[Administrative Code - COVID-19 Tenant Protections]

Ordinance amending the Administrative Code to prohibit landlords from evicting residential tenants for non-payment of rent that was not paid due to the COVID-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.

NOTE: Unchanged Code text and uncodified 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. 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 has responded with a series of emergency orders, including an eviction moratorium that gives tenants who have suffered a financial impact due to COVID-19 an extension of time to pay their rent (hereafter, the “Eviction Moratorium”). The Mayor issued the Eviction Moratorium on March 13, 2020 and updated it on March 23, 2020 most recently on April 30, 2020, and currently it only applies to rent payments missed in April, May, and June. But the Eviction Moratorium allows tenants to be evicted if they have not paid their past due rent once the extension expires, and many tenants have lost their jobs and many businesses have closed. If these trends worsen or if
the emergency continues, tenants may find themselves in an ever deepening financial hole, with the result that a large wave of evictions for nonpayment of rent is likely to follow once the extension period ends. It is essential to address this looming danger – an impending crisis in its own right. The City has a shortage of affordable rental housing, and a significant percentage of its households are renters and at risk of permanent displacement should they be forced to leave their current homes. Many potentially impacted renters are also essential workers, and the City could be at even greater risk in the event of a future pandemic if they are displaced.

(b) On March 16, 2020, the Governor issued Executive Order N-28-20 (the “Executive Order”), which found that the COVID-19 pandemic is having severe impacts throughout the State, and recognized that local jurisdictions must take measures based on their particular needs to preserve and increase housing security, and to protect public health and mitigate the economic effects of the pandemic. To encourage such efforts, Paragraph 2 of the Executive Order authorized local governments to impose substantive limitations on residential evictions for tenants who are unable to pay rent through May 31, 2020 due to the pandemic (or a later date if extended by the Governor), and suspended any provisions of state law that would otherwise preempt local governments from enacting such measures. On May 29, 2020, the Governor issued Executive Order N-66-20, which extended Paragraph 2 of Order N-28-20 by an additional 60 days.

(c) The Board of Supervisors finds it is in the public interest to prevent tenant displacement in San Francisco due to the COVID-19 pandemic to the maximum extent permitted by law. Pursuant to its regular authority and consistent with Paragraph 2 of the Executive Order, the protections of this ordinance shall apply only to rent payments that a tenant was unable to pay due to the COVID-19 pandemic during the period from March 16, 2020 through July 29, 2020 (or if the Governor extends the date,
through the date of extension). This ordinance shall not apply to rent payments that become
due after the May 31 \text{July 29} date (or, if the Governor extends the May 31 \text{July 29} date, after
the date of extension).

(d) This ordinance is intended to prevent tenants from being evicted due to having
suffered a financial impact that arose out of the COVID-19 pandemic. As compared to the just
cause protections of the California Tenant Protection Act of 2019 (“AB 1482”), this ordinance
further limits the permissible reasons for termination of a residential tenancy and provides
additional tenant protections. The Board of Supervisors therefore finds that this ordinance is
more protective of tenants than AB 1482, and intends that the Rent Ordinance (as hereby
amended) shall apply rather than AB 1482.

(e) The Board of Supervisors intends to create a COVID-19 Rent Resolution and
Relief Fund by separate legislation to provide support to eligible landlords whose tenants are
unable to pay rent due to the financial impacts of the COVID-19.

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

**SEC. 37.9. EVICTIONS.**

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

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

(1) The tenant:

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

* * * *

(B) Habitually pays the rent late; or
(C) Gives checks which are frequently returned because there are insufficient funds in the checking account; or

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

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

* * * *
(D) Before endeavoring to recover possession based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation that provides the tenant with an opportunity to cure the violation in 10 or more days. The tenant may cure the violation by making a written request to add occupants referenced in Subsection (A), (B), or (C) of Section 37.9(a)(2) or by using other reasonable means to cure the violation, including, without limitation, the removal of any additional or unapproved occupant. Nothing in this Section 37.9(a)(2)(D) is intended to limit any other rights or remedies that the law otherwise provides to landlords.

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

* * * *

Section 3. 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.

Section 4. 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 5. 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 6. Mayoral Order. This ordinance is intended to supplement the tenant protections in the Mayor’s Eviction Moratorium by prohibiting a landlord from recovering possession due the non-payment of rent upon expiration of the moratorium period. In the event of a conflict between this ordinance and the Eviction Moratorium, the measure that provides greater tenant protections shall apply.

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

By: /s/ MANU PRADHAN
Deputy City Attorney
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June 08, 2020 Land Use and Transportation Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

June 08, 2020 Land Use and Transportation Committee - RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

June 09, 2020 Board of Supervisors - PASSED ON FIRST READING
   Ayes: 10 - Fewer, Haney, Mandelman, Mar, Peskin, Preston, Ronen, Safai, Walton and Yee
   Noes: 1 - Stefani

June 16, 2020 Board of Supervisors - FINALLY PASSED
   Ayes: 10 - Fewer, Haney, Mandelman, Mar, Peskin, Preston, Ronen, Safai, Walton and Yee
   Noes: 1 - Stefani

File No. 200375

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 6/16/2020 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

Date Approved: 6/26/20