

1 [Rent Ordinance: applies to units where a tenant's occupancy predates federal low income
2 housing tax credits.]

3 **Ordinance amending Residential Rent Stabilization and Arbitration Ordinance**
4 **(Administrative Code Chapter 37, "Rent Ordinance") by amending the Section 37.2(r)(4)**
5 **definition of "rental units" covered by the ordinance to include units in buildings for**
6 **which tax credits are reserved or obtained pursuant to the federal low income housing**
7 **tax credit program (LIHTC, Section 42 Internal Revenue Code, 26 U.S.C. Section 42),**
8 **where: a tenant's occupancy pre-dates recordation of the LIHTC regulatory agreement;**
9 **and, the rent is not otherwise controlled or regulated by any use restrictions imposed**
10 **by the San Francisco Redevelopment Agency, the State of California Office of Housing**
11 **and Community Development, the United States Department of Housing and Urban**
12 **Development, or the City. This change will encompass rental units where the**
13 **qualifying tenant is in possession of the unit on or after the effective date of this**
14 **ordinance, including any unit where the tenant has been served with a notice to quit**
15 **but has not vacated the unit and there is no final judgment against the tenant for**
16 **possession of the unit prior to the effective date of this ordinance.**

17 Note: Additions are *single-underline italics Times New Roman font*;
18 deletions are *strikethrough italics Times New Roman font*.
19 Board amendment additions are double underlined Arial font;
20 Board amendment deletions are ~~strikethrough Arial font~~.

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

22 Section 1. The San Francisco Administrative Code is hereby amended by amending
23 Section 37.2, to read as follows:

24 Sec. 37.2. DEFINITIONS.

25 (a) Base Rent.

1 (1) That rent which is charged a tenant upon initial occupancy plus any rent increase
2 allowable and imposed under this Chapter; provided, however, that base rent shall not include
3 increases imposed pursuant to Section 37.7, and base rent shall not include utility
4 passthroughs or water revenue bond passthroughs or general obligation bond passthroughs
5 pursuant to Sections 37.2(q), 37.3(a)(5)(B), and 37.3(a)(6). Base rent for tenants of RAP
6 rental units in areas designated on or after July 1, 1977, shall be that rent which was
7 established pursuant to Section 32.73-1 of the San Francisco Administrative Code. Rent
8 increases attributable to the City Administrator's amortization of an RAP loan in an area
9 designated on or after July 1, 1977, shall not be included in the base rent.

10 (2) From and after the effective date of this ordinance, the base rent for tenants
11 occupying rental units which have received certain tenant-based or project-based rental
12 assistance shall be as follows:

13 (A) With respect to tenant-based rental assistance:

14 (i) For any tenant receiving tenant-based assistance as of the effective date of this
15 ordinance (except where the rent payable by the tenant is a fixed percentage of the tenant's
16 income, such as in the Section 8 certificate program and the rental subsidy program for the
17 HOPWA program), and continuing to receive tenant-based rental assistance following the
18 effective date of this ordinance, the base rent for each unit occupied by such tenant shall be
19 the rent payable for that unit under the Housing Assistance Payments contract, as amended,
20 between the San Francisco Housing Authority and the landlord (the "HAP contract") with
21 respect to that unit immediately prior to the effective date of this ordinance (the "HAP" contract
22 rent").

23 (ii) For any tenant receiving tenant-based rental assistance (except where the rent
24 payable by the tenant is a fixed percentage of the tenant's income, such as in the Section 8
25 certificate program and the rental subsidy program for the HOPWA program), and

1 commencing occupancy of a rental unit following the effective date of this ordinance, the base
2 rent for each unit occupied by such a tenant shall be the HAP contract rent in effect as of the
3 date the tenant commences occupancy of such unit.

4 (iii) For any tenant whose tenant-based rental assistance terminates or expires, for
5 whatever reason, following the effective date of this ordinance, the base rent for each such
6 unit following expiration or termination shall be the HAP contract rent in effect for that unit
7 immediately prior to the expiration or termination of the tenant-based rental assistance.

8 (B) For any tenant occupying a unit upon the expiration or termination, for whatever
9 reason, of a project-based HAP contract under Section 8 of the United States Housing Act of
10 1937 (42 USC Section 1437f, as amended), the base rent for each such unit following
11 expiration or termination shall be the "contract rent" in effect for that unit immediately prior to
12 the expiration or termination of the project-based HAP contract.

13 (C) For any tenant occupying a unit upon the prepayment or expiration of any
14 mortgage insured by the United States Department of Housing and Urban Development
15 ("HUD"), including but not limited to mortgages provided under Sections 221(d)(3), 221(d)(4)
16 and 236 of the National Housing Act (12 USC Section 1715z-1), the base rent for each such
17 unit shall be the "basic rental charge" (described in 12 USC 1715z-1(f), or successor
18 legislation) in effect for that unit immediately prior to the prepayment of the mortgage, which
19 charge excludes the "interest reduction payment" attributable to that unit prior to the mortgage
20 prepayment or expiration.

21 (b) Board. The Residential Rent Stabilization and Arbitration Board.

22 (c) Capital Improvements. Those improvements which materially add to the value of
23 the property, appreciably prolong its useful life, or adapt it to new uses, and which may be
24 amortized over the useful life of the improvement of the building.

25 (d) CPI. Consumer Price Index for all Urban Consumers for the San Francisco-

1 Oakland Metropolitan Area, U.S. Department of Labor.

2 (e) Energy Conservation Improvements. Work performed pursuant to the
3 requirements of Chapter 12 of the San Francisco Housing Code.

4 (f) Administrative Law Judge. A person, designated by the Board, who arbitrates and
5 mediates rental increase disputes, and performs other duties as required pursuant to this
6 Chapter 37.

7 (g) Housing Services. Services provided by the landlord connected with the use or
8 occupancy of a rental unit including, but not limited to: repairs; replacement; maintenance;
9 painting; light; heat; water; elevator service; laundry facilities and privileges; janitor service;
10 refuse removal; furnishings; telephone; parking; rights permitted the tenant by agreement,
11 including the right to have a specific number of occupants, whether express or implied, and
12 whether or not the agreement prohibits subletting and/or assignment; and any other benefits,
13 privileges or facilities.

14 (h) Landlord. An owner, lessor, sublessor, who receives or is entitled to receive rent
15 for the use and occupancy of any residential rental unit or portion thereof in the City and
16 County of San Francisco, and the agent, representative or successor of any of the foregoing.

17 (i) Member. A member of the Residential Rent Stabilization and Arbitration Board.

18 (j) Over FMR Tenancy Program. A regular certificate tenancy program whereby the
19 base rent, together with a utility allowance in an amount determined by HUD, exceeds the fair
20 market rent limitation for a particular unit size as determined by HUD.

21 (k) Payment Standard. An amount determined by the San Francisco Housing
22 Authority that is used to determine the amount of assistance paid by the San Francisco
23 Housing Authority on behalf of a tenant under the Section 8 Voucher Program (24 CFR Part
24 887).

25 (l) RAP. Residential Rehabilitation Loan Program (Chapter 32, San Francisco

1 Administrative Code).

2 (m) RAP Rental Units. Residential dwelling units subject to RAP loans pursuant to
3 Chapter 32, San Francisco Administrative Code.

4 (n) Real Estate Department. A city department in the City and County of San
5 Francisco.

6 (o) Rehabilitation Work. Any rehabilitation or repair work done by the landlord with
7 regard to a rental unit, or to the common areas of the structure containing the rental unit,
8 which work was done in order to be in compliance with State or local law, or was done to
9 repair damage resulting from fire, earthquake or other casualty or natural disaster.

10 (p) Rent. The consideration, including any bonus, benefits or gratuity, demanded or
11 received by a landlord for or in connection with the use or occupancy of a rental unit, or the
12 assignment of a lease for such a unit, including but not limited to monies demanded or paid
13 for parking, furnishing, food service, housing services of any kind, or subletting.

14 (q) Rent Increases. Any additional monies demanded or paid for rent as defined in
15 item (p) above, or any reduction in housing services without a corresponding reduction in the
16 monies demanded or paid for rent; provided, however, that: (1) where the landlord has been
17 paying the tenant's utilities and the cost of those utilities increases, the landlord's passing
18 through to the tenant of such increased costs pursuant to this Chapter does not constitute a
19 rent increase; (2) where there has been a change in the landlord's property tax attributable to
20 a general obligation bond approved by the voters between November 1, 1996 and November
21 30, 1998, or after November 14, 2002, the landlord's passing through to the tenant of such
22 increased costs in accordance with this Chapter (see Section 37.3(a)(6)) does not constitute a
23 rent increase; and, (3) where water bill charges are attributable to water rate increases
24 resulting from issuance of water revenue bonds authorized at the November 5, 2002 election,
25 the landlord's passing through to the tenant of such increased costs in accordance with this

1 Chapter (see Section 37.3(a)(5)(B)) does not constitute a rent increase.

2 (r) Rental Units. All residential dwelling units in the City and County of San Francisco
3 together with the land and appurtenant buildings thereto, and all housing services, privileges,
4 furnishings and facilities supplied in connection with the use or occupancy thereof, including
5 garage and parking facilities.

6 Garage facilities, parking facilities, driveways, storage spaces, laundry rooms, decks,
7 patios, or gardens on the same lot, or kitchen facilities or lobbies in single room occupancy
8 (SRO) hotels, supplied in connection with the use or occupancy of a unit, may not be severed
9 from the tenancy by the landlord without just cause as required by Section 37.9(a). Any
10 severance, reduction or removal permitted under this Section 37.2(r) shall be offset by a
11 corresponding reduction in rent. Either a landlord or a tenant may file a petition with the Rent
12 Board to determine the amount of the rent reduction.

13 The term "rental units" shall not include:

14 (1) Housing accommodations in hotels, motels, inns, tourist houses, rooming and
15 boarding houses, provided that at such time as an accommodation has been occupied by a
16 tenant for 32 continuous days or more, such accommodation shall become a rental unit
17 subject to the provisions of this Chapter; provided further, no landlord shall bring an action to
18 recover possession of such unit in order to avoid having the unit come within the provisions of
19 this Chapter. An eviction for a purpose not permitted under Section 37.9(a) shall be deemed
20 to be an action to recover possession in order to avoid having a unit come within the
21 provisions of this Chapter;

22 (2) Dwelling units in nonprofit cooperatives owned, occupied and controlled by a
23 majority of the residents or dwelling units solely owned by a nonprofit public benefit
24 corporation governed by a board of directors the majority of which are residents of the
25 dwelling units and where it is required in the corporate by-laws that rent increases be

1 approved by a majority of the residents;

2 (3) Housing accommodation in any hospital, convent, monastery, extended care
3 facility, asylum, residential care or adult day health care facility for the elderly which must be
4 operated pursuant to a license issued by the California Department of Social Services, as
5 required by California Health and Safety Chapters 3.2 and 3.3; or in dormitories owned and
6 operated by an institution of higher education, a high school, or an elementary school;

7 (4) Except as provided in Subsections (A), ~~and (B)~~, and (C), dwelling units whose rents
8 are controlled or regulated by any government unit, agency or authority, excepting those
9 unsubsidized and/or unassisted units which are insured by the United States Department of
10 Housing and Urban Development; provided, however, that units in unreinforced masonry
11 buildings which have undergone seismic strengthening in accordance with Building Code
12 Chapters 16B and 16C shall remain subject to the Rent Ordinances to the extent that the
13 ordinance is not in conflict with the seismic strengthening bond program or with the program's
14 loan agreements or with any regulations promulgated thereunder;

15 (A) For purposes of Sections 37.2, 37.3(a)(10)(A), 37.4, 37.5, 37.6, 37.9, 37.9A,
16 37.10A, 37.11A and 37.13, and the arbitration provisions of Sections 37.8 and 37.8A
17 applicable only to the provisions of Sections 37.3(a)(10)(A), the term "rental units" shall
18 include units occupied by recipients of tenant-based rental assistance where the tenant-based
19 rental assistance program does not establish the tenant's share of base rent as a fixed
20 percentage of a tenant's income, such as in the Section 8 voucher program and the "Over-
21 FMR Tenancy" program defined in 24 CFR Section 982.4;

22 (B) For purposes of Sections 37.2, 37.3(a)(10)(B), 37.4, 37.5, 37.6, 37.9, 37.9A,
23 37.10A, 37.11A and 37.13, the term "rental units" shall include units occupied by recipients of
24 tenant-based rental assistance where the rent payable by the tenant under the tenant-based
25 rental assistance program is a fixed percentage of the tenant's income; such as in the Section

1 8 certificate program and the rental subsidy program for the Housing Opportunities for
2 Persons with Aids ("HOPWA") program (42 U.S.C. Section 12901 et seq., as amended);

3 (C) The term "rental units" shall include units in a building for which tax credits are
4 reserved or obtained pursuant to the federal low income housing tax credit program (LIHTC, Section
5 42 of the Internal Revenue Code, 26 U.S.C. Section 42), that satisfy the following criteria:

6 (i) Where a tenant's occupancy of the unit began before the applicable LIHTC
7 regulatory agreement was recorded; and,

8 (ii) Where the rent is not controlled or regulated by any use restrictions imposed by the
9 City and County of San Francisco, the San Francisco Redevelopment Agency, ~~or~~ the State of California
10 Office of Housing and Community Development, or the United States Department of Housing and
11 Urban Development.

12 Nothing in this Section 37.2(r)(4)(C) precludes a landlord from seeking an exemption on the
13 basis of substantial rehabilitation under Section 37.2(r)(6).

14 This Section 37.2(r)(4)(C) definition of "rental unit" shall apply to any unit where the
15 qualifying tenant (see Section 37.2(r)(4)(C)(i)) is in possession of the unit on or after the
16 effective date of this ordinance (Ord. No. _____), including but not limited to any unit where the
17 tenant has been served with a notice to quit but has not vacated the unit and there is no final
18 judgment against the tenant for possession of the unit as of the effective date of this
19 ordinance (Ord. No. _____).

20 (5) Rental units located in a structure for which a certificate of occupancy was first
21 issued after the effective date of this ordinance, except as provided for certain categories of
22 units and dwellings by Section 37.3(d) and Section 37.9A(b) of this Chapter;

23 (6) Dwelling units in a building which has undergone substantial rehabilitation after the
24 effective date of this ordinance; provided, however, that RAP rental units are not subject to
25 this exemption.

1 (7) Dwellings or units otherwise subject to this Chapter 37, to the extent such
2 dwellings or units are partially or wholly exempted from rent increase limitations by the Costa-
3 Hawkins Rental Housing Act (California Civil Code Sections 1954.50, et seq.) and/or San
4 Francisco Administrative Code Section 37.3(d).

5 (s) Substantial Rehabilitation. The renovation, alteration or remodeling of residential
6 units of 50 or more years of age which have been condemned or which do not qualify for
7 certificates of occupancy or which require substantial renovation in order to conform the
8 building to contemporary standards for decent, safe and sanitary housing. Substantial
9 rehabilitation may vary in degree from gutting and extensive reconstruction to extensive
10 improvements that cure substantial deferred maintenance. Cosmetic improvements alone
11 such as painting, decorating and minor repairs, or other work which can be performed safely
12 without having the unit vacated do not qualify as substantial rehabilitation.

13 (t) Tenant. A person entitled by written or oral agreement, sub-tenancy approved by
14 the landlord, or by sufferance, to occupy a residential dwelling unit to the exclusion of others.

15 (u) Tenant-Based Rental Assistance. Rental assistance provided directly to a tenant
16 or directly to a landlord on behalf of a particular tenant, which includes but shall not be limited
17 to certificates and vouchers issued pursuant to Section 8 of the United States Housing Act of
18 1937, as amended (42 U.S.C. Section 1437f) and the HOPWA program.

19 (v) Utilities. The term "utilities" shall refer to gas and electricity exclusively.

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

23 By: _____
24 MARIE CORLETT BLITS
25 Deputy City Attorney