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FILED
San Francisco County Superior Court
JUN 29 2020
CLERK OF THE COURT
BY: _____ Deputy Clerk

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ORIGINAL FAXED

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

SAN FRANCISCO APARTMENT ASSOCIATION, SAN FRANCISCO ASSOCIATION OF REALTORS, COALITION FOR BETTER HOUSING, SMALL PROPERTY OWNERS OF SAN FRANCISCO INSTITUTE, Petitioners, v. CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation, and SAN FRANCISCO BOARD OF SUPERVISORS, Respondents.	Case No.: CPF-20-517136 **VERIFIED PETITION FOR WRIT OF MANDATE AND FOR IMMEDIATE STAY** [Code of Civ. Proc. § 1085; Code of Civ. Proc. § 527]

Petitioners SAN FRANCISCO APARTMENT ASSOCIATION, a California nonprofit trade association, SAN FRANCISCO ASSOCIATION OF REALTORS a California nonprofit corporation, COALITION FOR BETTER HOUSING, a California nonprofit trade association, and SMALL PROPERTY OWNERS OF SAN FRANCISCO INSTITUTE, a California nonprofit corporation (collectively, "Petitioners") bring this petition seeking a writ of mandate, pursuant to Code of Civil Procedure section 1085, to compel Respondents CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation, and SAN FRANCISCO BOARD OF SUPERVISORS (collectively, "Respondents") to repeal San Francisco Ordinance No. 200375 (the "Ordinance") as described herein. Petitioners additionally request an immediate stay of enforcement under Civil Code section 527. In support, Petitioners allege as follows:

PARTIES

1. Petitioner SAN FRANCISCO APARTMENT ASSOCIATION ("SFAA") is a non-profit trade association of persons and entities who own residential rental properties in San Francisco. SFAA currently has more than 2,800 active members who own more than 65,000 residential rental units in San Francisco. SFAA's membership also includes hundreds of "mom & pop" owners who own 2-4 unit buildings and live in one of the units. SFAA is dedicated to educating, advocating for, and supporting the rental housing community and preserving the property rights of all residential rental property providers in San Francisco. SFAA fields hundreds of calls each month from property owners with questions about their rights and duties under San Francisco and state laws. SFAA includes members whose tenants have failed to pay their rent during the Covid-19 Period, and many of these tenancies are subject to the San Francisco Rent Ordinance ("SFRO") and the Ordinance. SFAA and its members are adversely and directly affected by the Ordinance. The ability of residential property owners to exercise their state law termination rights, including those under the unlawful detainer statutes, is germane to SFAA's organizational purpose.

2. Petitioner SAN FRANCISCO ASSOCIATION OF REALTORS ("SFAR") is a nonprofit corporation that represents over 4,000 San Francisco realtors, who promote the rights of residential property owners, including those who own residential rental properties subject to the Ordinance. SFAR advocates, and provides educational and technological opportunities for, its

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members and their businesses. SFAR's members include landlords subject to the SFRO and the Ordinance, and who are adversely and directly affected by the Ordinance. The ability of residential property owners to exercise their state law termination rights, including those under the unlawful detainer statutes, is germane to SFAR's organizational purpose.

3. Petitioner COALITION FOR BETTER HOUSING ("CBH") is a nonprofit association comprised of owners of over 20,000 residential rental units in San Francisco. CBH advocates for their members' rights, and helps keep their members informed about issues that impact them. CBH's members include landlords subject to the SFRO and the Ordinance, and who are adversely and directly affected by the Ordinance. The ability of residential property owners to exercise their state law termination rights, including those under the unlawful detainer statutes, is germane to CBH's organizational purpose.

4. Petitioner SMALL PROPERTY OWNERS OF SAN FRANCISCO INSTITUTE ("SPOSFI") is a California nonprofit corporation that advocates for, and represents, the rights of small real property owners in San Francisco, as well as advocates for homeownership in San Francisco. SPOSFI advocates for hundreds of members who include landlords subject to the SFRO and the Ordinance, and whose tenants have not paid rent during the Covid-19 Period. SPOSFI's members include landlords subject to the SFRO and the Ordinance, and who are adversely and directly affected by the Ordinance. The ability of residential property owners to exercise their state law termination rights, including those under the unlawful detainer statutes, is germane to SPOSFI's organizational purpose.

5. Respondent CITY AND COUNTY OF SAN FRANCISCO is a California municipal corporation organized under the Constitution and laws of the State of California.

6. Respondent SAN FRANCISCO BOARD OF SUPERVISORS is the legislative governing body of the City. It is also the administrative agency whose quasi-legislative action is being reviewed in this case.

JURISDICTION AND VENUE

7. This court has jurisdiction to issue a writ of mandate under Code of Civ. Proc. § 1085.

8. Venue is proper under Code of Civ. Proc. § 395 because Respondents reside in San

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Francisco County, and under Code of Civ. Proc. § 393 because the cause for a suit against a government agency arose in San Francisco County.

9. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law.

FACTS

10. Shortly after the Covid-19 pandemic took hold of the country, the State of California declared a state of emergency pursuant to the California Emergency Services Act, Gov't Code sections 8550, et seq. ("ESA"). The ESA confers upon the Governor of California broad, but not unlimited, powers to deal with a state of emergency "in conditions of . . . extreme peril to life, property, and the resources of the state" so as to "mitigate the effects of [the emergency]" in order to "protect the health and safety and preserve the lives and property of the people of the state." (Gov't Code § 8550.) The Governor may "make, amend, and rescind orders and regulations necessary to carry out the provisions of [the ESA]." (Gov't Code § 8567(a).) The ESA permits the Governor, during a state of emergency, to "suspend any regulatory statute, or statute prescribing the procedure for conduct of state business, or the orders, rules, or regulations of any state agency . . . where the Governor determines and declares that strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay the mitigation of the effects of the emergency." (Gov't Code § 8571.) When the state of emergency is terminated, however, the Governor's emergency orders "shall be of no further force or effect." (Gov't Code § 8567(b), emph. add.)

11. Pursuant to the state of emergency and as authorized by Gov't Code sections 8567 and 8571, Governor Newsom ordered a statewide moratorium on residential evictions. On March 16, 2020, Governor Newsom signed Executive Order N-28-20 (the "Order") pursuant to the ESA, which authorized a residential eviction moratorium through May 31, 2020. The Order, under the authority of the ESA, permits local governments to temporarily restrict evictions due to the Covid-19 crisis, including those based upon non-payment of rent. It does so by "suspending" the application of eviction statutes during the time the Order is in place (the "Covid-19 Period"). The Order does not allow municipalities to *permanently* prohibit those proceedings. Instead, the Order specifically provides that it does *not* restrict a landlord's ability to recover unpaid rents.

12. On April 6, 2020, the California Judicial Council, headed by Chief Justice Tani Cantil-

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Sakauye, enacted emergency rules in response to the Covid-19 pandemic, in part upon reliance on the Governor's emergency executive orders. Among these emergency rules is Emergency Rule No. 1, which in part *suspends* the issuance of summons in new UD proceedings, i.e., temporarily prohibits those filings. Emergency Rule No. 1 "will remain in effect until 90 Days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council."

13. San Francisco Mayor Breed issued a declaration of local emergency under the ESA on February 25, 2020. On March 13, 2020, and as amended on March 23, 2020 and April 30, 2020, Mayor Breed issued an emergency proclamation imposing a temporary moratorium on evictions for non-payment of rent by residential tenants directly impacted by the Covid-19 crisis. That emergency proclamation was made in part pursuant to the Governor's Order and Emergency Rule No. 1. The Mayor's emergency proclamation will last the sooner of two months, until the San Francisco's local emergency is terminated, or upon further order of the Mayor. Under Mayor Breed's proclamation, "no owner shall evict a residential tenant due to a missed rent payment that was due between March 13, 2020 and the date this Order expires or is terminated, if the tenant was unable to pay due to financial impacts of COVID-19, until six months after the date this Order expires or is terminated." That is, the Mayor's emergency proclamation *suspends* evictions through December 30, 2020 (six months after the Order's expiration). The Mayor's Order also provides guidelines for landlords and tenants regarding formulation of payment plans to address any unpaid rents, and encourages such payment plans.

14. On May 29, 2020, Governor Newsom signed Executive Order N-66-20, also pursuant to the ESA. Executive Order N-66-20 extended the timeframe during which municipalities may suspend residential evictions, i.e. the Covid-19 Period, as set forth in the Order. Executive Order N-66-20 did not alter any other portion of the Order; it *only* extended the residential moratorium suspension through July 28, 2020 (i.e., 60 days from the date of N-66-20).

15. On June 16, 2020, respondent SAN FRANCISCO BOARD OF SUPERVISORS adopted the Ordinance, which *permanently* prohibits evictions for nonpayment, when that rent was unpaid through the Covid-19 Period, i.e. March 16, 2020, through July 28, 2020 (unless extended).

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A copy of the Ordinance is attached hereto as **Exhibit A.**

16. The Ordinance amended the SFRO, San Francisco Administrative Code Chapter 37, to exclude tenants' failure to pay rent during the Covid-19 Period from the list of permissible bases for eviction. SFRO Section 37.9(a)(1)(A)-(C) generally permits evictions for a tenant's nonpayment, or habitually late payment, of rent:

> SEC. 37.9 EVICTIONS
>
> . . . .
>
> (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 fund in the checking account . . . .

17. In direct contradiction to the Governor's Order, Judicial Council Emergency Rule 1, and Mayor Breed's emergency proclamation, the Ordinance adds Subsection (a)(1)(D) to SFRO Section 37.9 to ***permanently*** prohibit evictions based on nonpayment or habitually late payment of rent, when that rent was unpaid during the Covid-19 Period for a Covid-19 related reason:

> (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.

18. The Ordinance also limits a landlord's ability to impose late fees, penalties or similar charges for unpaid or timely paid rents as described in Subsection (a)(1)(D) and to seek possession if such fees or penalties are unpaid.

19. The Ordinance states it derives its alleged authority to permanently prohibit such evictions from San Francisco's police power and the Order:

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> **Pursuant to [San Francisco's] 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 July 29 date through the date of extension).

20. Despite the Ordinance purportedly deriving its authority from the Governor's Order, the Order does not permit permanent prohibition of evictions for nonpayment of rent; it only suspends them during the Covid-19 Period. Nor does the Order purport to invest local government the power to permanently prohibit such evictions. Notwithstanding, the Ordinance goes much farther than just *suspending* evictions during the Covid-19 Period. If a tenant's failure to pay their rent during the Covid-19 Period is based on an Covid-related financial impact, the Ordinance prohibits a landlord from *ever* exercising the remedy of UD action to obtain possession or unpaid rent even *after* the Covid-19 Period expires.

21. On April 17, 2020 and on June 1, 2020, Petitioners filed objections to the Ordinance, based on the Ordinance's conflict with the Governor's Order, and state and constitutional law. Notwithstanding these objections, San Francisco passed the illegal Ordinance on June 16, 2020. Mayor Breed signed the Ordinance and it was enacted on June 26, 2020. The Ordinance will become effective on July 26, 2020.

FIRST CAUSE OF ACTION
(Writ of Mandate CCP §1085)

22. Petitioners re-allege and incorporates here by this reference the allegations of paragraph 1 through 21.

23. A city or county may make and enforce within its limits all ordinances and regulations that do not conflict with general law. (Cal. Const., art. XI, § 7.) A city's police power under the California Constitution is subject to displacement by State law. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 140.) Under elementary principles of preemption, if a city or county enacts an ordinance that conflicts with a state law, it's void—even if the ordinance otherwise would be legal. (Cal. Const., art. XI, § 7; *Sherwin–Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893,

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897-898; *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1161; *Coyne v. City and County of San Francisco* (2017) 9 Cal.App.5th 1215, 1224; *Birkenfeld, supra,* at p. 140.) A conflict exists if the local legislation " 'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.' " (*Coyne, supra,* 9 Cal.App.5th at p. 1224, citing *Sherwin–Williams Co., supra,* 4 Cal.4th at p. 897; accord, *Big Creek Lumber Co., supra,* at p. 1161.)

24. The Ordinance conflicts with the Order and the ESA. The Order, which permits local government to impose limitations on residential evictions for Covid-related nonpayment of rent, is made under the apparent authority of Gov't Code section 8567 and 8571. Gov't Code section 8571 permits *suspension* of certain laws. (Gov't Code § 8571.) There is no enumerated power in Section 8571—or the ESA generally—that enables permanent displacement of such laws. Rather, the ESA specifically provides that orders made pursuant to the ESA "shall be of no further force or effect" when the state of emergency terminates. (Gov't Code § 8567.) Nor does the Order purport to permanently displace any such laws. Congruent with the ESA, the Governor's Order permits local government to *suspend* the UD Statutes and other methods of residential eviction *only until the state of emergency terminates.* The Order terminates on July 29, 2020, unless extended. Contrary to the Order, the Ordinance *permanently* prohibits landlords from exercising the remedy of UD action to obtain unpaid rent if the rent was unpaid during the Covid-19 Period. Neither the Order, nor the ESA authorize San Francisco to deprive Petitioners, their members, and the thousands of other landlords throughout the County of such rights. In permanently stripping landlords of their right to invoke the unlawful detainer remedy for non-payment of rent through the Covid-19 Period, the Ordinance exceeds the authority granted to San Francisco by the Governor's Order and the ESA and is thus preempted thereby.

25. The Ordinance also conflicts with, and therefore is preempted by, California's unlawful detainer statutes, Code of Civ. Proc. §§ 1159, *et seq.* The specific purpose of an unlawful detainer action is to provide landlords a summary proceeding for recovery of possession of their properties based on unpaid rent. (*Birkenfeld, supra,* at pp. 149-151.) Additional procedural requirements imposed by local governments that are not found in the unlawful detainer statutes raise impermissible procedural barriers between landlords and that judicial proceeding. (*Ibid.*) the Ordinance does not

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outlaw the landlords' substantive right to rent—it expressly provides that the unpaid rent remains due to the landlord, and that the landlord may seek to recover that rent. While the Ordinance acknowledges that substantive right to collection of unpaid rent, *it prohibits the UD procedure to exercise and enforce this right.* By prohibiting landlords' access to the UD procedure for nonpayment of rent—while still maintaining that landlords have a right to that rent—the Ordinance places an unlawful procedural barrier to the summary UD process and unlawfully extends San Francisco's police power into a field that is fully occupied by the state.

26. The Ordinance is also unlawful because it perpetrates unconstitutional takings of private property on its face. It devalues landlords' properties by not permitting landlords to use the summary unlawful detainer procedure to recover possession of their properties despite continued nonpayment of rents. This necessarily means that landlords will be required to invoke the more arduous civil debt recovery process to attempt to remediate the nonpayment issue, even though landlords did not cause the problem to which tenants may now be exposed. (*Levin v. City and County of San Francisco* (2014) 71 F.Supp.3d 1072; *Nollan v. California Coastal Com'n* (1987) 483 U.S. 825; *Dolan v. City of Tigard* (1994) 512 U.S. 374.) The Ordinance will unlawfully force property owners to accept occupants on their property without compensation. (See, *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419, 435; *Cwynar v. City & Cty. of San Francisco*, 90 Cal. App.4th 637, 658.)

27. The Ordinance also impairs landlords' and tenants' contractual agreements in violation of the Contracts Clauses of the United States and California Constitutions. (U.S. Const., art. I, § 10; Cal. Const., art. 1, § 9.) The Ordinance substantially impairs preexisting contracts between landlords and tenants by abrogating a basic term of any tenancy—rent in exchange for possession of property. San Francisco's purpose in enacting the Ordinance is not legitimate, but even if it is, the Ordinance exceeds San Francisco's police power on its face and is not narrowly tailored to the severity of the impairment.

28. Petitioners seeks an immediate stay to enjoin Respondents from enforcing the Ordinance because allowing the law to take effect on July 26, 2020 would harm Petitioners' members, and landlords and tenants throughout San Francisco. The Ordinance is *retroactive* to the beginning of the Covid-19 Period on March 16, 2020, and effectively forgives rent due through July 28, 2020. The

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Ordinance places a significant economic burden on Petitioners' members and landlords throughout San Francisco and subjects them to penalties for noncompliance in the SFRO. Tenants who rely upon the invalid law will do so to their detriment. Tenants' decisions to withhold rent will be guided by a false sense of security that they are permanently immune from eviction. When this Court ultimately grants the relief sought, tenants will be even further compromised in their ability to maintain their housing. San Francisco, by comparison, faces no meaningful burden or adverse impact whatsoever if enforcement of the Ordinance is stayed and deferred pending this Court's determination of the merits, because there is no immediate threat of evictions for unpaid rents if the stay were issued; under Mayor Breed's current order, tenants have through at least December 30, 2020 to make good on any rent payments that were not paid during the Covid-19 emergency. And, Judicial Council Emergency Rule 1 prohibits issuance of unlawful detainer summons until 90 days after the Governor terminates the emergency.

29. Petitioners have a beneficial interest in compelling performance of Respondent's duty to rescind the Ordinance; Petitioners are made up of members who have been directly affected by the Ordinance, and have invoked the SFRO, as well as members who intend to do so in the future. This lawsuit is brought on behalf of those interests, which are germane to Petitioners' purpose, and neither the claims asserted nor the relief requested requires the individual members' participation in the lawsuit.

30. Petitioners have no plain, speedy, or adequate remedy for these violations in the ordinary course of law and Petitioners will suffer irreparable injury absent writ relief. Accordingly, writ relief is necessary in order to compel San Francisco to perform its ministerial duties and/or correct its legislative actions, which are unlawful, invalid, and/or in excess of their authority. San Francisco has a clear, present, and sacrosanct ministerial duty to comply with the California Constitution and state law. Despite the San Francisco's legal duty to rescind the unlawful regulation and ability to do so, San Francisco has failed and refused to rescind its invalid and unlawful acts.

PRAYER

WHEREFORE, Petitioners pray:

1. For a writ of mandate or other appropriate relief, including an injunction, declaration,

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and/or order, directing and commanding Respondents to rescind, repeal, and to not enforce Ordinance No. 200375 for all of the reasons specified herein;

2. For a writ of mandate commanding Respondents to not allow anyone else, natural person or otherwise, to enforce Ordinance No. 200375;

3. For an alternative and/or preemptory writ against Respondents for the same;

4. For a stay of Ordinance No. 200375 pending the determination of the merits;

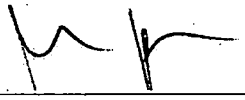
5. For costs of suit herein;

6. For reasonable attorneys' fees under Civ. Proc. § 1021.5 and/or Gov. Code § 800;

7. For any other relief that the Court deems just and proper.

Dated: June 29, 2020

ZACKS, FREEDMAN & PATTERSON, PC



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FAX SIGNATURE

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VERIFICATION

I, Andrew M. Zacks, am lead counsel for all Petitioners. I also act as general counsel for SPOSFI. I have read the foregoing petition and am both authorized and able to make this verification. I have read, and am familiar with, the Ordinance challenged in this petition. I am informed and believe, and on that ground allege, that the matters stated in the petition are true and correct.

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge and belief.

Date: June 29, 2020

Andrew M. Zacks FAX SIGNATURE

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EXHIBIT A

Exhibit A

[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 ~~May 31~~July 29, 2020 (or if the Governor extends the ~~May 31~~July 29 date,

through the date of extension). This ordinance shall not apply to rent payments that become due after the ~~May 31~~July 29 date (or, if the Governor extends the ~~May 31~~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. ~~; or~~

(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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City and County of San Francisco

Tails

Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 200375 **Date Passed:** June 16, 2020

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.

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

6/26/20
Date Approved