



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CPF-16-515087

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ORDER

**SAN FRANCISCO APARTMENT ASSOCIATION ET AL VS. CITY AND COUNTY
OF SAN FRANCISCO ET AL**

001C05535931

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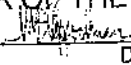

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FILED
San Francisco County Superior Court

AUG 31 2016

CLERK OF THE COURT

BY:  Deputy Clerk 

11 SUPERIOR COURT – STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO – UNLIMITED CIVIL JURISDICTION

13 SAN FRANCISCO APARTMENT
14 ASSOCIATION, SMALL PROPERTY
15 OWNERS OF SAN FRANCISCO
16 INSTITUTE,

17 Petitioners and Plaintiffs,

18 v.

19 CITY AND COUNTY OF SAN
20 FRANCISCO, SAN FRANCISCO BOARD
21 OF SUPERVISORS,

22 Respondents and Defendants.

CASE NO. CPF-16-515087

ORDER GRANTING PETITION FOR WRIT
OF MANDATE (Proposed)

Date: August 18, 2016

Time: 9:30 a.m.

Dept: Real Property court, Dept. 501

Judge: Hon. Ronald E. Quidachay

ZACKS, FREEDMAN & PATTERSON, P.C.
235 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104

1 At 9:30 a.m. on August 18, 2016, in the Real Property court, of the San Francisco Superior
2 Court, 400 McAllister Street, the Hon. Ronald E. Quidachay, presiding, heard the petition. Andrew
3 M. Zacks and James B. Kraus, Zacks, Freedman & Patterson, PC, appeared for Petitioners. Wayne
4 M. Snodgrass, Deputy City Attorney, appeared for Respondents (the "City").

5 On June 10, 2016, petitioners SAN FRANCISCO APARTMENT ASSOCIATION and
6 SMALL PROPERTY OWNERS OF SAN FRANCISCO INSTITUTE filed a petition for writ of
7 Mandate challenging San Francisco ordinance #160100 entitled "No-Fault Eviction Protections
8 During School Year" (the "Extended Notice Ordinance"), which amends San Francisco
9 Administrative Code ("Rent Ordinance") § 37.9.

10 The Extended Notice Ordinance regulates the procedure for terminating tenancies under
11 Rent Ordinance §§ 37.9(a)(8)-(12) in the following manner:

12 A. It creates a class of tenants who have resided in their units for at least 12 months, and
13 who are either "educators" as defined by Rent Ordinance § 37.9(j)(4) or where a child under the age
14 of 18 resides in the unit. As to this class of tenants the landlord must adjust the notice period
15 beyond that required by California law so that the notice terminates during an allowable window
16 that falls outside the first day of instruction for the Fall semester through the last day of instruction
17 for the Spring semester of the San Francisco Unified School District -- unless their landlords seek
18 possession during an annually adjusted, roughly 80-day notification cycle.

19 B. If landlords seeking to evict qualifying tenants under Rent Ordinance §§ 37.9(a)(8)-
20 (12) do not serve termination notices during the 80-day notification cycle and instead rely on the
21 notice period required by state law; the Extended Notice Ordinance provides a "defense" to an
22 unlawful detainer action.

23 For the following reasons, the Court grants the petition and orders that a writ of mandate
24 shall issue invalidating the Extended Notice Ordinance.

25 The Extended Notice Ordinance does not create a new ground for recovering possession of a
26 rental unit. It does not affect or alter an existing just cause, other than to limit the time of year the
27 landlord can recover possession pursuant to Rent Ordinance §§ 37.9(a)(8)-(12). Moreover, the
28

1 Ordinance only applies if one of the occupants is in a certain class defined in the ordinance, a
2 *circumstance that the landlord may only learn of after serving a notice that is ineffective based on*
3 *when it is served.* The parties disagree on whether the Extended Notice Ordinance affects the
4 length of the notice required to terminate affected tenancies. Petitioners argue that the length of the
5 notice depends on the amount of time between when a landlord seeks to recover possession and the
6 first eligible day the expiration of the notice can occur. Thus, if a landlord wishes to recover
7 possession on September 1, the length of notice must be approximately 9 months.¹ The City argues
8 that the Ordinance does not affect the length of notice required; if landlords wish to serve a 60-day
9 notice under state law, they must wait until 60 days before the first eligible day for expiration.
10 Petitioners respond that even if the City's characterization is correct, the result is still the same – the
11 Ordinance governs when a notice of termination may expire and has nothing to do with the
12 underlying basis of the termination or the nature of the tenancy (as opposed to the nature of the
13 tenants).

14 The Court agrees that the characterization of whether the Ordinance controls the length of
15 notice or merely *when* the notice may expire is a procedural regulation not a substantive one.
16 Indeed, the City uses such terms as “when”, “during”, and “until”, which are terms of time. Since
17 the Ordinance only regulates when some tenancies may be terminated based on who the tenants are,
18 the Court agrees with Petitioners that it is preempted because it enters the fully-occupied field of the
19 “timing of landlord-tenant transactions” which “is a matter of statewide concern not amenable to
20 local variations”. (Tri County Apartment Assn. v. City of Mountain View (1987) 196 Cal.App.3d
21 1283, 1298) Because state statutes also fully occupy the field of the procedures necessary to
22 terminate a tenancy, including the period of a tenancy termination notice, the Ordinance is
23 preempted and invalid on its face. (See Channing Properties v. City of Berkeley (1992) 11
24 Cal.App.4th 88, 96-97; Tri County, supra, 196 Cal.App.3d at 1296)

25
26
27 ¹ The Court notes that the actual period of notice that is required is subject to annual adjustment based on fluctuations in
28 when the school year ends and begins. This leaves landlords subject to the whim of local school administrators or the
elected School Board of Education in attempting to comply with these uncertain dates that change annually.

1 The City compares the limitation provided by the Ordinance to owner move-in limitations
2 that prohibit recovering possession if tenants fit certain categories, such as senior or catastrophically
3 disabled and having resided in their unit for at least a certain number of years, or if a comparable
4 unit is, or becomes, vacant prior to recovering possession. However, the analogy supports
5 Petitioners because these conditions are a complete bar to recovery regardless of how much notice
6 is given or when it expires. A complete moratorium on recovering possession of units occupied by
7 students or educators would be a substantive limitation. However, the Ordinance merely affects
8 “when” these tenants may be evicted not “if” they may.

9 The City attempts to distinguish Tri County and Channing Properties on the ground that
10 those cases required the landlord to take an additional step. However, the additional steps at issue
11 in those cases (longer notice period for rent increases and longer notice period for Ellis Act
12 evictions, respectively) are not materially different than requiring the additional step here of timing
13 the termination notice so that it expires during the Summer. In this regard, the Court is also
14 concerned that landlords may have difficulty determining when they are permitted to recover
15 possession and depend upon the school district to release the school schedule. Furthermore,
16 nothing in the Ordinance prevents the school district from changing the school year during the year
17 for any reason, particularly if a natural disaster occurs that closes the schools for some period of
18 time, necessitating extending the school year into what was originally supposed to be summer
19 vacation. While the Court is cognizant of the desire to prevent disruption of the educational
20 process, that concern must be addressed some way other than regulating the timing of landlord-
21 tenant transactions.

22 Lastly, the City cites to Rental Housing Assn of Northern Alameda County v. City of
23 Oakland (2009) 171 Cal.App.4th 741 arguing that a restriction that prohibits evictions for nuisance
24 unless the landlord warns the tenant and gives an opportunity to cure is substantive and not
25 preempted. However, the Court of Appeal merely determined that a nuisance was not substantively
26 eviction-worthy unless the tenant had been given the required warning and opportunity to cure. The
27 restriction did not limit nuisance evictions to any particular time of year. More importantly, the
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1 restriction in Rental Housing enabled the tenant to avoid eviction altogether, not simply delay it
2 until summer.

3 IT IS HEREBY ORDERED that San Francisco ordinance #160100 entitled "No-Fault
4 Eviction Protections During School Year" is invalid on its face, preempted by state law and
5 unenforceable. Accordingly:

6 (a) A writ of mandate shall issue commanding Respondents to set aside the actions
7 approving and enacting ordinance #160100; and

8 (b) Respondents are enjoined from enforcing ordinance #160100.

9
10 IT IS SO ORDERED

11
12 Date: August 31, 2016



13
14 The Hon. Ronald E. Quidachay
15 Judge, Superior Court