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8 Attorneys for Petitioners/Plaintiffs  
9 San Francisco Apartment Association,  
10 Small Property Owners of San Francisco Institute

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

JUN 10 2016

CLERK OF THE COURT  
BY: ARLENE RAMOS  
Deputy Clerk

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

13 **CPF-16-515087**

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

18 Petitioners and Plaintiffs,

19 v.

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

23 Respondents and Defendants.

CASE NO. \_\_\_\_\_

PETITION FOR WRIT OF MANDATE (CCP  
§ 1084 et seq.) AND COMPLAINT FOR  
DECLARATORY RELIEF (CCP § 1060)

24 PRELIMINARY ALLEGATIONS

25 PARTIES

26 1. Petitioner/Plaintiff Small Property Owners of San Francisco Institute (“SPOSFI”)  
27 is a California nonprofit corporation that advocates for, and represents, the rights of small real  
28 property owners in the City, as well as advocates for home ownership in the City. SPOSFI has, and  
advocates for, hundreds of members who include landlords subject to the Ordinance, and who are  
currently terminating, and will in the future terminate, San Francisco tenancies under Rent

1 Ordinance §§ 37.9(a)(8)-(12) and many of these tenancies are subject to the Ordinance. SPOSFI  
2 advocates for, and represents, persons subject to the ordinance at issue in this action.

3 2. Petitioner/Plaintiff San Francisco Apartment Association is a non-profit trade  
4 association of persons and entities who own residential rental properties in San Francisco (the  
5 "City"). SFAA currently has more than 2,800 active members who own more than 65,000 residential  
6 rental units in the City. SFAA's membership also includes hundreds of "mom & pop" owners who  
7 own 2-4 unit buildings and live in one of the units. SFAA is dedicated to educating, advocating for,  
8 and supporting the rental housing community and preserving the property rights of all residential  
9 rental property providers in San Francisco. SFAA fields hundreds of calls each month from property  
10 owners with questions about their rights and duties under San Francisco and state laws. SFAA and its  
11 members are adversely and directly affected by the Ordinance. SFAA includes members who are  
12 currently terminating, and will in the future terminate, San Francisco tenancies under Rent Ordinance  
13 §§ 37.9(a)(8)-(12) and many of these tenancies are subject to the Ordinance. Additionally, SFAA and  
14 its members have an interest in the Ordinance being invalidated because some members will rent to  
15 tenants with children or persons otherwise subject to the Ordinance. The ability of residential  
16 property owners to exercise their state law termination rights free from the constraints of the  
17 Ordinance is germane to SFAA's organizational purpose and this challenge does not require the  
18 participation of individual members of SFAA.

19 3. Respondent/Defendant City and County of San Francisco (the "City") is a California  
20 Municipal Corporation organized under the Constitution, and laws, of the State of California.

21 4. Respondent/Defendant San Francisco Board of Supervisors (the "Board") is an  
22 elected governmental entity which is charged with governing the City.

23 5. The interests sought to be protected by SFAA and SPOSFI are germane to these  
24 organizations' purposes. Neither the claims asserted, nor the relief requested, require that the  
25 individual members of these entities participate individually.

26 6. Venue is proper in this Court because the legislation at issue was enacted by the City,  
27 and affects property and property owners in the City.

1           7.     The California State Legislature has long asserted its control over landlord-tenant  
2 notification procedures. Residential landlord-tenant relationships are so much affected by statutory  
3 timetables governing the parties' respective rights and obligations that a statewide, "patterned  
4 approach" by the Legislature is clear.

5           8.     On April 22, 2016, the Board enacted ordinance #55-16 entitled "No-Fault Eviction  
6 Protections During School Year" (the "Extended Notice Ordinance"), which amends San Francisco  
7 Administrative Code ("Rent Ordinance") § 37.9. A true and correct copy of the Extended Notice  
8 Ordinance is attached hereto as Exh. A.

9           9.     The effective date of the Extended Notice Ordinance is May 22, 2016.

10          10.    The Extended Notice Ordinance applies to evictions under Rent Ordinance §§  
11 37.9(a)(8)-(12).

12          11.    The Extended Notice Ordinance does the following:

13           A.     It creates a class of tenants who have resided in their units for at least 12  
14 months, and who are either "educators" as defined by the Extended Notice Ordinance (at  
15 Administrative Code § 37.9(j)(4) or have a child under the age of 18 in the unit.

16           B.     For evictions based on Rent Ordinance §§ 37.9(a)(8)-(12) as to this class  
17 of tenants, unless their landlords give notice of termination during a short, roughly 80-day  
18 window, the landlord must extend the notice period so that it terminates during the allowable  
19 period defined as the first day of instruction for the Fall semester through the last day of  
20 instruction for the Spring semester of the San Francisco Unified School District. The 2015-  
21 2016 school year is August 17, 2015 through May 26, 2016. The 2016-2017 school year is  
22 August 15, 2016 through May 26, 2017.

23           C.     If landlords seeking to evict qualifying tenants under Rent Ordinance §§  
24 37.9(a)(8)-(12) do not serve termination notices within that 80-day window and insist on  
25 adhering to their state law notice rights, the Extended Notice Ordinance provides a defense to  
26 the unlawful detainer.

27          12.    State law preempts the Extended Notice Ordinance because it affects landlord-  
28

1 tenant notification procedures and timetables governing the parties' respective rights and  
2 obligations, including the timing of the right to terminate tenancies even where the landlord has  
3 just cause under the San Francisco Rent Ordinance.

4 FIRST CAUSE OF ACTION

5 (Writ of Mandate or Other Appropriate Relief)

6 13. Petitioners reallege paragraphs 1 – 12 above.

7 14. The Extended Notice Ordinance is facially invalid because it is preempted by State  
8 laws governing landlord-tenant notification procedures and timetables governing the parties'  
9 respective rights and obligations, including the timing of the right to terminate tenancies where the  
10 landlord has otherwise complied with all state and local *substantive* requirements necessary to  
11 terminate the tenancy.

12 15. Petitioners have a beneficial interest in ensuring that the Extended Notice Ordinance is  
13 found invalid and void, and that Respondents are ordered to rescind it, so that Petitioners', and their  
14 individual members', rights under state law are not infringed or limited.

15 16. Petitioners do not have a plain, speedy, or adequate remedy in the ordinary course  
16 of law, and therefore writ relief is necessary.

17 SECOND CAUSE OF ACTION

18 (Declaratory Relief)

19 17. Plaintiffs reallege and incorporate as if pled herein the allegations at ¶¶ 1-12.

20 18. An actual controversy now exists between Plaintiffs and Defendants concerning  
21 their respective rights and duties. Plaintiffs contend that the Extended Notice Ordinance is preempted  
22 by state law and cannot lawfully be enforced against anyone. Defendants contend that the Extended  
23 Notice Ordinance is valid and that all of Plaintiffs' members must comply with its timing  
24 requirements.

25 19. Plaintiffs' members who have already initiated terminations subject to the Extended  
26 Notice Ordinance may be forced to re-initiate all pending terminations unless relief is granted.

27 20. Plaintiffs desires a judicial determination and declaration of the parties'

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1 respective rights and duties regarding the validity and/or enforceability of the Extended Notice  
2 Ordinance. Such a declaration is necessary and proper at this time so that Plaintiffs and their members  
3 (and others) may ascertain and determine their rights and duties.

4 PRAYER FOR RELIEF

5 Petitioners/Plaintiffs pray for judgment against Respondents as follows:

- 6 1. For a writ of mandate or other appropriate relief, including a mandatory  
7 injunction, directing and commanding Respondents to rescind the Extended Notice Ordinance;  
8 2. For an alternative writ against Respondents commanding it to file a response to this  
9 petition and to appear before this Court on a date to be determine and show cause why a writ of  
10 mandate should not issue invalidating the Extended Notice Ordinance;  
11 3. For an immediate stay of enforcement of the Extended Notice Ordinance;  
12 4. For a declaration that the Extended Notice Ordinance is invalid and may not be  
13 enforced.  
14 5. For costs of suit and attorney's fees pursuant to Code of Civil Procedure §  
15 1021.5;  
16 6. For such other relief as the Court deems appropriate.

17 Date: June 10, 2016

ZACKS, FREEDMAN & PATTERSON, P.C.

18 /s/ Andrew M. Zacks


19 By: Andrew M. Zacks  
20 Attorneys for Petitioners/Plaintiffs

VERIFICATION

1  
2  
3 I, Andrew M. Zacks, am the lead counsel for Petitioners SFAA and SPOSFI. I <sup>act as</sup> am also general  
4 counsel for SPOSFI. I have read the foregoing petition and am both authorized and able to make this  
5 verification. I have read, and am familiar with, the ordinance challenged in this petition. I am  
6 informed and believe, and on that ground allege, that the matters stated in the petition are true and  
7 correct.

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

10  
11 Date: June 10, 2016.

  
\_\_\_\_\_  
Andrew M. Zacks

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Exh. A

1 [Administrative Code - No-Fault Eviction Protections During School Year]

2  
3 **Ordinance amending the Administrative Code to prevent certain no-fault evictions**  
4 **(owner move-in, condominium conversion, removal of rental unit, capital improvement,**  
5 **and substantial rehabilitation) during the school year if a child under 18 or a person**  
6 **who works at a school in San Francisco resides in the rental unit, is a tenant or has a**  
7 **custodial or family relationship with a tenant, and the tenant has resided in the unit for**  
8 **12 months or more, provided, however, that this ordinance would not restrict the timing**  
9 **of evictions performed in connection with mandatory seismic retrofits pursuant to**  
10 **Building Code, Chapter 34B, and Administrative Code, Chapter 65A; and to remove**  
11 **existing exceptions for owners that apply to owner move-in evictions during the school**  
12 **year.**

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

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

22 Section 1. Findings.

23 (a) The frequency of no-fault evictions in San Francisco, combined with the steep rise  
24 in market rents, has displaced many lower and middle income households from their homes.  
25 Many of these households have experienced considerable dislocation as a result, and have  
found upon eviction that they can no longer afford to remain in the City.



1 (b) No-fault evictions occur year-round, but those occurring during the school year are  
2 of particular concern due to the adverse effect on children. Studies overwhelmingly  
3 demonstrate that moving homes in the middle of the school year can be harmful for children.  
4 For example, a 2009 Legislative Analyst Report previously submitted to the Board of  
5 Supervisors indicates that residential instability likely has a negative effect on a child's  
6 academic performance, social relationships, and mental health (File No. 090835). Likewise, a  
7 2015 study from New York University, titled "Moving Matters: The Causal Effect of Moving  
8 Schools on Student Performance," found that mid-year moves are more likely to disrupt  
9 children's peer networks and interfere with the learning process.

10 (c) The impact of no-fault evictions during the school year on school staff, both  
11 teachers and others, also raises serious concern. School staff tend to be especially  
12 vulnerable to displacement due to salary limitations that can make it difficult to quickly or  
13 easily locate replacement housing, and the eviction of school staff during the school year can  
14 cause significant harm. Children need strong mentoring relationships to succeed and often  
15 turn to school staff, particularly when they cannot find stability in their homes or in their  
16 communities. There is a broad consensus that academic performance suffers when teachers  
17 leave or are repeatedly absent during the school year. And the loss of school staff other than  
18 teachers is also harmful, not only because non-teaching staff support teachers in the  
19 classroom, but also because the loss of non-teaching staff results in teachers having to  
20 devote more time and energy to non-teaching duties. Thus, mid-year evictions of school staff  
21 disrupt relationships that are important to children, interfere with the learning process, and  
22 burden our schools.

23 (d) For the foregoing reasons, the Board of Supervisors finds that there is a strong  
24 public interest in reducing the number of evictions during the school year of families with  
25

1 children, and of teachers and other school staff. Accordingly, this ordinance will serve the  
2 public interest by regulating the timing of certain no-fault evictions.

3  
4 Section 2. The Administrative Code is hereby amended by revising Section 37.9 to  
5 read as follows:

6 **SEC. 37.9. EVICTIONS.**

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

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

10 \* \* \* \*

11 (8) The landlord seeks to recover possession in good faith, without ulterior  
12 reasons and with honest intent:

13 (i) For the landlord's use or occupancy as his or her principal residence  
14 for a period of at least 36 continuous months;

15 (ii) For the use or occupancy of the landlord's grandparents,  
16 grandchildren, parents, children, brother or sister, or the landlord's spouse, or the spouses of  
17 such relations, as their principal place of residency for a period of at least 36 months, in the  
18 same building in which the landlord resides as his or her principal place of residency, or in a  
19 building in which the landlord is simultaneously seeking possession of a rental unit under  
20 Section 37.9(a)(8)(i). For purposes of this Section 37.9(a)(8)(ii), the term spouse shall include  
21 domestic partners as defined in San Francisco Administrative Code Sections 62.1 through  
22 62.8.

23 \* \* \* \*

1 (9) The landlord seeks to recover possession in good faith in order to sell the  
2 unit in accordance with a condominium conversion approved under the San Francisco  
3 subdivision ordinance and does so without ulterior reasons and with honest intent; or

4 (10) The landlord seeks to recover possession in good faith in order to  
5 demolish or to otherwise permanently remove the rental unit from housing use and has  
6 obtained all the necessary permits on or before the date upon which notice to vacate is given,  
7 and does so without ulterior reasons and with honest intent; provided that a landlord who  
8 seeks to recover possession under this Section 37.9(a)(10) shall pay relocation expenses as  
9 provided in Section 37.9C except that a landlord who seeks to demolish an unreinforced  
10 masonry building pursuant to Building Code Chapters 16B and 16C must provide the tenant  
11 with the relocation assistance specified in Section 37.9A(f) below prior to the tenant's vacating  
12 the premises; or

13 (11) The landlord seeks in good faith to remove temporarily the unit from  
14 housing use in order to be able to carry out capital improvements or rehabilitation work and  
15 has obtained all the necessary permits on or before the date upon which notice to vacate is  
16 given, and does so without ulterior reasons and with honest intent. Any tenant who vacates  
17 the unit under such circumstances shall have the right to reoccupy the unit at the prior rent  
18 adjusted in accordance with the provisions of this Chapter. The tenant will vacate the unit only  
19 for the minimum time required to do the work. On or before the date upon which notice to  
20 vacate is given, the landlord shall advise the tenant in writing that the rehabilitation or capital  
21 improvement plans are on file with the Central Permit Bureau of the Department of Building  
22 Inspection and that arrangements for reviewing such plans can be made with the Central  
23 Permit Bureau. In addition to the above, no landlord shall endeavor to recover possession of  
24 any unit subject to a RAP loan as set forth in Section 37.2(m) of this Chapter except as  
25 provided in Section 32.69 of the San Francisco Administrative Code. The tenant shall not be

1 required to vacate pursuant to this Section 37.9(a)(11), for a period in excess of three months;  
2 provided, however, that such time period may be extended by the Board or its Administrative  
3 Law Judges upon application by the landlord. The Board shall adopt rules and regulations to  
4 implement the application procedure. Any landlord who seeks to recover possession under  
5 this Section 37.9(a)(11) shall pay relocation expenses as provided in Section 37.9C or

6 (12) The landlord seeks to recover possession in good faith in order to carry  
7 out substantial rehabilitation, as defined in Section 37.2(s), and has obtained all the necessary  
8 permits on or before the date upon which notice to vacate is given, and does so without  
9 ulterior reasons and with honest intent. Notwithstanding the above, no landlord shall endeavor  
10 to recover possession of any unit subject to a RAP loan as set forth in Section 37.2(m) of this  
11 Chapter except as provided in Section 32.69 of the San Francisco Administrative Code; Any  
12 landlord who seeks to recover possession under this Section 37.9(a)(12) shall pay relocation  
13 expenses as provided in Section 37.9C; or

14 \* \* \* \*

15 (j) The following additional provision shall apply to a landlord who seeks to recover a  
16 rental unit by utilizing the grounds enumerated in Sections 37.9(a)(8), (a)(9), (a)(10), (a)(11), or  
17 (a)(12).

18 (1) It shall be a defense to an eviction under Sections 37.9(a)(8), (a)(9), (a)(10),  
19 (a)(11), or (a)(12) if ~~any tenant in the rental unit has a custodial or family relationship with~~ a child  
20 under the age of 18 ~~or any educator resides who is residing~~ in the unit, the child or educator is a  
21 tenant in the unit or has a custodial or family relationship with a tenant in the unit, the tenant ~~with the~~  
22 ~~custodial or family relationship~~ has resided in the unit for 12 months or more, and the effective  
23 date of the notice of termination of tenancy falls during the school year. *The term "school year"*  
24 *as used in this Section 37.9(j) means the first day of instruction for the Fall Semester through the last*  
25

1 ~~day of instruction for the Spring Semester, as posted on the San Francisco Unified School District~~  
2 ~~website for each year.~~

3 (2) ~~The foregoing provision~~ Section 37.9(j)(1) shall not apply where the landlord  
4 is seeking to temporarily evict or temporarily sever housing services in order to perform seismic work  
5 required by Building Code Chapter 34B and has provided notice and compensation as required by  
6 Administrative Code Chapter 65A. ~~there is only one rental unit owned by the landlord in the building,~~  
7 ~~or where the owner who will move into the unit pursuant to a Section 37.9(a)(8) eviction has a~~  
8 ~~custodial or family relationship with a child under the age of 18 who will reside in the unit with the~~  
9 ~~owner.~~

10 (3) Within 30 days of personal service by the landlord of a written request, or,  
11 at the landlord's option, a notice of termination of tenancy under Sections 37.9(a)(8), (a)(9),  
12 (a)(10), (a)(11), or (a)(12), the tenant must submit a statement with supporting evidence to the  
13 landlord, if the tenant claims to be a member of the class protected from eviction by Section  
14 37.9(j). The landlord's written request or notice shall contain a warning that a tenant's failure  
15 to submit a statement within the 30 day period shall be deemed an admission that the tenant  
16 is not protected from eviction by Section 37.9(j). The landlord shall file a copy of the landlord's  
17 request or notice with the Rent Board within 10 days of service on the tenant. A tenant's  
18 failure to submit a statement within the 30 day period shall be deemed an admission that the  
19 tenant is not protected from eviction by Section 37.9(j). A landlord may challenge a tenant's  
20 claim of protected status either by requesting a hearing with the Rent Board or, at the  
21 landlord's option, through commencement of eviction proceedings, including service of a  
22 notice of termination of tenancy. In the Rent Board hearing or the eviction action, the tenant  
23 shall have the burden of proof to show protected status. No civil or criminal liability under  
24 Section 37.9(e) or (f) shall be imposed upon a landlord for either requesting or challenging a  
25 tenant's claim of protected status.

1 (4) For purposes of this Section 37.9(j), the following terms have the following  
2 meanings:

3 "eCustodial relationship" means, with respect to a child and a tenant, that the tenant person  
4 is a legal guardian of the child, or has a court-recognized caregiver authorization affidavit for  
5 the child, or ~~that the person~~ has provided full-time custodial care of the child pursuant to an  
6 agreement with the child's legal guardian or court-recognized caregiver and has been  
7 providing that care for at least one year or half of the child's lifetime, whichever is less.

8 "Educator" means any person who works at a school in San Francisco as an employee or  
9 independent contractor of the school or of the governing body that has jurisdiction over the school,  
10 including, without limitation, all teachers, classroom aides, administrators, administrative staff,  
11 counselors, social workers, psychologists, school nurses, speech pathologists, custodians, security  
12 guards, cafeteria workers, community relations specialists, child welfare and attendance liaisons, and  
13 learning support consultants.

14 The term "fFamily relationship" means that the person is the parent, grandparent,  
15 brother, sister, aunt, or uncle of the child or educator, or the spouse or domestic partner of  
16 such relations.

17 "School" means any state-licensed child care center, state-licensed family day care, and/or any  
18 public, private, or parochial institution that provides educational instruction for students in any or all  
19 of the grades from kindergarten through twelfth grade.

20 "School year" means the first day of instruction for the Fall Semester through the last day of  
21 instruction for the Spring Semester, as posted on the San Francisco Unified School District website for  
22 each year.

23 \* \* \* \*

1 Section 3. Effective Date. This ordinance shall become effective 30 days after  
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
4 of Supervisors overrides the Mayor's veto of the ordinance.

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

12  
13 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word  
14 of this ordinance, or any application thereof to any person or circumstance, is held to be  
15 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision  
16 shall not affect the validity of the remaining portions or applications of the ordinance. The  
17 Board of Supervisors hereby declares that it would have passed this ordinance and each and  
18 every section, subsection, sentence, clause, phrase, and word not declared invalid or  
19 unconstitutional without regard to whether any other portion of this ordinance or application  
20 thereof would be subsequently declared invalid or unconstitutional.

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

23  
24 By:

  
25 MANU PRADHAN  
Deputy City Attorney

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