Ordinance amending the Administrative Code to clarify the rights of landlords and “Tier 1” commercial tenants (certain commercial tenants that employ fewer than ten full-time equivalent employees as of November 1, 2020) following the tenant’s termination of the lease due to COVID-19.

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

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

Section 1. Chapter 37C of the Administrative Code is hereby amended by revising Sections 37C.1 and 37C.3, to read as follows:

SEC. 37C.1. PURPOSE AND FINDINGS.

(a) The City and County of San Francisco is facing an unprecedented public health and economic crisis due to the COVID-19 pandemic. The Mayor declared a state of emergency on February 25, 2020, and on March 16, 2020, the Governor issued Executive Order N-28-20 (E.O. N-28-20), which found that the COVID-19 pandemic is having severe impacts throughout the State, and which recognized that local jurisdictions must take measures based on their particular needs to prevent displacements and to protect public health and mitigate the economic effects of the pandemic. Paragraph 2 of E.O. N-28-20 initially allowed local governments to enact measures to protect commercial tenants impacted by COVID-19 from being evicted due to non-payment through May 31, 2020. Through a series
of follow-up orders (Executive Orders N-66-20, N-70-20, N-80-20, and most recently Executive Order N-80-20N-03-21), the Governor has ordered that the protections of paragraph 2 of E.O. N-28-20 will remain in effect through March 31 June 30, 2021, unless the Governor orders otherwise.

* * * *

(e) The protections of this Chapter 37C shall only apply to rent payments that came due between March 16, 2020 and March 31 June 30, 2021, inclusive (or if the Governor extends the effective period of paragraph 2 of E.O. N-28-20 past March 31 June 30, 2021, through the date of extension).

SEC. 37C.3. TEMPORARY EVICTION PROTECTIONS.

* * * *

(c) If a Tier 1 Covered Commercial Tenant that is unable to pay the rent due to a Financial Impact Related to COVID-19 and its landlord fail to reach a mutually satisfactory agreement for repayment, the Tier 1 Covered Commercial Tenant shall also have the option to terminate its lease and cease paying any further rent upon thirty (30) days’ written notice to the landlord, notwithstanding any lease term to the contrary. Termination shall not affect whether the tenant is responsible for any unpaid rent that originally came due prior to the effective date of termination. In addition, if the tenant has terminated during the Moratorium Period, then the tenant shall not be liable for any penalties arising out of the termination, notwithstanding any lease term to the contrary. Nothing in this subsection (c) is intended to or shall affect any rights or remedies a landlord may have under state law with respect to any actual damages that may result from the termination of a lease under this subsection, subject to any legal or equitable defenses the tenant may have with respect to such claims.

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

Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.
Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

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

By: /s/ MANU PRADHAN
Deputy City Attorney

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Ordinance amending the Administrative Code to clarify the rights of landlords and "Tier 1" commercial tenants (certain commercial tenants that employ fewer than ten full-time equivalent employees as of November 1, 2020) following the tenant's termination of the lease due to COVID-19.

May 10, 2021 Land Use and Transportation Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

May 10, 2021 Land Use and Transportation Committee - RECOMMENDED AS AMENDED

May 18, 2021 Board of Supervisors - PASSED ON FIRST READING
Ayes: 11 - Chan, Haney, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

May 25, 2021 Board of Supervisors - FINALLY PASSED
Ayes: 11 - Chan, Haney, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 5/25/2021 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor