

BOARD of SUPERVISORS



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MEMORANDUM

TO: Olson Lee, Director, Mayor's Office of Housing and Community Development
Tiffany Bohee, Executive Director, Office of Community Investment and Infrastructure
Robert Collins, Acting Executive Director, Rent Board
Trent Rhorer, Executive Director, Human Services Agency
Barbara Smith, Acting Executive Director, Housing Authority

FROM: Andrea Ausberry, Assistant Clerk
Land Use and Transportation Committee

DATE: May 24, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Wiener on May 17, 2016:

File No. 160554

Ordinance amending the Administrative Code to allow persons receiving tenant-based rental assistance under the federal Housing Opportunities for Persons with AIDS (HOPWA) program to be eligible for protections against rent increases.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: andrea.ausberry@sfgov.org.

c: Eugene Flannery, Mayor's Office of Housing and Community Development
Sophie Hayward, Mayor's Office of Housing and Community Development
Claudia Guerra, Office of Community Investment and Infrastructure
Krista Ballard, Human Services Agency
Louise Rainey, Human Services Agency
Andrea Agho, Housing Authority
Velma Navarro, Housing Authority
Linda Martin-Mason, Housing Authority

1 [Administrative Code - Rent Control for Tenants in Housing Opportunities for Persons With
2 AIDS Program]

3 **Ordinance amending the Administrative Code to allow persons receiving tenant-based**
4 **rental assistance under the federal Housing Opportunities for Persons With AIDS**
5 **(HOPWA) program to be eligible for protections against rent increases.**

6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
8 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~strikethrough Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 subsections or parts of tables.

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

14 Section 1. Background, Purpose, and Findings.

15 (a) The Residential Rent Stabilization and Arbitration Ordinance (Admin. Code
16 Chapter 37) (the "Rent Ordinance") imposes rent increase limitations on certain rental units in
17 the City, but exempts units from rent control if occupied by recipients of tenant-based rental
18 assistance under the federal Housing Opportunities for Persons With AIDS (HOPWA) rental
19 subsidy program (24 C.F.R. Part 574). This exclusion is unfair and contrary to public policy.
20 It withholds the protection of rent control from tenants residing in units that might otherwise be
21 eligible for rent control, based solely on their receipt of HOPWA rental subsidies.

22 (b) The HOPWA rental subsidy typically covers the difference between 30% of the
23 tenant family's adjusted monthly income, and the lower of either (1) the federal rent standard
24 or (2) the reasonable rent for the unit. 24 C.F.R. §§ 574.310(d), 320(a). However, in some
25 cases, tenants receiving a subsidy still have not been able to afford their rents; and, as rents
have continued to rise, some of these residents have lost their ability to receive the subsidy or

1 lost their housing altogether. The City does not have the capacity to change the HOPWA
2 rules, to the extent they allow this, but it can attempt to address the hardships that these
3 tenants have experienced. By removing the exclusion of units occupied by HOPWA
4 participants from local rent control, this ordinance will allow tenants participating in HOPWA to
5 receive rent control if otherwise eligible to do so, and will help these tenants continue to
6 receive assistance through the HOPWA program and remain in San Francisco.

7 (c) This ordinance is intended solely to remove the current exemption of units from
8 rent control based on occupancy by recipients of a subsidy under the HOPWA program, and
9 thereby render such tenants eligible for the protection of rent control under the Rent
10 Ordinance. This ordinance is not intended to alter the applicability of the Rent Ordinance to
11 units housing tenants receiving any other form of tenant-based rental assistance.

12
13 Section 2. The Administrative Code is hereby amended by revising Sections 37.2 and
14 37.3 as follows:

15 **SEC. 37.2. DEFINITIONS.**

16 (a) **Base Rent.**

17 * * * *

18 (2) From and after August 30, 1998~~the effective date of this ordinance~~, the base rent
19 for tenants occupying rental units which have received certain tenant-based or project-based
20 rental assistance shall be as follows:

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

22 (i) For any tenant receiving tenant-based rental assistance as of August
23 30, 1998~~the effective date of this ordinance~~ under a program that does not establish the tenant's share
24 of base rent as a fixed percentage of a tenant's income, such as in the Housing Choice Voucher
25 Program or the Over-FMR Tenancy program,~~(except where the rent payable by the tenant is a fixed~~

1 ~~percentage of the tenant's income, such as in the Section 8 certificate program and the rental subsidy~~
2 ~~program for the HOPWA program), and continuing to receive such tenant-based rental~~
3 ~~assistance thereafter following the effective date of this ordinance, the initial base rent for each~~
4 ~~unit occupied by such tenant shall be the rent payable for that unit under the Housing~~
5 ~~Assistance Payments contract, as amended, between the San Francisco Housing Authority or~~
6 ~~the Human Services Agency and the landlord (the "HAP contract") with respect to that unit~~
7 ~~immediately prior to August 30, 1998~~the effective date of this ordinance~~ (the "HAP" contract rent").~~

8 (ii) For any tenant receiving tenant-based rental assistance under a
9 program that does not establish the tenant's share of base rent as a fixed percentage of a tenant's
10 income, such as in the Housing Choice Voucher Program or the Over-FMR Tenancy program,~~(except~~
11 ~~where the rent payable by the tenant is a fixed percentage of the tenant's income, such as in the Section~~
12 ~~8 certificate program and the rental subsidy program for the HOPWA program), and commencing~~
13 ~~occupancy of a rental unit after August 30, 1998~~following the effective date of this ordinance~~, the~~
14 ~~initial base rent for each unit occupied by such a tenant shall be the HAP contract rent in~~
15 ~~effect as of the date the tenant commences occupancy of such unit.~~

16 (iii) For any tenant receiving rental assistance under the HOPWA rental subsidy
17 program as of May 17, 2016, and continuing to receive such assistance under the HOPWA rental
18 subsidy program thereafter, the initial base rent for each unit occupied by such tenant shall be the HAP
19 Contract Rent in effect as of May 17, 2016.

20 (iv) For any tenant receiving rental assistance under the HOPWA rental subsidy
21 program who commenced occupancy of a rental unit after May 17, 2016, the initial base rent for each
22 unit occupied by such tenant shall be the HAP Contract Rent in effect as of the date the tenant
23 commences occupancy of such unit.

24 (viii) For any tenant whose tenant-based rental assistance terminates or
25 expires, for whatever reason, ~~after August 30, 1998~~~~following the effective date of this ordinance~~, the

1 base rent for each such unit following expiration or termination shall be the HAP contract rent
2 in effect for that unit immediately prior to the expiration or termination of the tenant-based
3 rental assistance.

4 * * * *

5 (k) **Payment Standard.** An amount determined by the San Francisco Housing
6 Authority that is used to determine the amount of assistance paid by the San Francisco
7 Housing Authority on behalf of a tenant under the Housing Choice Section 8 Voucher Program
8 (24 CFR Part 982887). The term "payment standard" shall also refer to the rent standard used to
9 determine the amount of assistance paid by the Human Services Agency under the HOPWA rental
10 subsidy program (24 C.F.R. Part 574).

11 * * * *

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

16 * * * *

17 The term "rental units" shall not include:

18 * * * *

19 (4) Except as provided in Subsections (A), (B) and (C), dwelling units whose rents
20 are controlled or regulated by any government unit, agency or authority, excepting those
21 unsubsidized and/or unassisted units which are insured by the United States Department of
22 Housing and Urban Development; provided, however, that units in unreinforced masonry
23 buildings which have undergone seismic strengthening in accordance with Building Code
24 Chapters 16B and 16C shall remain subject to the Rent Ordinances to the extent that the
25

1 ordinance is not in conflict with the seismic strengthening bond program or with the program's
2 loan agreements or with any regulations promulgated thereunder;

3 (A) For purposes of Sections 37.2, 37.3(a)(10)(A), 37.4, 37.5, 37.6, 37.9,
4 37.9A, 37.10A, 37.11A and 37.13, and the arbitration provisions of Sections 37.8 and 37.8A
5 applicable only to the provisions of Sections 37.3(a)(10)(A), the term "rental units" shall
6 include units occupied by recipients of tenant-based rental assistance where the tenant-based
7 rental assistance program does not establish the tenant's share of base rent as a fixed
8 percentage of a tenant's income, such as in the Housing Choice Section 8 Voucher P program
9 and the "Over-FMR Tenancy" program defined in 24 CFR Section 982.4, and shall also include
10 units occupied by recipients of tenant-based rental assistance under the HOPWA rental subsidy
11 program;

12 (B) For purposes of Sections 37.2, 37.3(a)(10)(B), 37.4, 37.5, 37.6, 37.9, 37.9A,
13 37.10A, 37.11A and 37.13, the term "rental units" shall include units occupied by recipients of
14 tenant-based rental assistance where the rent payable by the tenant under the tenant-based
15 rental assistance program is a fixed percentage of the tenant's income, such as in the
16 Section 8 Certificate Program ~~and the rental subsidy program for the Housing Opportunities for~~
17 ~~Persons with Aids ("HOPWA") program (42 U.S.C. Section 12901 et seq., as amended);~~

18 * * * *

19 (u) **Tenant-Based Rental Assistance.** Rental assistance provided directly to a tenant
20 or directly to a landlord on behalf of a particular tenant, which includes but shall not be limited
21 to certificates, ~~and vouchers,~~ and subsidies issued pursuant to Section 8 of the United States
22 Housing Act of 1937, as amended (42 U.S.C. Section 1437f), or and the HOPWA program (24
23 CFR Part 574).

1 **SEC. 37.3. RENT LIMITATIONS.**

2 (a) **Rent Increase Limitations for Tenants in Occupancy.** Landlords may impose
3 rent increases upon tenants in occupancy only as provided below and as provided by
4 Subsection 37.3(d):

5 * * * *

6 (10) With respect to units occupied by recipients of tenant-based rental assistance:

7 (A) If the tenant's share of the base rent is not calculated as a fixed percentage
8 of the tenant's income, such as in the Housing Choice Section 8 Voucher Program and the
9 Over-FMR Tenancy Program, or if the tenant is receiving assistance under the HOPWA rental
10 subsidy program, then:

11 (i) If the base rent is equal to or greater than the payment standard, the rent
12 increase limitations in Sections 37.3(a)(1) and (2) shall apply to the entire base rent, and the
13 arbitration procedures for those increases set forth in Section 37.8 and 37.8A shall apply.

14 (ii) If the base rent is less than the payment standard, the rent increase
15 limitations of this Chapter shall not apply; provided, however, that any rent increase which
16 would result in the base rent being equal to or greater than the payment standard shall not
17 result in a new base rent that exceeds the payment standard plus the increase allowable
18 under Section 37.3(a)(1).


19 (B) If the tenant's share of the base rent is calculated as a fixed percentage of
20 the tenant's income, such as in the Section 8 Certificate Program ~~and the rental subsidy~~
21 ~~program for the HOPWA program~~, the rent increase limitations in Section 37.3(a)(1) and (2)
22 shall not apply. In such circumstances, adjustments in rent shall be made solely according to
23 the requirements of the tenant-based rental assistance program.

1 Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word
2 of this ordinance, or any application thereof to any person or circumstance, is held to be
3 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
4 shall not affect the validity of the remaining portions or applications of the ordinance. The
5 Board of Supervisors hereby declares that it would have passed this ordinance and each and
6 every section, subsection, sentence, clause, phrase, and word not declared invalid or
7 unconstitutional without regard to whether any other portion of this ordinance or application
8 thereof would be subsequently declared invalid or unconstitutional.

9
10 Section 4. Effective Date. This ordinance shall become effective 30 days after
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
13 of Supervisors overrides the Mayor's veto of the ordinance.

14
15 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
17 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
18 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
19 additions, and Board amendment deletions in accordance with the "Note" that appears under
20 the official title of the ordinance.

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

23 By: 
24 MANU PRADHAN
Deputy City Attorney
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