter feed) perhaps provide me with a quick update, or at least the BOS legislative language reference, for the small business rent relief proposal that you made back on 5/25?

The proposal looks very similar in spirit to the suggestion that I had made below in public comment about "presumption" handling, and so I am interested in following the developments. Naturally I am also hoping that the proposal passes, as our small business continues to struggle with our landlord. I am also available to discuss at an anecdotal level the practicalities behind this bill if you would like to have further input, particularly if that discussion might assist with analysis of any issues you are addressing as you work with other supervisors on passage.

Thanks kindly once again for your help on this critical issue !

Geoff

----- Forwarded Message -----

From: soul fist <soulfistication@yahoo.com>

To: Carroll, John (BOS) <john.carroll@sfgov.org>

Sent: Thursday, March 18, 2021, 01:54:02 PM PDT

Subject: Re: Public Comment on Lease matters for Government Audit and Oversight Committee March 18, 2021

That is fantastic, as with apologies I did not realize that the comment period was so short.

Thanks once again for your assistance following the hearing rules, establishing good public comment records, and just generally helping folks out here - very much appreciated.

One other quick question - is there perhaps a deck or other set of materials from the meeting that is made publicly available? There was some helpful information provided about legal support networks, but I am a bit unclear how/whether to access the public record for this meeting (or whether I should just ask my supervisor's office directly?). No problem if you don't know or can't provide - but if there is a public link to materials please consider sending.

Thanks John !!

On Thursday, March 18, 2021, 01:32:10 PM PDT, Carroll, John (BOS) <john.carroll@sfgov.org> wrote:

Thank you for your messages and for following up. I have already forwarded your first message to the committee, and I will do the same with this message as well.

Regards,

John Carroll

Assistant Clerk

Board of Supervisors

San Francisco City Hall, Room 244

San Francisco, CA 94102

(415) 554-4445

(VIRTUAL APPOINTMENTS) To schedule a virtual meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services.



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation and archived matters since August 1998.

***Disclosures:** Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*

From: soul fist <soulfistication@yahoo.com>

Sent: Thursday, March 18, 2021 1:05 PM

To: Carroll, John (BOS) <john.carroll@sfgov.org>

Subject: Re: Public Comment on Lease matters for Government Audit and Oversight Committee March 18, 2021

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Hi John, my public comment period on the call was cut-off, and I have amended my written comment - would you please kindly consider entering the following comment into the record, as a replacement to my initial email?

Thank you!!!!

Thank you to those Board members, city employees, and public servants who have been working actively to protect small SF businesses during this difficult time. I can tell you as a small business owner that your careful and thoughtful work has provided a lifeline to those of us who are struggling to survive, employee local citizens, provide services and goods to the community, and enhance the cultural, economic and tax revenue base for the city through successful operations. The public policy considerations at stake are unquestionably immense for our blighted neighborhoods and our fellow citizens. Many small business owners need no additional data entered into the public record at this time to reach the fundamental and common-sense conclusion that they are on the verge of personal financial ruin due to the

pandemic, and more support is critical please.

I would like to address the recent commercial lease ordinance that has provided an opportunity for tier one covered tenants and landlords to address, renegotiate, or even terminate leases. While the ordinance is welcome and I believe designed to encourage active and holistic renegotiation of lease terms, I am hoping to respectfully encourage further review and consideration to continue to refine this ordinance for clarity. In particular, my direct experience, and additional anecdotal evidence indicates that many landlords are refusing to even recognize the ordinance, and continue to threaten to take legal action against tenants for FUTURE rent, attorneys fees, and contract penalties despite the clear and recent guidance with respect to the lease termination framework stated directly in the ordinance. Landlords also continue to assert that full pre-pandemic market value is due for back rent and future rent despite clear and common-sense conclusions that the pandemic has fundamentally shifted the property rental values in the city through no fault of tenants. So, my comments are directed towards three potential legislative considerations.

First, to address numerous comments about possible limits under the state statutory regime, and the argument that new legislation cannot look backwards, nor reform or reshape existing rent terms or contracts. I ask the Board of Supervisors to please immediately enact additional ordinance or legislation which states in simple terms that the city's legislative intent is to be consistent with Section 1511 of the California Civil Code with respect to force majeure events. This statute – which was in effect at the state level prior to the pandemic, and is therefore immune to temporal or jurisdictional challenges - provides a direct and legitimate excuse from contract performance for certain force majeure events. There is no barrier to enacting new legislation that is consistent with the state's own law that completely excuses contract performance in certain conditions, and is therefore not a local rent control provision but rather a pure contract rescission mechanism under state law. Specifically, the updated city legislation should indicate that the pandemic is a (quote) “irresistible superhuman event” consistent with section 1511 of the state's civil code. There need be no legal conclusion enacted that such event actually caused a contract breach for a particular tenant (which is a question of fact). Rather, the local law should indicate that in any future administrative proceedings or legal proceedings within city jurisdiction there will be a presumption that a tier one covered tenant did not assume the risk of the pandemic at the time that they entered into the lease, and that the landlord, and not the tenant, shall have the burden of proof to demonstrate that the lease terms clearly, expressly, and unequivocally override subsection (2) of Section 1511 of the California Civil Code. Additionally, evidentiary and remedy provisions should limit damages claims to a cap related to a landlord's demonstrable interim mortgage payments and building expenses rather than pre-pandemic property rental values, and provided that the landlord has introduced evidence demonstrating that they took reasonable steps to secure tenant safety and facilitate the tenant's use of the property for its intended purpose. Finally, as part of this presumption, any attorney fees or penalties as applied to a tenant should be expressly limited unless the landlord has not only met their burden of proof but has also demonstrated bad faith negotiation activities by the tenant. I believe that underscoring the force majeure framework alongside future evidentiary process considerations and damages limits would frame the constitutionality of the ordinance and the clear legislative intent behind our city rules. I encourage the board to consult with the city attorney regarding this legal framework – not only with respect to force majeure and contract concepts but also the basic and fundamental value to everyone – the city included - provided by certainty rather than ongoing multi-year litigation.

Second, I ask the Board to please consider the legal obligations of realty agents in this

framework. Many brokerages are representing tenants and landlords without full transparency or recognition of the standard of care obligations that they have to their clients. This is particularly true with respect to those brokers who have entered into a dual-agency relationship for both parties to a lease, yet are not properly facilitating the resolution of outstanding lease disputes, and in some cases may be favoring their commercial landlord clients to the detriment of small business tenants. Accordingly, I ask the Board to consider legislation that underscores basic standard of care owed to small business tenants. Such legislation should have no bearing upon those realty agents who are already properly facilitating negotiation and handling of outstanding leases, and should otherwise provide for penalties consistent with state law concepts for those brokers who are not honoring their duties.

Third and finally, I ask the Board to please consider the most appropriate **enforcement** mechanisms for willful violations of the ordinance. It is a law. Compliance is required, not optional. It needs to be enforced by the appropriate city department(s) when landlords are not playing along. It is unclear in the ordinance language where tenants can report the possibility of non-compliance, and what, if anything, would even be done with such an allegation.

Please give this ordinance some teeth so that alleged violators are investigated, and actual violators are penalized. The city should have the legal authority to provide for penalties, prohibit grants or incentives, or take other actions if its rules are not followed. Tenants should have a mechanism for reporting alleged violations, and landlords should have a mechanism for defending their actions amidst such allegations so that there is city follow-up to determine the nature and extent of any possible violations. Citizens and small business owners would like to see that proverbial and actual broken windows are being identified and repaired, not left unattended, and there is a strong belief that enforcement mechanisms need to be revisited and strengthened please.

Thank you once again for the opportunity to express my opinions on possible steps forward.

On Thursday, March 18, 2021, 10:00:24 AM PDT, soul fist <soulfistication@yahoo.com> wrote:

I would like to submit a public comment related to the discussion of future legislation for landlord and tenant rules and interactions.

I appreciate all the work that is being done to help small businesses address critical rent issues.

I have two comments, which are both related to the ongoing resistance in the commercial landlord community whereby landlords are refusing to acknowledge the validity of the new ordinance which allows tier one tenants to terminate their lease if they cannot reach a satisfactory resolution of issues. I am hoping that the Board of Supervisors will enact additional legislation to provide legal certainty.

First, some landlords are arguing that the ordinance is not constitutional - their position is that legislation cannot look backwards, nor reform or reshape existing contracts. I ask the Board of Supervisors to please enact additional ordinance or legislation which states that their relief measures are consistent with Section 1511 of the California Civil Code with respect to force majeure events. Specifically, the updated legislation should indicate that the pandemic is an irresistible superhuman event. The law should also indicate that in any future legal proceedings in SF courts there will be a presumption that a tier one covered tenant did not assume the risk of the pandemic at the the time they entered into the lease, and that the landlord, and not the tenant, shall have the burden of proof in a future proceeding to demonstrate that lease terms clearly, expressly, and unequivocally override subsection (2) of Section 1511 of the California Civil Code.

Second, I ask the Board to please consider the enforcement mechanism for willful violations of the ordinance. It is a law. It needs to be enforced when landlords are not playing along. It is unclear where tenants can report non-compliance. Please give this some teeth so that violators are penalized. The city should have the legal authority to provide for penalties or other actions if a law is not followed. Tenants should have a mechanism for reporting alleged violations, for city follow-up.

Thank you,

Geoff



MYRNA MELGAR

DATE: July 15, 2021

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Myrna Melgar, Chair, Land Use and Transportation Committee *mm*

RE: Land Use and Transportation Committee
COMMITTEE REPORTS

Pursuant to Board Rule 4.20, as Chair of the Land Use and Transportation Committee, I have deemed the following matters are of an urgent nature and request them be considered by the full Board on Tuesday, July 20, 2021, as Committee Reports:

- File No. 210674 Planning Code - Code Corrections Ordinance**
- File No. 210698 Administrative Code - Displaced Tenant Preference in City Affordable Housing**
Sponsor: Mayor
- File No. 210563 Environment Code - Climate Action Plan**
Sponsor: Mayor
- File No. 201151 Environment, Public Works Codes - Construction and Demolition Debris Recovery**
Sponsors: Safai; Walton
- File No. 210603 Administrative Code - Effect Of COVID-19 On Commercial Leases**
Sponsors: Preston; Peskin, Ronen, Mar, Walton and Chan

These matters will be heard in the Land Use and Transportation Committee at a Regular Meeting on Monday, July 19, 2021, at 1:30pm.

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