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9 Small Property Owners Of San Francisco Institute

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

03/21/2022
Clerk of the Court
BY: LAURA SIMMONS
Deputy Clerk

10 SUPERIOR COURT - STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION

12 SAN FRANCISCO APARTMENT
13 ASSOCIATION, a California non-profit trade
14 association and SMALL PROPERTY
15 OWNERS OF SAN FRANCISCO
16 INSTITUTE, a California non-profit
17 corporation

16 Petitioners,

17 vs.

18 CITY AND COUNTY OF SAN
19 FRANCISCO, a California municipal
20 corporation,

21 Respondent.

Case No.: _____ **CPF-22-517718**

PETITION FOR WRIT OF MANDATE

CCP §1085

22 Petitioners SAN FRANCISCO APARTMENT ASSOCIATION (“SFAA”), and SMALL
23 PROPERTY OWNERS OF SAN FRANCISCO INSTITUTE (“SPOSFI”), (collectively
24 “Petitioners”), allege as follows:

25 1. Petitioners petition this Court for a writ of mandate enjoining respondent City and
26 County of San Francisco (“San Francisco”, “the City”, or “Respondent”), from enforcing San
27 Francisco Ordinance No. 18-22 amending Chapter 37 of the San Francisco Administrative Code,
28

1 known as the Rent Ordinance. A true and correct copy of Ordinance No. 18-22, hereafter referred
2 to as “the Ordinance” or “the 10-day Notice Requirement”, is attached hereto as Exh. 1 and
3 incorporated herein by reference. The Ordinance conflicts with, and is thus preempted by, Code of
4 Civil Procedure §§ 1161(2)-(4).

5 2. Petitioner SFAA is a non-profit trade association of more than 2,800 active members
6 (persons and entities), who own more than 65,000 residential rental properties in the City. SFAA’s
7 membership also includes hundreds of “mom-and-pop” owners who live in one unit of their 2-4 unit
8 buildings. SFAA is dedicated to educating, advocating for, and supporting the rental housing
9 community and preserving the property rights of all residential rental property providers in San
10 Francisco. SFAA fields hundreds of calls each month from property owners with questions about
11 their rights and duties under San Francisco and state laws. SFAA and its members are adversely
12 and directly affected by the 10-day Notice Requirement. SFAA includes members whose tenancies
13 are subject to the 10-day Notice Requirement and who are at risk of not timely receiving rent from
14 their tenants as required by their rental agreements. Under state law, such members would be
15 entitled to serve a 3-day notice to pay or quit in order to either recover the unpaid rent or possession
16 of their real property which was let in exchange for timely payment of rent. At the expiration of this
17 3-day notice, if the tenants have not paid the rent or quit the premises, the landlords would be able
18 to invoke their state law speedy summary remedy to obtain possession of the demised premises.
19 Said members would also be entitled to invoke their summary, 3-day remedies under Code of Civil
20 Procedure §§ 1161(3) and (4) for conduct constituting violations of those subsections without
21 improper encumbrance by the Ordinance. The ability of residential property owners to exercise
22 their state law rights, including those under the unlawful detainer statutes, free from the 10-day
23 Notice Requirement is germane to SFAA’s organizational purpose and this challenge does not
24 require the participation of individual members.

25 3. Petitioner SPOSFI is a California nonprofit corporation and organization of small
26 property owners that advocates for home ownership and the rights of residential rental property
27 owners in San Francisco. SPOSFI’s members range from young families to the elderly on fixed
28 incomes, and with membership across all racial, ethnic, and socio-economic strata. SPOSFI’s

1 members own single-family and small multi-unit residential properties subject to the Ordinance.
2 SPOSFI is also involved in education, outreach, and research regarding issues facing its members.
3 Through education, it helps owners better understand their rights and learn how to deal with local
4 government; through outreach to community groups and to the public, it demonstrates how
5 restrictive San Francisco regulations can harm both tenants and landlords, and through research
6 projects, it aims to separate hyperbole from fact on the effect of rent and eviction control. SPOSFI
7 seeks to protect the rights of small property owners against unfair and burdensome regulations.
8 SPOSFI and its members are adversely and directly affected by the 10-day Notice Requirement.
9 SPOSFI includes members whose tenancies are subject to the 10-day Notice Requirement and who
10 are at risk of not timely receiving rent from their tenants as required by their rental agreements.
11 Under state law, such members would be entitled to serve a 3-day notice to pay or quit in order to
12 either recover the unpaid rent or possession of their real property which was let in exchange for
13 timely payment of rent. At the expiration of this 3-day notice, if the tenants have not paid the rent
14 or quit the premises, the landlords would be able to invoke their state law speedy summary remedy
15 to obtain possession of the demised premises. Said members would also be entitled to invoke their
16 summary, 3-day remedies under Code of Civil Procedure §§ 1161(3) and (4) for conduct
17 constituting violations of those subsections without improper encumbrance by the Ordinance.
18 SPOSFI has standing because: (i) the ability of residential real property owners to manage and
19 control their property and to exercise their statutory rights without being burdened by invalid local
20 requirements is germane to SPOSFI's organizational purpose; and (ii) individual members are
21 subject to the Ordinance and could have challenged it in their own right; such that this facial
22 challenge to the Ordinance does not require participation of individual members of SPOSFI.

23 4. Respondent San Francisco is a California municipal corporation organized under the
24 Constitution and laws of the State of California. San Francisco has police power authority to
25 regulate the substantive, but not the procedural, grounds for evictions. It extends eviction control
26 protections and other related regulations to most residential rental units within its jurisdiction.

27 5. Venue is proper in this Court because this petition challenges legislation enacted by
28 the City and County of San Francisco.

1 the speedy and summary remedy of unlawful detainer.

2 11. There is no way to compensate Petitioners' members for the lost time and delay
3 which the Ordinance will cause them. Therefore, Petitioners do not have a plain, speedy, or
4 adequate remedy in the ordinary course of law, and writ relief is necessary.

5 **PRAYER**

6 WHEREFORE, Petitioners pray for relief as follows:

7 1. That the Court find that Ordinance No. 18-22 conflicts with, and is preempted by,
8 state law, particularly Code of Civil Procedure § 1161(2);

9 2. That the Court find that Ordinance No. 18-22 is facially invalid, void, and
10 unenforceable;

11 3. For a writ of mandate pursuant to Code of Civil Procedure § 1085 compelling
12 Respondent not to enforce Ordinance No. 18-22 and not to assert its validity;

13 4. For an alternative writ, ordering Respondent City to show cause why Petitioner's
14 Petition should not be granted and a writ issued, mandating the relief set forth above;

15 5. For an immediate stay of Ordinance No. 18-22 pending a determination of this
16 petition on the merits;

17 6. For costs of suit, including pursuant to California Code of Civil Procedure, §1021.5;

18 7. For a judgment in favor of Petitioners and against Respondent City for the above
19 relief; and

20 8. For such further and other relief as the Court deems warranted.

21 Date: March 21, 2022

ZACKS, FREEDMAN & PATTERSON, PC

22 /s/ Andrew M. Zacks

23 _____
24 By: Andrew M. Zacks
25 Counsel for Petitioners SFAA and SPOSFI

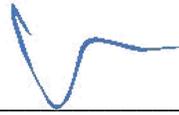
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VERIFICATION

I, Andrew M. Zacks, am an attorney representing both Petitioners. I have personal knowledge of the facts alleged above. I have practiced residential real property law in San Francisco for approximately 30 years. I have provided legal counsel to both Petitioners for more than 20 years and have assisted both in pursuing the objectives of their organizations. I am familiar with the amendments to local law created by Ordinance No. 18-22 that are the subject of this petition. I have represented SFAA and SPOSFI in multiple lawsuits involving preemption of local law by state law.

On this basis, 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.

Date: March 21, 2022



Andrew M. Zacks

EXHIBIT 1

1 [Administrative Code - Tenant Opportunity To Cure; Eviction Protections]

2
3 **Ordinance amending the Administrative Code to require landlords pursuing certain**
4 **types of evictions to first provide their tenants written notice and an opportunity to**
5 **cure, unless the eviction is based on an imminent health or safety issue or the non-**
6 **payment of COVID-19 rental debt; and making findings that the eviction protections in**
7 **the Rent Ordinance are more protective than those found in State law pursuant to**
8 **California Civil Code, Section 1946.2.**

9
10 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.
12 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
13 **Board amendment additions** are in double-underlined Arial font.
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.
15 **Asterisks (* * * *)** indicate the omission of unchanged Code
16 subsections or parts of tables.

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

18 Section 1. Purpose and Findings.

19 The Rent Ordinance recognizes that tenants owe certain obligations to their landlords,
20 and that a tenant's failure to meet those obligations may under certain conditions give the
21 landlord just cause to evict. But the Rent Ordinance generally does not specify for how long a
22 tenant's misconduct must continue before it rises to the level of being a just cause. This
23 ambiguity creates confusion, and is particularly harmful to tenants, as some landlords claim
24 that a tenant's violation instantly creates just cause to evict even if the tenant just made an
25 innocent mistake or is able to correct the issue. A cure period would reduce the undue
hardship suffered by tenants who face sudden evictions and promote economy in the use of

1 judicial resources, while still protecting the property owners by curing the harm. It is essential
2 to provide clarity around what constitutes just cause: if a tenant can correct the violation within
3 a reasonable timeframe, to nevertheless evict the tenant and put them at risk of permanent
4 displacement from the City is not appropriate.

5
6 Section 2. The Administrative Code is hereby amended by revising Section 37.1, to
7 read as follows:

8 **SEC. 37.1. TITLE AND FINDINGS.**

9 * * * *

10 (d) In accordance with California Civil Code Section 1946.2(g)(1)(B), the Board of
11 Supervisors finds that this Chapter 37 further limits the permissible reasons for termination of a
12 residential tenancy and provides additional tenant protections as compared to California Civil Code
13 Section 1946.2, which the California Legislature adopted as part of the Tenant Protection Act of 2019.
14 The Board of Supervisors therefore finds that this Chapter 37 is more protective of tenants than Section
15 1946.2, and intends that this Chapter 37 shall apply rather than Section 1946.2.

16
17 Section 3. The Administrative Code is hereby amended by revising Section 37.9, to
18 read as follows:

19 **SEC. 37.9. EVICTIONS.**

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

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

23 (1) The tenant:

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

1 * * * *

2 (B) Habitually pays the rent late; or

3 (C) Gives checks which are frequently returned because there are insufficient
4 funds in the checking account;

5 * * * *

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

10 * * * *

11 (3) The tenant is committing or permitting to exist a nuisance in, or is causing
12 substantial damage to, the rental unit, or is creating a substantial interference with the
13 comfort, safety or enjoyment of the landlord or tenants in the building, the activities are
14 severe, continuing or recurring in nature, and the nature of such nuisance, damage or
15 interference is specifically stated by the landlord in writing as required by Section 37.9(c).

16 * * * *

17 (4) The tenant is using or permitting a rental unit to be used for any illegal
18 purpose, provided however that a landlord shall not endeavor to recover possession of a
19 rental unit solely:

20 (A) as a result of a first violation of Chapter 41A that has been cured within 30
21 days written notice to the tenant; or

22 (B) because the illegal use is the residential occupancy of a unit not authorized
23 for residential occupancy by the City. Nothing in this Section 37.9(a)(4)(B) prohibits a landlord
24 from endeavoring to recover possession of the unit under Section 37.9(a)(8) or (10) of this
25 Chapter 37.

1 (5) The tenant, who had an oral or written agreement with the landlord which
2 has terminated, has refused after written request or demand by the landlord to execute a
3 written extension or renewal thereof for a further term of like duration and under such terms
4 which are materially the same as in the previous agreement; provided, that such terms do not
5 conflict with any of the provisions of this Chapter 37; or

6 (6) The tenant has, after written notice to cease, refused the landlord access to
7 the rental unit as required by State or local law; or

8 * * * *

9 (c) A landlord shall not endeavor to recover possession of a rental unit unless at
10 least one of the grounds enumerated in Section 37.9(a) or (b) above is (1) the landlord's
11 dominant motive for recovering possession and (2) unless the landlord informs the tenant in
12 writing on or before the date upon which notice to vacate is given of the grounds under which
13 possession is sought. For notices to vacate under Sections 37.9(a)(1), (2), (3), (4), (5), or (6), the
14 landlord shall prior to serving the notice to vacate provide the tenant a written warning and an
15 opportunity to cure as set forth in Section 37.9(o). For ~~and for~~ notices to vacate under Sections
16 37.9(a)(8), (9), (10), (11), ~~or and~~ (14), the landlord shall state in the notice to vacate the lawful
17 rent for the unit at the time the notice is issued, before endeavoring to recover possession.
18 The Board shall prepare a written form that (1) states that a tenant's failure to timely act in
19 response to a notice to vacate may result in a lawsuit by the landlord to evict the tenant, and
20 that advice regarding the notice to vacate is available from the Board; and (2) includes
21 information provided by the Mayor's Office of Housing and Community Development
22 regarding eligibility for affordable housing programs. The Board shall prepare the form in
23 English, Chinese, Spanish, Vietnamese, Tagalog, and Russian and make the form available
24 to the public on its website and in its office. A landlord shall attach a copy of the form that is in
25 the primary language of the tenant to a notice to vacate before serving the notice, except that

1 if the tenant's primary language is not English, Chinese, Spanish, Vietnamese, Tagalog, or
2 Russian, the landlord shall attach a copy of the form that is in English to the notice. A copy of
3 all notices to vacate except three-day notices to pay rent or quit and a copy of any additional
4 written documents informing the tenant of the grounds under which possession is sought shall
5 be filed with the Board within 10 days following service of the notice to vacate. In any action to
6 recover possession of the rental unit under Section 37.9, the landlord must plead and prove
7 that at least one of the grounds enumerated in Section 37.9(a) or (b) and also stated in the
8 notice to vacate is the dominant motive for recovering possession. Tenants may rebut the
9 allegation that any of the grounds stated in the notice to vacate is the dominant motive.

10 * * * *

11 (o) Notice and Opportunity to Cure. The grounds for recovering possession set forth in
12 Sections 37.9(a)(1), (2), (3), (4), (5), and (6) shall not apply unless the violation is not cured within ten
13 days after the landlord has provided the tenant a written warning that describes the alleged violation
14 and informs the tenant that a failure to correct such violation within ten days may result in the
15 initiation of eviction proceedings. The Rent Board shall prepare a form that landlords may use for this
16 purpose. However, this Section 37.9(o) shall not apply if a longer notice and cure period applies (for
17 example, under the terms of the lease agreement between the parties); or if the landlord is seeking to
18 recover possession based on the tenant causing or creating an imminent risk of physical harm to
19 persons or property; or if the landlord is seeking to recover possession based on the non-payment of
20 rent or any other unpaid financial obligation of a tenant under the tenancy that came due between
21 March 1, 2020 and March 31, 2022.

22
23 Section 4. Effective Date. This ordinance shall become effective 30 days after
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
25

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

3
4 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
8 additions, and Board amendment deletions in accordance with the "Note" that appears under
9 the official title of the ordinance.

10
11 Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word
12 of this ordinance, or any application thereof to any person or circumstance, is held to be
13 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
14 shall not affect the validity of the remaining portions or applications of the ordinance. The
15 Board of Supervisors hereby declares that it would have passed this ordinance and each and
16 every section, subsection, sentence, clause, phrase, and word not declared invalid or
17 unconstitutional without regard to whether any other portion of this ordinance or application
18 thereof would be subsequently declared invalid or unconstitutional.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22
23 By: /s/
24 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: 211265

Date Passed: February 01, 2022

Ordinance amending the Administrative Code to require landlords pursuing certain types of evictions to first provide their tenants written notice and an opportunity to cure, unless the eviction is based on an imminent health or safety issue or the non-payment of COVID-19 rental debt; and making findings that the eviction protections in the Rent Ordinance are more protective than those found in State law pursuant to California Civil Code, Section 1946.2.

January 10, 2022 Land Use and Transportation Committee - RECOMMENDED

January 25, 2022 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Chan, Haney, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

February 01, 2022 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Chan, Haney, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 211265

I hereby certify that the foregoing
Ordinance was FINALLY PASSED on
2/1/2022 by the Board of Supervisors of the
City and County of San Francisco.


Angela Calvillo
Clerk of the Board


London N. Breed
Mayor

2/11/22
Date Approved