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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco  
**03/21/2022**  
Clerk of the Court  
BY: LAURA SIMMONS  
Deputy Clerk

7 Attorneys for Petitioners  
8 San Francisco Apartment Association  
9 Small Property Owners Of San Francisco Institute

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

18 Petitioners,

19 vs.

20 CITY AND COUNTY OF SAN  
21 FRANCISCO, a California municipal  
22 corporation,

23 Respondent.

Case No.: \_\_\_\_\_ **CPF-22-517718**

**PETITION FOR WRIT OF MANDATE**

CCP §1085

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

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

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.

THE 10-DAY NOTICE REQUIREMENT

6. The common law rule governing unlawful detainer was codified in California in 1863. Code of Civil Procedure § 1161 has governed unlawful detainer actions since 1872; although amended on several occasions in the interim, section 1161 has established the same general procedural requirements for unlawful detainer actions since 1905. The unlawful detainer statute applies throughout California, including San Francisco.

7. Code of Civil Procedure § 1161(2) generally provides that a tenant is “guilty of unlawful detainer” when the tenant continues in possession without the permission of the landlord after default in the payment of rent and after expiration of the 3-day notice demanding payment or forfeiture of the tenancy served on the tenant. Code of Civil Procedure § 1161(2) does not contain any exceptions for municipal control over its provisions and preempts local controls that mandate that landlords provide more than 3 days notice to pay or quit the premises before filing an unlawful detainer action to recover possession.

8. In 2022, San Francisco adopted Ordinance No. 18-22. It is effective as to rent due on or after April 1, 2022. It requires landlords to give tenants in default on rent 10 days notice to pay or potentially face eviction proceedings. This means that before affected landlords can invoke their Code of Civil Procedure § 1161(2) rights by serving a 3-day notice to pay or quit, these landlords must give their defaulting tenants 10 additional days to pay. (Exh. 1 at 37.9(c), 37.9(o))

9. California has determined that residential tenants are only entitled to be given 3 days notice to pay rent in default or quit before their landlords may invoke unlawful detainer proceedings. The Ordinance is facially invalid because it is preempted by California law, including but not limited to, Code of Civil Procedure §§ 1159, *et seq.* It impermissibly interferes with California law governing landlords’ unlawful detainer remedy for tenants’ failure to pay rent timely, on which State law occupies the field. San Francisco has no authority to lengthen this notice period or require any other notices be served prior to invoking Code of Civil Procedure § 1161(2) and otherwise initiating the petitioning process.

10. Petitioners have a beneficial interest in ensuring that the Ordinance is found to be invalid, void, and unenforceable. The Ordinance impermissibly burdens landlords’ state law right to

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

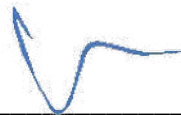
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**VERIFICATION**

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~~ (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  
25 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