



THE PRESIDENT'S MESSAGE

Welcome to what promises to be another challenging month for rental property owners

By Noni Richen, SPOSF/SPOSFI President

As we move into yet another month of the pandemic, we will try to help you through this strange and unique situation or refer you to others who can help. We appreciate your continued confidence in SPOSF.

First, I'd like to apologize for a misstatement I made in my last message to you, that the Rent Board had prepared an agreement form for owners and renters to use for temporary reductions in rent. In fact, the Rent Board website contains only the regulations surrounding rent forbearance. However, our business member, Bornstein Law, has produced a form for San Francisco that we can forward to you. I discussed the

form with Robert Collins, Director of the Rent Board. He stressed how important it is to discuss rent forbearance with our renters as a temporary adjustment to help them through a difficult time. Do not mention

that you are lowering the rent because rents in general, or rents in your other apartments, are lower now because of the pandemic. Such talk could prevent you from being able to raise the rent back to original levels, should the renter go to the Rent Board to protest.

We have continued to discuss with our statewide colleagues in CalRHA, the many different bills that are before our legislature that affect us. Some of the most onerous ones will wither in committees that choose to put them aside, but those that will

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Due to the ongoing public health crisis, our regular in-person Sept. 8 members' meeting is again cancelled.

BUT DON'T MISS OUR ON-LINE LEGAL PANEL

at its regular time: 6:15 p.m., Tuesday, Sept. 8.

CALLING ALL BILLIONAIRES!

Billionaires can help financially distressed tenants and landlords with a sensible solution

Tenants are fearing homelessness, while many cash-strapped landlords are in dire straits. Private-sector interest-free loans could assuage the fear of eviction while keeping landlords solvent.

By Daniel Bornstein, Esq., Bornstein Law

When COVID-19 reared its ugly head, tenants' advocates sounded the alarms, and lawmakers heard the call. Fearing massive displacement of renters who have lost income due to the pandemic, and with unemployment benefits ending soon, politicians have gotten together to enact ever-expanding eviction moratoriums and a wide range of tenant protections.

Meanwhile, landlords are struggling, especially mom-and-pops who are bereft of income. We were disheartened by a survey conducted by the Turner Center for Housing Innovation at UC Berkeley that reported one in four small landlords have borrowed funds to absorb costs, and some are on the brink of going out of business or losing retirement funds.

“Meanwhile, landlords are struggling, especially mom-and-pops who are bereft of income.”

Relief proposals have been lopsided

This virus and the economic fallout do not discriminate against landlords or against tenants. Everyone has suffered. There is no “tenant camp” or “landlord camp.” The question now is how to bounce back and find equitable solutions that recognize the pain of both tenants and rental property owners. Thus far, the proposals have been lopsided.

In Sacramento, several crackpot measures like

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“Do not mention that you are lowering the rent because rents in general, or rents in your other apartments, are lower now because of the pandemic.”

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likely pass will get amended numerous times. That is where our lobbyists work to exert pressure. As you can read in the article which follows, the lawsuit we filed against Supervisor Preston's legislation (Ordinance 200375), that seeks to override state emergency orders concerning evictions was dismissed by the local

“We will defeat Prop. 21.”



Superior Court. This was not totally unexpected, and we and our partner groups have filed an appeal. On a positive note, the California Judicial Council, the administrative arm of the courts, voted to lift its moratorium on eviction hearings on September 2. While this ruling will have little effect on most of us small property owners, it

does acknowledge that property owners have rights to use the courts. We, along with other property groups had signed a letter drafted by the Zacks, Freedman & Patterson law group protesting the moratorium. Also, in Kern County, the Pacific Legal Foundation had filed a suit for clients who were denied access to the courts.

Please continue to support our legal panels by emailing your questions to info@smallprop.org. The programs are pre-recorded, usually the day before the presentation, so send us your questions early. We will get past this pandemic. We will defeat Prop. 21. And hopefully, we'll see you soon in person. 🏠



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SPOSF endorsements for the November 3 election

San Francisco ballot measures

Prop H: Streamlines city's permitting process. **YES**

Prop I: Increases taxes on property sales valued at \$10 million or more. **NO**

Prop J: Creates \$288 parcel tax for schools. **NO**

State of California ballot measures

SCA 2: Repeals Prop 50 and Prop 193, transfer to children and grandchildren. **NO**

Prop 15: Taxes. Requires commercial and industrial properties to be taxed based on market value. **NO**

Prop 19: Taxes. Changes tax assessment transfers and inheritance rules. **NO**

Prop 21: Housing. Expands local governments' power to institute rent control. **NO NO NO**

San Francisco Supervisor

SPOSF is endorsing candidates for supervisor in Districts 1, 5, and 7 only. the election is by Ranked Choice Voting (RCV):

District 1

1st choice: Marjan Philhour

2nd: Sherman D'Silva

3rd: Veronica Shinzato

District 7

1st choice: Joel Engardio

2nd: Stephen Martin-Pinto

3rd: Emily Murase

District 5

1st choice: Valle Brown

SF judge: "no landlord right to unlawful detainer action during pandemic"

By Brian Wallace, SPOSFI Member

In August, a San Francisco judge ruled that the city's moratorium on evictions due to COVID-19-related non-payment of rent is a "permissible exercise" of its power, thus denying a legal challenge by SPOSFI and three other groups. The appellants argued that the eviction moratorium forces owners to collect rent through civil claims or by hiring collections agencies, both costly and rarely successful. But, more importantly, adherence to the ordinance amounted to an unconstitutional taking of property; however, San Francisco Superior Court Judge Charles Haines called it "a reasonable exercise of the police power to promote public welfare."

Background

In March, Mayor London Breed first declared an eviction moratorium which provided a six-month extension on rent payments that become due during that

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Two misguided tenant relief bills, SB 1410 and AB 1436, die in committee

Although a host of bills related to the pandemic have come before the State Assembly and Senate, two stand out as garnering the greatest controversy.

SB 1410 (Caballero, D) would provide tax credits to property owners as compensation for not evicting tenants who do not pay their full rent due to COVID-19. Originally, the idea of AB 1410 was to have landlords forego 20% of rent and for the State to pay them the remaining 80%. However, Sacramento legislators dropped the idea for lack of money to pay landlords; even if they had the funds, they would rather give it directly to tenants, relying on the tenants to forward the money on to their landlords.

The original intent of the legislation failed, so a scheme was offered to use a questionable system of tax credits providing relief to tenants, but leaving property owners with 13 years to recoup their money.

AB 1436 (Chiu, D) would prohibit evictions for back rent owed due to COVID-19 and would give distressed renters up to 15 months after the state of emergency had been lifted to repay. AB 1436 makes no distinction between tenants with the financial ability to pay rent and those who have been genuinely impacted by the pandemic; would not be able to tap into security deposits to recoup rent defaults; and would prohibit owners from using an unlawful detainer action, or even making a notation on a tenant's credit report.

The Judiciary Committees in the State Assembly and State Senate have rejected both AB 1436 and SB 1410. In addition, Governor Newsom made it known that even if passed, he would veto both. CalRHA added its considerable weight to the issue by suggesting replacing both bills with a \$2 billion package to help the neediest tenants and their landlords.

Replacing both SB 1410 and AB 1436 with a trailer bill has found resonance with the Governor, who has solicited suggestions from CalRHA. In response, CalRHA has asked the following points to be included:

1. Written verification from tenants that their income has been affected due to the pandemic. The legislation in AB 1436 required only the tenant's word in the form of a letter, but no actual proof.
2. A guarantee that non-Covid-related evictions can

MAKE A DONATION TO THE NO ON PROP. 21 CAMPAIGN

1. Via the website at noonprop21.org, or
2. mail your check to:
Californians for Affordable Housing
1121 L Street, #200
Sacramento, CA 95814

You must provide your name, street address, city, state, zip code, occupation, name of employer, and email or phone number. The recommended donation is **\$100 per rental unit** you own.



still occur as before. Total evictions were banned in the other bills and may still be, as the governor was reluctant to accept this item in any future trailer bill.

3. Include mortgage forbearance. It must be noted that this point has no legal effect since mortgage providers operate under federal, not state law.

4. Specify a date certain for regular rent payments to commence, whether the pandemic is over or not. CalRHA sought to have regular rent payments started on Feb 1, 2021, that is, to end the eviction moratorium on January 31, 2021. A tenant who cannot pay the current month's rent is clearly not going to be able to pay five or six months of arrears. So CalRHA has asked that a firm date be specified when regular rent payments must resume—or the tenant can be served with an eviction notice. 🏠

Bloated city budget reflects no concern for plight of rental property owners

By Brian Wallace, SPOSFI Member

If San Francisco property owners are looking for any silver linings in Mayor Breed's new budget proposal, they'd better get a magnifying glass or better yet, an electron microscope.

In 2009, voters passed Proposition A, which amended the City Charter to require the city to transition to a two-year budget cycle. The proposed budget for San Francisco for fiscal years 2020–21 and 2021–22 is \$13.7 billion and \$12.6 billion, respectively. Normally submitted in June, the COVID-19 pandemic delayed its submission until August. How does this news affect

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“The Judiciary Committees in the State Assembly and Senate have rejected both AB 1436 and SB 1410. In addition, Governor Newsom has made it known that even if passed, he would veto both.”

Lawsuits highlight citizens' frustration with city's inaction on homeless encampments

Tent encampments have a profound impact on owners, tenants, and small businesses.

By Sarah M.K. Hoffman, Esq., Law Offices of Zacks, Freedman & Patterson, PC

The COVID-19 pandemic has exacerbated San Francisco's homelessness crisis. The city's closure of shelters and failure to provide alternative shelter for the unhoused has led to a 300% increase in people sleeping on the street. Seemingly permanent tent encampments have been established on sidewalks across the city. These living conditions are unsafe for their occupants, and impact neighboring residents and small property owners in a big way. Small businesses already struggling due to the pandemic are facing a decline in customers due to conditions on the streets, residents are unable to safely access their homes, and the disabled are forced to drive their mobility scooters on the road because the sidewalks are blocked by these encampments.

Local businesses and small property owners have been increasingly frustrated in their efforts to make the city address these issues. 311 calls are routinely ignored and e-mails to local officials are usually met with canned responses. Finally, neighborhood groups in the Tenderloin and Mid-Market have resorted to suing the city, in order to compel it to take action. Lawsuits in other neighborhoods are being considered as well. The lawsuits recognize that these issues are not the fault of San Francisco's unhoused population. Rather, they target the city's failure to provide shelter for the unhoused and keep the streets safe, in violation of multiple state and federal laws, including the **Americans With Disabilities Act (ADA)**.

Litigation sends a clear message

These lawsuits have yielded some promising results. For instance, UC Hastings' lawsuit regarding conditions in the Tenderloin resulted in a swift settlement agreement, in which the city agreed to provide housing for people living in tents in this area. Other lawsuits have resulted in a clean-up of the streets without a formal settlement agreement. Notably, the Mid-Market lawsuit, brought by local residents and restaurant owners, led to the city finally addressing the problems identified in the lawsuit (after months of ignoring residents' requests).

Revised SPOSFI Lease Agreement and addendum now available

We have a revised lease agreement for new or renewal tenancies, which includes a new Section 5, allowing the landlord to designate if the unit is subject to the state rent control/just cause provisions, as required by AB 1482. We're also providing a lease addendum that can be served on current tenants to advise them if their unit is exempt from the new statewide rules.

Both documents may be downloaded from our website at www.smallprop.org.

The long-term efficacy of this approach remains to be seen, as the city has expressed concern about the precedent created by settling these lawsuits. The Board of Supervisors reluctantly approved the UC Hastings agreement, with some members noting that they didn't want to send a message that litigation is the only way to make San Francisco address homelessness with urgency. But ironically, unless the city takes more proactive steps to respond to residents' and small business' concerns, that is precisely the message it is sending. 🏠

Cont'd from page 3: **BLOATED CITY BUDGET**

renters and owners of their apartments in San Francisco? Let's look inside the budget's 306 pages and see: **Renter assistance**

A search using the word "tenant" reveals the following:

- On page 17 (under **Preserving and Expanding Critical City Pilots and Programs**): "... and \$0.8 million to fund emergency rental assistance for tenants in both private and subsidized housing (including San Francisco Housing Authority units) who have fallen behind on rent and are in danger of being displaced."
- On page 186: we see that the Department of Homelessness and Supportive Housing has a core component entitled Housing Ladder, "offering opportunities for residents of permanent supportive housing or rapid rehousing programs to relocate to housing in the private market using tenant-based rental subsidies."
- On page 210 (under **Fostering Healthy Communities and Neighborhoods**): "The Mayor's Office of Housing and Community Development's community development grants will provide 1,800 tenants facing eviction with full-scope legal representation, as well as assist 4,500 individuals with counseling to help prevent eviction or loss of housing; provide more than 3,600 individuals with increased access to housing; [and] assist in the submission of 200,000 applications submitted for affordable housing rental opportunities."

Landlord assistance? None

A word search of "landlord" finds references to the city's efforts in arbitration and mediation to resolve disputes between landlords and tenants, but no mention of direct fiscal assistance during the pandemic. One

►► Concludes on page 5

“Local businesses and small property owners have been increasingly frustrated in their efforts to make the city address these issues.”

time. In June, the Board of Supervisors amended the Rent Ordinance to provide further eviction protections for renters. The amendments provide that no renter may be evicted for non-payment of rent that become due while the Governor's Executive Order on evictions is in effect (currently March 16, 2020 through September 30, 2020, unless extended), even if the rent is not paid after the Mayor's six-month extension period expires. In other words, this law (along with the closure of the court system) would allow renters to live rent free from March to September 2020 and potentially beyond—and property owners would have no legal recourse to recoup unpaid rent.

Coming to terms with the terms

What the general public calls an "eviction," rental property owners embrace as their right—an important, fundamental right—to an **unlawful detainer action**. Existing law provides that a renter is subject to such an

What the general public calls an 'eviction,' rental property owners embrace as their right—an important, fundamental right—to an unlawful detainer action."

action if the renter continues to possess the property without the owner's permission; for example, if a renter violates a provision of the lease or fails to pay rent. It's not so much that an apartment is taken away from the renter as it is that a

leased property is being returned to its rightful owner. This most-recent eviction ruling further erodes the right to pursue an unlawful detainer action.

What did Judge Haines mean when he called the moratorium "a reasonable exercise of the police power to promote public welfare?" Merriam-Webster defines **police powers** as "the inherent power of a government to exercise reasonable control over persons and property within its jurisdiction in the interest of the general security, health, safety, morals, and welfare, except where legally prohibited." The term harkens back to colonial times when local jurisdictions lacked an established police force. They then took it upon themselves to control nuisances (such as tanneries that fouled the air and water in towns), to prevent the sale of bad food, and to quarantine persons who were infected with communicable diseases.

Results of the decision

Sadly, the city's law, now with the blessing of a judge's order, goes much further than an emergency plan established by the state. "This order basically means that San Francisco can eliminate the grounds of nonpayment as a basis to evict tenants, not in the context of an emergency but as a general matter," states Andrew Zacks, an attorney for the landlords with the firm Zacks, Freedman & Patterson. "What's to stop the city from going further? That's why this case is such an impor-

tant one even outside the world of the emergency. If we were comfortable that the city wasn't going to go any further, it wouldn't be as important."

"This order basically means that San Francisco can eliminate the grounds of nonpayment as a basis to evict tenants, not in the context of an emergency but as a general matter. What's to stop the city from going further?"

He said it's typical for the government to try to permanently expand its powers during an emergency, and that it would be a logical step for the city to extend its eviction protections to financial hardships beyond those created by the pandemic.

"Certain government power is expanded in an emergency, and government forgets it's supposed to be

temporary," he said. "And once the government has the power, it doesn't want to give it up.

"My clients are fighting for the very principle that when a landlord rents a property, the tenant has to pay rent or the tenant has to move," Zacks added. "That's the hallmark of what a landlord-tenant relationship is."

San Francisco is desperately trying to upend that relationship. While property owners still have the ability to bring lawsuits for breach of contract, most landlords won't go that route nor do they want to. Most property owners don't want to evict and would much rather work something out with renters, but renters now have zero incentive to negotiate.

SPOSFI and the other groups involved have filed an appeal to the judge's ruling. 🏠

Cont'd from page 4: **BLOATED CITY BUDGET**

"But one thing is certain: property tax revenue will increase by 2% automatically—no shortfall there."

reference on page 128 is rather telling, "The City Attorney continues to use the power of the law to help marginalized communities... cracking down on landlords

who were illegally discriminating against low-income tenants by refusing to accept government housing vouchers." In the entire budget text, there is not a single favorable mention of landlords and their contribution to the city in providing critical housing.

Mayor Breed's proposed budget is now before the Budget and Finance Committee, after which it will go before the full Board of Supervisors. Following approval by the Board, the budget for FY 2020-21 and 2021-22 will go to the Mayor for her signature and final adoption by October 1, 2020.

Whether any of the above-cited aid to renters finds its way to rental property owners remains to be seen. But one thing is certain: property tax revenue will increase by 2% automatically—no shortfall there. 🏠

Cont'd from page 1: **CALLING ALL BILLIONAIRES!**

reducing rent across the board by 25% (AB 828) and giving tenants years to pay back COVID-related debt have been defeated or stalled. SB 1410 was one of the few bills that acknowledged the hardship of landlords. In its original form, SB 1410 would pay 80% of back rent to landlords in exchange for reasonable concessions. The re-worked bill was watered down, however, and would not have provided much-needed cash assistance to landlords. Instead, owners would be entitled to tax credits spread out over many years. With the proposal butchered, SB 1410 lost its blessing from the California Apartment Association (CAA).

Mortgage forbearance is a band-aid fix

Another bill, AB 1436, would be a token act that grants a one-year mortgage forbearance to small landlords with up to four units; landlords with five or more units could request just six-months forbearance. Although

branded as a landlord relief bill, AB 1436 provides no aid to landlords trying to make ends meet.

A reality that often goes unacknowledged is that when owners don't make money from their rental properties, tenants suffer. Maintenance,

upkeep, and necessary repairs fall by the wayside.

In late-breaking news, we are relieved to learn that both AB 1436 and SB 1410 have died in committee, and the Governor is talking about a replacement bill. There are other measures we won't survey here, but suffice it to say that after looking high and low, we could not find any legislative proposals that help owners. It's been said by one former California governor and president that government is the problem and not the answer, but there is a private market that is willing and able to chip in and offer solutions.

Bay Area wealth can put a big dent in the crisis

Let's explore the possibility that vocal, socially conscientious people who have the means to make a difference can step up and actually put a dent in this crisis.

In the tech capital of the world, there's no shortage of money to go around. As *Forbes* reports, California is home to 165 billionaires, of whom a good number reside in the Bay Area. Governor Newsom in his first days in office called upon tech giants to provide developers with low-interest loans to build housing for teachers, nurses, and other middle-class Californians. So asking well-to-do companies to help solve our current crisis is not a radical idea.

A lifeline for landlords

There have been numerous wealthy individuals, corpo-

rations, philanthropies, and foundations who have raised their hand and said they want to be part of the solution. They can now step up and help preserve housing by giving interest-free loans to tenants in order to pay past due rent. In so doing, they would give a *lifeline to landlords* who depend on rental income to sustain life and maintain the comfort and amenities that tenants deserve.

"Someone needs to tap (the billionaires) on the shoulder, and say, 'Now is the time to be there for us. What are you waiting for? This is the crisis.'"

This is what I told the *San Francisco Chronicle* recently, and that the publication conceded is not that far of a stretch considering that Jack Dorsey, head of Twitter and Square, forked over \$1 billion to coronavirus relief and donated \$10 million to close the digital divide for Oakland students.

Billionaires, please stand up

Facebook, Apple, and other huge tech companies have put their money where their mouth is by pouring many millions into affordable housing programs. How about a similar effort—a private-sector pool of wealth providing interest-free loans—to enable tenants to pay their rent? Many tenants need the funds *now*—and landlords rely on that money. True, state and local moratoriums on evictions for pandemic-related non-payment of rent still obligate the tenant to pay their back rent, but they defer that obligation to the point that it becomes increasingly unlikely that the tenant will be able to pay it back—especially if she has accrued up to 15 months of indebtedness, as AB 1436 would have allowed. Worst of all, however, these eviction moratoriums place the burden entirely on the owner to collect the back rent, an effort that anyone who's been through it knows, is costly, time-consuming, emotionally draining—and often unsuccessful.

Obviously, many details need to be worked out for a successful implementation of this model. For example, who would administer the loans? Would the funds be disbursed directly to the landlord in order to ensure that the money gets spent to pay rent and not simply into the pockets of unscrupulous tenants? Having the private sector step in to get the money flowing to keep both tenants and landlords solvent is far faster and far more efficient than looking to government to do it. It's the smart thing to do.

We call upon those with the means to make a real difference in the current crisis. It's altruism at its best, but it's also enlightened self interest and good business. To the billionaires we say: **"You've made money, and now it can really matter."** 🏠

"Someone needs to tap (the billionaires) on the shoulder, and say, 'Now is the time to be there for us. What are you waiting for? This is the crisis.'"

"...when owners don't make money from their rental properties, tenants suffer. Maintenance, upkeep, and necessary repairs fall to the wayside."

RESOURCE GUIDE

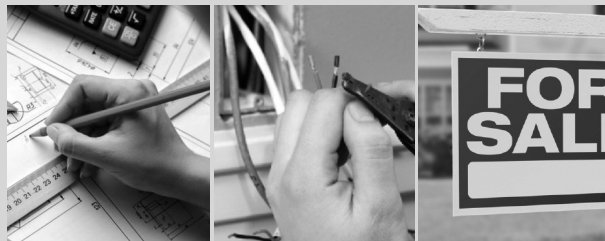
THE FOLLOWING BUSINESSES SUPPORT SPOSI and have joined at the **Business Member Level**. For a full listing, with complete contact information, please visit our website at:

www.smallprop.org/resources/guide/

When selecting service providers from this list, always exercise good judgment to ensure that they meet your specific needs.

SPOSI makes no claims or warranties of any kind, and provides these service listings for your convenience only.

All phone numbers are **(415)** area code unless noted otherwise.



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- **Patricia A. Harris**, *Apartment Owners Association of California (AOA)* (818) 988-9200

ARCHITECTS

- **Rachel Malchow**
Rachel Malchow Architect Inc. 710-9093

ATTORNEYS: LANDLORD

- **Andrew M. Zacks** (中文服務)
Zacks, Freedman & Patterson, PC 956-8100
- **Paul F. Utrecht**, *Utrecht & Lenvin LLP* 357-0600
- **Daniel Bornstein**, *Bornstein Law* 409-7611
- **Nicholas Goldman**, *Nicholas Goldman Law* 350-8740
- **Denise A. Leadbetter**
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Law Offices of Parsley & Makarin 777-1800
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Law Office of Juliana E. Pisani 800-7562
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Law Offices of Karen Y. Uchiyama 563-9300

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- **John O'Grady**, *O'Grady Law Group* 986-8500

DISPUTE RESOLUTION

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ELECTRICAL CONTRACTORS

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- **Eric & Christian Alexanderson**
Alexanderson Properties 285-3737
- **Michael Langley**, *Paul Langley Co.* (431) 9104 x301
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2020 SF RENT BOARD NUMBERS:

Maximum allowable rent increase: **1.8%** Interest on security deposits: **2.2%** Annual tenant Rent Board fee: **\$25.00**
Effective March 1, 2020 —> February 28, 2021



**Small Property Owners
of San Francisco Institute**
P.O. Box 170669
San Francisco, CA 94117-0669

Visit us online at
www.smallprop.org
 (415) 647-2419



**DUE TO THE ONGOING
PUBLIC HEALTH CRISIS,
OUR SEPT. 8 MEMBERS'
MEETING HAS BEEN
CANCELLED.**

But our on-line Legal Panel starts
as usual at 6:15 p.m. —this month with
attorneys Anna Liu, Lon Fullerton,
and Olivia Dopler of Steven Adair
MacDonald & Partners

Published monthly except August and
December. SPOSF members can also
download the newsletter from our
website.

NO ON PROP. 21



**YES. I WANT TO JOIN
THE FIGHT TO PRESERVE
THE RIGHTS OF SMALL
PROPERTY OWNERS**

Please complete all information below, tear off
form and mail with your check payable to:

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P.O. Box 170669, San Francisco, CA 94117-0669



SEPT. 2020
SPOSF:
Standing up for
the rights of small
property owners
through advocacy
and education

Name: _____ Phone: _____ E-mail: _____

Mailing address: _____ City: _____ State: _____ Zip: _____

Employer: _____ Occupation: _____ ☐ Self-employed ☐ Retired

How many units do you own? _____ In which Supervisorial District (1-11) do you reside? _____ OK to share your e-mail with NAA? ☐

Sign me up as: ☐ **\$100-Regular member** ☐ **\$150-Supporter** ☐ **\$250-Sponsor** ☐ **\$400-Business member** (includes listing in Resource Guide)

DONATIONS TO SPOSF: I'd also like to make a separate donation to SPOSF (please make *separate* check payable to SPOSF and mail to the same address). Enclosed is my contribution of: ☐ \$50 ☐ other: _____

PLEASE NOTE: While SPOSF membership dues are tax-deductible as a charitable contribution to the extent allowed by law, donations to SPOSF are not tax-deductible as charitable contributions.